

INTRODUCTION

The legislative amendments proposed in this document are supplementary to those already suggested in the IPC's March 2015 publication, *It's Time to Update, Proposals for Amendments to The Freedom of Information and Protection of Privacy Act and The Local Authority Freedom of Information and Protection of Privacy Act (It's Time to Update)*. The amendments proposed in this document reflect new developments and trends and include recommendations made by the Saskatchewan Information and Privacy Commissioner (IPC) or were offered in legislative review documents from other jurisdictions. Also considered were recent legislative amendments in other jurisdictions including those made in Newfoundland and Labrador to its *Access to Information and Protection of Privacy Act, 2015* and public comments received by our office.

This document sets out a series of proposed amendments to *The Freedom of Information and Protection of Privacy Act* (FOIP) and *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP) in the following categories: Amendments for Citizens, Amendments for Public Bodies, Amendments to Assist the Commissioner and General Amendments.

SUMMARY OF PROPOSALS

Part I Amendments for Citizens

1. Confirm or deny existence of record - It is proposed that FOIP be amended to limit which exemptions may be relied upon when invoking subsection 7(4).
2. WCB amendment - It is proposed that FOIP, HIPA and *The Workers' Compensation Act, 2013* be amended so that FOIP, not HIPA, will apply in full to records in the possession or control of the Workers' Compensation Board.
3. Providing electronic access – It is proposed that citizens have the option of receiving requested records electronically.
4. Cabinet confidences - It is proposed that FOIP be amended to reduce the time Cabinet confidences may be released from 25 to 15 years.
5. Duty to Document - It is proposed that a duty to document be introduced into FOIP as presently one does not exist.
6. Delegation by the Head - FOIP should include a provision that requires the appointment of an access and privacy coordinator for every government institution and clarify that the head may delegate to an employee, not just an officer.

Part II Amendments for Public Bodies

7. Counselor's records – LA FOIP presently does not clarify when records are in the possession or control of a municipality or its council members. A new subsection should be added to provide that clarification.

Part III Amendments to Assist the Commissioner

8. IPC authority to disclose to contractors – FOIP should be clarified so that the Commissioner may appoint and disclose confidential information to contractors when necessary.

Part IV General

9. Expand Government Reporting Requirements – It is proposed that an amendment is made to FOIP that would require government institutions to expand present reporting requirements in its Annual Report to include the number of privacy breach complaints received by each government institution that fiscal year.
10. MLAs' and Ministers' offices bound by FOIP – FOIP only applies presently to government institutions. It is proposed that the privacy provisions of FOIP be extended to offices of MLAs and Ministers.
11. Private sector employee protection - Depending on the nature of the organization, privacy protection is not extended to all employees. A new Part should be added to FOIP or *The Saskatchewan Employment Act* to address this deficiency.

PART I AMENDMENTS FOR CITIZENS

1. Confirm or deny existence of record

In Review Report 035/2015, the IPC made the following recommendation:

I recommend that the Legislative Assembly amend subsection 7(4) of *The Local Authority Freedom of Information and Protection of Privacy Act* and *The Freedom of Information and Protection of Privacy Act* to narrow the scope of these provisions to bring them in line with other provinces.

In this Report, our section 7(4) of FOIP was compared to similar provisions in other jurisdictions as follows:

A jurisdictional scan indicates that British Columbia and Ontario have a similar provision but it can only be invoked where there would be an unjustified invasion of privacy or interference with law enforcement. Alberta, Prince Edward Island and Manitoba are similar but in addition to the above, the provision can be invoked where disclosure would threaten health or safety. The federal *Access to Information Act* (ATIA) has a provision most similar to Saskatchewan's. It is broad and the federal Information Commissioner has recommended that it be more narrowly defined as it is in other provinces. Saskatchewan's subsection 7(4) of LA FOIP and FOIP should also be amended to narrow the scope of this discretionary power in order to bring it into line with other provinces.

Proposal

To bring Saskatchewan in line with other jurisdictions, I propose the following amendment to subsection 7(4) of FOIP:

7(4) Where an application is made with respect to a record that is exempt from access pursuant to sections 15, 21 or 29(1) of this Act, the head may refuse to confirm or deny that the record exists or ever did exist.

2. WCB amendment

In the IPC's November 2015 *Submission to The Workers' Compensation Act Committee of Review 2015*, http://www.oipc.sk.ca/Resources/2015-2016/Workers_Compensation_Act_Committee_of_Review_2015.pdf, the following is noted:

In all other provinces and territories (except Quebec and New Brunswick) legislation similar to FOIP applies to WCB in the same manner as it would to any other public body.

However, many of the provinces have special exemptions for personal notes, communications or draft decisions created by or for a person who is acting in a judicial or quasi-judicial capacity.

In New Brunswick, Alberta, Manitoba, Ontario and Prince Edward Island, the Workers' Compensation Board and the Appeal Body are separate entities. FOIP applies to both the Board and the Appeal Body (except in New Brunswick where FOIP only applies to the Board).

Workers in Saskatchewan do not enjoy the same access and privacy rights and protections as workers in most other provinces and territories.

Proposal

The following was recommended in the above noted submission:

I ask for the support of the Committee of Review in recommending the following in its final report:

That FOIP apply fully to WCB and the following legislative amendments occur:

- Repeal sections 172 to 174 of the WCA.
- Repeal subsection 23(3)(k) of FOIP.

That WCB not be a trustee under HIPA and the following legislative amendments occur:

- Repeal subsection 4(4)(h) of HIPA.
- Amend subsection 2(h) of HIPA to exclude WCB as a trustee.

Amend subsection 24(1.1) of FOIP to ensure that personal health information under the possession or control of WCB is personal information under FOIP.

3. Providing electronic access

Presently, FOIP does not contain a provision that provides for access in electronic form. The recommendation to provide records electronically was made in IPC Review Report 146-2015 and 147-2015 as follows:

I recommend that the Ministry, and all public bodies, in the future, accommodate Applicants and where practical provide the record electronically.

Subsection 9(2.1) of British Columbia's (BC's) FOIP provides this option:

9 (2.1) If the applicant has asked for a copy under section 5 (2) in electronic form and it is reasonable to provide the record in that form, a copy of the record or part of the record must be provided in that form with the response.

The Report of the 2014 Statutory Review Access to Information and Protection of Privacy Act Newfoundland and Labrador supports such a right and expands it even further as follows:

The Committee concludes that in order to achieve these objectives, the **existing definition of records should be changed to include machine-readable records and datasets; public bodies should consult with requesters before creating such records; and the information should be provided in an electronic form that can be reused.** The Committee notes there will be a learning curve for both public bodies and requesters in respect of machine readable records and datasets. It would be helpful if public bodies were to work with requesters to ensure that there is awareness of such records and to develop practices so that full use can be made of the records.

Definitions

2. In this Act

...

- (g) "**dataset**" means information comprising a collection of information held in electronic form where all or most of the information in the collection
- (i) has been obtained or recorded for the purpose of providing a public body with information in connection with the provision of a service by the public body or the carrying out of another function of the public body,
 - (ii) is factual information
 - (A) which is not the product of analysis or interpretation other than calculation, and
 - (B) to which section 13 of the *Statistics Agency Act* does not apply, and
 - (iii) remains presented in a way that, except for the purpose of forming part of the collection, has not been organized, adopted or otherwise materially altered since it was obtained or recorded;

...

- (y) "**record**" means a record of information in any form, and includes a dataset, information that is machine readable, written, photographed, recorded or stored in any manner, but does not include a computer program or a mechanism that produced records on any storage medium;

Provision of information

20. (1) Where the head of a public body informs an applicant under section 17 that access to a record or part of a record is granted, he or she shall

- (a) give the applicant a copy of the record or part of it, where the applicant requested a copy and the record can reasonably be reproduced; or
- (b) permit the applicant to examine the record or part of it, where the applicant requested to examine a record or where the record cannot be reasonably reproduced.

(2) Where **the requested information is in electronic form in the custody or under the control of a public body, the head of the public body shall produce a record for the applicant where**

- (a) **it can be produced using the normal computer hardware and software and technical expertise of the public body**; and
 - (b) producing it **would not interfere unreasonably with the operations of the public body**.
- (3) Where the requested information is information in electronic form that is, or forms part of, a dataset in the custody or under the control of a public body, the head of the public body shall produce the information for the applicant **in an electronic form that is capable of re-use** where
- (a) it can be produced using the normal computer hardware and software and technical expertise of the public body;
 - (b) producing it would not interfere unreasonably with the operations of the public body; and
 - (c) it is reasonably practicable to do so.
- (4) Where information that is, or forms part of, a dataset is produced, the head of the public body shall make it available for re-use in accordance with the terms of a licence that may be applicable to the dataset.
- (5) Where a record exists, but not in the form requested by the applicant, the head of the public body may, **in consultation with the applicant, create a record in the form** requested where the head is of the opinion that it would be simpler or less costly for the public body to do so.

The above provisions are also contained in Newfoundland and Labrador's *Access to Information and Protection of Privacy Act, 2015*.

The Information Commissioner of Canada made similar recommendations in a special report titled, *Striking the Right Balance for Transparency – Recommendations to modernize the Access to Information Act* as follows:

Recommendation 2.7

The Information Commissioner recommends that institutions be required to provide information to requesters in an open, reusable, and accessible format by default, unless the following circumstances apply:

- the requester asks otherwise;
- it would cause undue hardship to the institution; or
- it is technologically impossible

Proposal

It is proposed that FOIP be amended as follows:

Manner of access

10(1) Where an applicant is entitled to access pursuant to subsection 9(1), the head shall provide the applicant with access to the record in accordance with this section.

(2) A head may give access to a record:

...

(b) where it is not reasonable to reproduce the record, by giving the applicant an opportunity to examine the record; **or**

(c) where the requested information is information in electronic form in the possession or under the control of a government institution, the head of the government institution shall produce the information for the applicant in an electronic form where

(i) it can be produced using the normal computer hardware and software and technical expertise of the government institution;

(ii) producing it would not interfere unreasonably with the operations of the government institution; and

(iii) it is reasonably practicable to do so.

(3) A head may give access to a record that is a microfilm, film, sound recording, machine-readable record or other record of information stored by electronic means:

- (a) by permitting the applicant to examine a transcript of the record;
- (b) by providing the applicant with a copy of the transcript of the record; or
- (c) in the case of a record produced for visual or aural reception, by permitting the applicant to view or hear the record or by providing the applicant with a copy of it.

The above amendment should also be made to section 10 of LA FOIP and all references of “government institution” be changed to “local authority”.

4. Cabinet Confidences

It is proposed that FOIP be amended to reduce the time Cabinet confidences may be released from 25 to 15 years as has been recommended or found in legislation in other jurisdictions.

The Information Commissioner of Canada in a special report, *Striking the Right Balance for Transparency – Recommendations to modernize the Access to Information Act* recommended the following:

Recommendation 4.23

The Information Commissioner recommends reducing the time limit of the exemption for advice and recommendations **to five years** or once a decision has been made, whichever comes first.

In the North West Territories (NWT) *Access to Information and Protection of Privacy Act*, Cabinet confidences do not protect records that are more than 15 years old as follows:

Cabinet confidences

13. (1) The head of a public body shall refuse to disclose to an applicant information that would reveal a confidence of the Executive Council, including ...

...

15 year limit

(2) **This section does not apply to information that has been in existence in a record for more than 15 years.**

Alberta’s FOIP includes the following timelines to release of Cabinet confidences and considers if certain information is otherwise made publicly available:

Cabinet and Treasury Board confidences

22(1) The head of a public body must refuse to disclose to an applicant information that would reveal the substance of deliberations of the Executive Council or any of its committees or of the Treasury Board or any of its committees, including any advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Executive Council or any of its committees or to the Treasury Board or any of its committees.

(2) **Subsection (1) does not apply to**

- (a) information in a record that has been in existence for **15 years or more**,
- (b) information in a record of a decision made by the Executive Council or any of its committees on an appeal under an Act, or

It is proposed that FOIP be amended as follows:

Cabinet documents

16(2) Subject to section 30, a head shall not refuse to give access pursuant to subsection (1) to a record where:

- (a) the record has been in existence for more than ~~25~~ **15** years; or
- (b) consent to access is given by:
 - (i) the President of the Executive Council for which, or with respect to which, the record has been prepared; or
 - (ii) in the absence or inability to act of the President, by the next senior member of the Executive Council who is present and able to act.

5. Duty to document

In Canada, information commissioners have suggested that a duty to document would fit in information management legislation or access to information laws.

The following recommendation is from a special report, *Striking the Right Balance for Transparency – Recommendations to modernize the Access to Information Act*, Information Commissioner of Canada:

Recommendation 2.1

The Information Commissioner recommends establishing **a comprehensive legal duty to document, with appropriate sanctions for non-compliance.**

A past Information Commissioner of Canada proposed the following amendment to the federal *Access to Information Act* (ATIA):

- 67.1(1) No person shall, with intent to deny a right of access under this Act.
- (a) destroy, mutilate or alter a record;
 - (b) falsify a record or make a false record;
 - (c) conceal a record;
 - **(c.1) fail to create a record in accordance with section 2.1; or**
 - (d) direct, propose, counsel or cause any person in any manner to do anything mentioned in any of paragraphs (a) to (c.1).

Also recommended was the addition of the following language to ATIA:

Every officer and employee of a government institution shall create such records as are reasonably necessary to document their decisions, actions, advice, recommendations and deliberations.

Recommended by the BC IPC in Investigation Report F15-03, issued October 22, 2015, is the following:

RECOMMENDATION 11:

Government should create a legislative duty to document within FIPPA as a clear indication that it does not endorse “oral government” and that it is committed to be accountable to citizens by creating an accurate record of its key decisions and actions.

In BC, Bill M 210-2015, Open Government Act, 2015, (received first reading March 2015), contains the following amendments:

5 *The Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165*, is amended as follows:

- (a) adding the following paragraph to section 2 (1):
 - (f) recognizing a positive duty to document key government actions, deliberations, and decisions on the part of public bodies, and any other body to which this Act applies,
- (b) adding the following subsections to section 2:
 - (1.1) No person shall, with intent to deny a right of access under this Act fail to create a record in relation with section 2 (1) (f);
 - (1.2) The head of a public body shall ensure that all relevant records related to real or apprehended litigation, audit, investigation, court or archival order, or special organizational requirement are created and maintained.

The Explanatory Note at the end of this Bill reads as follows:

This Act amends the *Freedom of Information and Protection of Privacy Act* in order to enhance public access to information and bring a renewed culture of open government to British Columbia. These amendments restore government accountability by creating a positive duty to document, strengthening public interest provisions and providing for greater access to records of government decision making. These amendments also bring under the purview of the act information from quasi-public bodies and corporations owned by public bodies. This Bill gives the Information and Privacy Commissioner jurisdiction over record creation and disposal and also takes advantage of changes in electronic technology to promote routine disclosure of calendars. Further, this Bill makes changes to the fees associated with Freedom of Information requests to expand general public access to information.

Proposal

If this type of amendment was found in FOIP, the IPC would have an opportunity to investigate complaints. I propose a section in FOIP as follows:

XX. Every officer and employee of a government institution shall create such records as are reasonably necessary to document their decisions, actions, advice, recommendations and deliberations.

Alternatively, such an amendment with similar wording could be added to *The Archives and Public Records Management Act* (APRMA).

6. Delegation by the head

It is problematic in FOIP that any delegation by the head of a government institution in section 60 is to “one or more **officers of the government institution.**” “Officer” is not defined in FOIP but appears to constitute something other than an employee. Most FOIP Coordinators, I believe would be considered employees, not officers. Section 60 should be expanded to include “employee.”

In Saskatchewan, the Saskatchewan College of Pharmacists amended its Regulatory Bylaws to add the following:

- 18 (8) (a) **Every pharmacy must have a designated privacy officer.**
- (b) The pharmacy manager for each pharmacy, or any other licensed pharmacist employed at that pharmacy as may be appointed by the pharmacy manager, shall be designated as the privacy officer for that pharmacy.
- (c) The pharmacy manager for each pharmacy must report to the College:
- (i) the name of the designated privacy officer for that pharmacy;
 - (ii) any changes to the privacy officer for that pharmacy; and
 - (iii) the initial privacy training and re-certification training undertaken by the designated privacy officer for that pharmacy.
- (d) Every privacy officer designated before the expiration of the 2012-13 pharmacy permit shall undertake privacy training approved by the College before the expiration of that pharmacy permit.
- (e) Every privacy officer designated after the expiration of the 2012-13 pharmacy permit shall undertake privacy training approved by the College within one year of his or her designation.
- (f) Every privacy officer shall participate in re-certification training once every three years.
- (g) If the requirements set out in paragraphs (a), (b), (c), (d), (e) and (f) above are not met, the pharmacy permit for the applicable pharmacy may be suspended or cancelled by the Registrar-Treasurer. The pharmacy permit may be reinstated upon the provision of satisfactory evidence that the requirements set out in paragraphs (a), (b), (c), (d), (e) and (f) above have been met.
- (h) The College shall record:
- (i) the designated privacy officer, as identified by the pharmacy manager in accordance with paragraph (c); and
 - (ii) the initial privacy training and re-certification training undertaken by the designated privacy officer;
- in the Register for each pharmacy.

The following sections are found in Manitoba's Access and Privacy Regulation:

Definitions

1 In this regulation,

...

"access and privacy officer" means any employee of a public body to whom the head has delegated a duty or power under section 81 of the Act;

Appointment of access and privacy coordinator

2 Every public body shall appoint an employee as an access and privacy coordinator who is responsible for receiving applications for access to records and for the day-to-day administration of the Act.

Proposal

I propose the following amendment to section 60 of FOIP and a similar amendment to section 50 of LA FOIP:

Delegation

60(1) A head may delegate to one or more officers or employees of the government institution a power granted to the head or a duty vested in the head.

(2) Every government institution shall appoint an employee as an access and privacy coordinator who is responsible for receiving applications for access to records and for the day-to-day administration of the Act.

(3) A delegation pursuant to subsection (1) **or (2)**:

(a) is to be in writing; and

(b) may contain any limitations, restrictions, conditions or requirements that the head considers necessary.

PART II AMENDMENTS FOR PUBLIC BODIES

7. Counselor's records

There has been ongoing confusion as to whether or not records that are created or accessible to municipal councilors are or are not in the possession or control of the municipality. An amendment to LA FOIP could provide the clarification needed. Although there does not appear to be an existing provision in any access or privacy law, I note the following proposed amendment to ON's MFIPPA by the ON IPC as contained in a letter to Minister McMeekin dated August 11, 2015:

"I recommend that the following be added as section 2(3.1) and (3.2) of MFIPPA:

(3.1) A record in the custody or control of a member of the council of a municipality is deemed to be in the **control of a municipality for the purposes of this Act, if it was created in the course of the member acting in relation to civil or municipal affairs of a municipality** as set out in the Municipal Act, 2001, or the City of Toronto Act, 2006 in relation to a member of Toronto City Council.

(3.2) Subsection (3.1) **does not apply to a personal record of a member or a record associated primarily with the member's interest as a politician and not the interest of the municipality.**"

Proposal

I propose language similar to the above be added to section 5 of LA FOIP. It would then be clearer when LA FOIP applies, including the privacy protections, and when it does not.

PART III AMENDMENTS TO ASSIST THE COMMISSIONER

8. IPC authority to disclose to contractors

The IPC has a core staff, but at times, has needed to consult with outside experts (i.e. legal counsel). Presently, FOIP only explicitly lists the Commissioner or the staff of the Commissioner. Manitoba's *The Freedom of Information and Protection of Privacy Act* (FOIP) is broader including "anyone acting for or under the direction of the Ombudsman". This provision and others of relevance are as follows:

General powers and duties

49 In addition to the Ombudsman's powers and duties under Part 5 respecting complaints, the Ombudsman may

- (i) **consult with any person with experience or expertise in any matter** related to the purposes of this Act

Ombudsman restricted as to disclosure of information

55(1) The Ombudsman, **and anyone acting for or under the direction of the Ombudsman**, shall not disclose information obtained in performing duties or exercising powers under this Act, except as provided in subsections (2) to (5).

When disclosure permitted

55(2) The Ombudsman may disclose, or may authorize anyone acting for or under the direction of the Ombudsman to disclose, information that is necessary to

- (a) **perform a duty or exercise a power of the Ombudsman under this Act;** or
- (b) establish the grounds for findings and recommendations contained in a report under this Act.

Newfoundland and Labrador's *Access to Information and Protection of Privacy Act, 2015* includes similar language:

102. (1) The commissioner **and a person acting for or under the direction of the commissioner**, shall not disclose information obtained in performing duties or exercising powers under this Act, except as provided in subsections (2) to (5).

(2) The commissioner may disclose, **or may authorize a person acting for or under his or her direction to disclose, information that is necessary to**

- (a) **perform a duty or exercise a power of the commissioner under this Act;** or
- (b) **establish the grounds for findings and recommendations contained in a report under this Act.**

(3) In conducting an investigation and in performing a duty or exercising a power under this Act, the commissioner and a person acting for or under his or her direction, shall take reasonable precautions to avoid disclosing and shall not disclose

- (a) any information or other material if the nature of the information or material could justify a refusal by a head of a public body to give access to a record or part of a record; or
- (b) the existence of information, where the head of a public body is authorized to refuse to confirm or deny that the information exists under subsection 17 (2).

(4) The commissioner may disclose to the Attorney General information relating to the commission of an offence under this or another Act of the province or Canada, where the commissioner has reason to believe an offence has been committed.

(5) The commissioner may disclose, or may authorize a person acting for or under his or her direction to disclose, information in the course of a prosecution or another matter before a court referred to in subsection 99 (1).

In the Yukon's *Access to Information and Protection of Privacy Act 2015 Review Information and Privacy Commissioner's Comments* from is the following recommendation:

Some Commissioners also have the power to:

- Consult with any person with experience or expertise in any matter related to the privacy law. MB's and NL's Commissioners have this power.

The following language is taken from the federal *Privacy Act*:

58. (1) Such officers and employees as are necessary to enable the Privacy Commissioner to perform the duties and functions of the Commissioner under this Act or any other Act of Parliament shall be appointed in accordance with the Public Service Employment Act.

(2) The Privacy Commissioner **may engage on a temporary basis the services of persons having technical or specialized knowledge of any matter** relating to the work of the Commissioner to advise

and assist the Commissioner in the performance of the duties and functions of the Commissioner under this Act or any other Act of Parliament and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of such persons.

Alberta's FOIP contains the following provision:

51(2) The Commissioner may engage the services of any persons necessary to assist the Commissioner in carrying out the Commissioner's duties and functions.

Proposal

Sections 43, 45, 46 and 47 of FOIP should be amended as follows:

Staff of commissioner

43(1) The commissioner may appoint the employees or contractors that are required in order to exercise the powers and perform the duties of the commissioner effectively.

...

(5) The commissioner shall:

...

(b) oversee and direct the staff of the commissioner's office and all contractors.

General powers of commissioner

45(2) The Commissioner may consult with or engage on a temporary basis the services of any person with experience or expertise in any matter related to the purposes of this Act.

Confidentiality

46(3) Notwithstanding subsection (1), the commissioner may disclose or may authorize a person acting for or under his or her direction to disclose:

...

(5) Notwithstanding subsection (1), the commissioner may disclose or may authorize a person acting for or under his or her direction to disclose information that is necessary to:

(a) perform a duty or exercise a power of the commissioner under this Act;

(6) Notwithstanding subsection (1), the commissioner may disclose to the Attorney General for Saskatchewan or the Attorney General of Canada information that relates to the commission of an offence against:

Non-compellability

47(2) Subsection (1) applies, with any necessary modification, to the staff of the commissioner's office or any contractors.

PART IV GENERAL

9. Expand Government Reporting Requirements

Presently, section 63 of FOIP limits government's annual report to the number of applications received by government institutions, the number of times access is denied and why and what fees are charged. Reporting should be broader and include commentary on privacy breaches.

In *The Privacy Act: First Steps Towards Renewal Report of the Standing Committee on Access to Information, Privacy and Ethics* the following recommendations for expanding government reporting requirements:

Quick Fix #8: Strengthen the annual reporting requirements of government departments and agencies under section 72 of the *Privacy Act*, by **requiring these institutions to report to Parliament on a broader spectrum of privacy-related activities.**

...

The Commissioner proposed that section 72 of the *Act* be amended to incorporate the updated Treasury Board guidelines and to make them mandatory for all federal institutions. This would enshrine the following reporting requirements in the law:

- a description of each PIA completed during the reporting period;
- an indication of the number of new data matching and data sharing activities undertaken;
- a description of privacy-related education and training activities initiated;
- a summary of significant changes to organizational structure, programs, operations, or policies that may impact on privacy;
- an overview of new and/or revised privacy related policies and procedures implemented;
- a description of major changes implemented as a result of concerns or issues raised by the OPC or the Auditor General;
- an **indication of privacy complaints or investigations processed and a summary of related key issues**, and;
- an indication of the number of applications or appeals submitted to the Federal Court or Federal Court of Appeal on *Privacy Act* matters.

Proposal

I propose that section 63(2) of FOIP be amended as follows:

63(2) The annual report of the minister is to provide details of:

- (a) the number of applications received by each government institution during the year;
- (b) the number of times during the year that the head of each government institution refused an application for access to a record, and the specific provisions of this Act or the regulations on which the refusals were based; ~~and~~
- (c) the fees charged and collected by each government institution for access to records during the year; and
- (d) the number of privacy complaints received by each government institution during the year.**

10. **MLAs and Ministers offices bound by FOIP**

In IPC Investigation Report 092-2015 to 095-2015, I recommended the following:

- a) that the Legislative Assembly introduce amendments to FOIP that would require offices of members of the Assembly or members of the Executive Council to be subject to Part IV (Protection of Privacy) of FOIP;

Similarly, the Information Commissioner of Canada recommended the following in a special report, *Striking the Right Balance for Transparency – Recommendations to modernize the Access to Information Act*:

Recommendation 1.2

The Information Commissioner recommends extending coverage of the Act to the Prime Minister's Office, offices of ministers and ministers of State, and parliamentary secretaries.

In an article on *Global News* on August 8, 2015, Premier Brad Wall is quoted as follows:

Even though I don't think we'll be able to review (the FOIP act) and pass it this fall, at the very least we should operate as if it applies to (politicians)," Wall said. "We will, I will, and I hope all MLAs will do the same.

Proposal

I propose an amendment that would extend the application of the privacy provisions in FOIP to these types of offices as is appropriate and practical.

11. Private sector employee protection

In its Time to Update, this office proposed that legislation be introduced to provide protection to employees in the private sector similar to the protections employees have in the public sector. In the event that such a law is not passed, an alternative in the interim would be to introduce a new Part to FOIP or *The Saskatchewan Employment Act* to extend privacy protections to employees outside the public sector.

Proposal

I propose sections pertaining to employee personal information similar to those found in Manitoba's *The Personal Information Protection and Identity Theft Prevention Act* and Alberta's and British Columbia's *Personal Information Protection Act* be inserted creating a new Part in FOIP or alternatively in *The Saskatchewan Employment Act*. This would include adding a definition of "employee personal information", clarifying the application of this new Part (i.e. this Part does not apply to employees of government institutions or local authorities), introducing a duty to protect and setting the rules for collection, use, disclosure, access, and correction of employee personal information.