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“... the overarching purpose of access to information legislation, then, is to facilitate democracy. It does so in two related ways. It helps ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry.”

Justice Laforest,
Supreme Court of
Canada, *Dagg v.*
Canada

ABOVE BOARD

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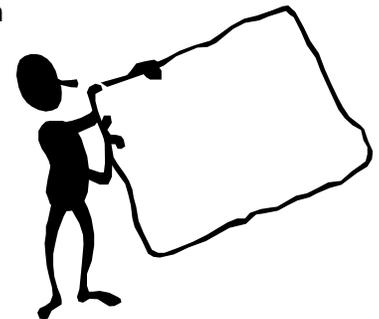
This edition of our newsletter has a schools and education theme.

It offers a summary of a recent OIPC Report involving an educational public body; highlights of court cases we are currently involved with that have repercussions for educational public bodies; articles about video surveillance in schools and our efforts to develop a set of practice guidelines, our efforts to expand our school educational mandate through presentations and school information kits, an update on Right to Know Week, the Right to Know Week Essay Competition, and the upcoming Data Privacy Day. We also have our regular features, Access and Privacy News, and an updated Resource List, along with a link to the new ATIPPA Fee Schedule.



School Presentations

Part of the mandate of the OIPC is public education about privacy issues. One of the ways we fulfill this mandate is to send Analysts to schools to instruct kids on how to best protect their privacy as they interact with social media. We focus on themes such as being the master of your own information and thinking before you post something. The message is clearly not anti-social media – we recognize that it is part of the kids' lives and we try to show them the tools and choices that they can use to reduce the exposure of their personal information.



We discuss topics like: online marketing, scams and identity theft, impacts on employment and education, slander, cyber-bullying, sexual predators, and sexting. The kids always find the presentations informative. We also do a parents/staff presentation which shows the parents what we will be discussing with the kids. We also add some extra information for parents so they can participate in the protection of their kids' online privacy.

Presentations are usually given to grades 7 to 9 but can be tailored to older kids if requested.

Schools & Education

Report A-2012-009 Memorial University of Newfoundland

The Applicant requested records from Memorial University pertaining to the observational study of MS patients announced on September 13, 2011 by the Minister of Health and Community Services. Memorial denied access to all the records under section 5, which exempts “research information” from the *Access to Information and Protection of Privacy Act*. During the course of the Review, Memorial took issue with the fact that records, which in its opinion were exempt from the Act, had been requested by this Office. The Commissioner stated that when a Request for Review is filed with this Office, the responsive records are requested from the public body as a matter of course, as it is often impossible to determine exactly what the records consist of without seeing them. Further, while the Commissioner cannot compel production of records which the public body states are exempt from the *ATIPPA* under section 5, this Office can still request that such records be provided voluntarily and this request could be granted by the public body in the keeping with the spirit and intent of the *ATIPPA*. The Commissioner found that some of the records were indeed research information and exempt from the *ATIPPA* while others were not, and should therefore be disclosed. Other records which were also found not to be research information were excepted from disclosure under section 30.

The OIPC in Court



The Commissioner has filed a court application for an appeal resulting from the recent Report issued by the Commissioner (and summarized above), Report A-2012-009. This related to a request for access filed by an Applicant with Memorial University. Memorial denied access to the records in their entirety on the basis that the records fell under section 5(1)(h) of the *ATIPPA*. That provision exempts from the *ATIPPA* “a record containing teaching materials or research information of an employee of a post-secondary educational institution.” Memorial claimed that all of the requested information was in fact “research information” as referenced in section 5(1)(h). The Commissioner found that some of the records were “research information” and were not subject to the *ATIPPA*, while other records did not fall into the category of “research information,” and he recommended that the latter records should be disclosed. Memorial University refused to comply with the Commissioner’s recommendations, and also raised the issue of whether the OIPC had jurisdiction to undertake the Review. The Commissioner hopes to receive guidance from the Court as to the correct definition of the term “research information” as found in section 5(1)(h), which would assist both the Commissioner and public bodies in the future.

The Commissioner has also recently filed a Notice of Appeal at the Supreme Court Trial Division in relation to a decision by the College of the North Atlantic to deny access to records requested by an Applicant. The College of the North Atlantic denied access to these records by claiming that they are protected by solicitor-client privilege, which falls under section 21 of the *ATIPPA*. Prior to the passage of Bill 29, which amended the *ATIPPA*, the Office of the Information and Privacy Commissioner was able to conduct a review of a decision by a public body to deny access to records on the basis of solicitor-client privilege. In the majority of such cases, we were able to resolve the matter informally, however when this was not possible the Commissioner issued a Report which could contain a recommendation if appropriate.

School & Education

The OIPC in Court continued...

Bill 29 removed the right of the OIPC to conduct a review where there is a claim of solicitor-client privilege. The process now is that individuals who are refused access to records on a claim of solicitor-client privilege may either proceed to an appeal at the Supreme Court Trial Division on their own behalf, or they may ask the OIPC to initiate the appeal on their behalf. In this case, the Applicant asked the OIPC to file an appeal on his behalf, and we have done so. Although we will not necessarily accept all requests to take this route on behalf of Applicants, we expect that the court process will now become a much more routine part of the Commissioner's responsibility to oversee and ensure compliance with the *ATIPPA*.

CCTV in Schools – Where to Draw the Line



Over 25% of all K-12 schools in Newfoundland and Labrador have closed circuit television camera systems (CCTV) in operation at present. All new school construction is being wired for CCTV, although camera installation itself is meant to be a separate decision. Surveillance cameras are becoming more and more common everywhere. While we have not reached the dystopian society envisioned by George Orwell in his novel *Nineteen Eighty-Four*, we have to ask ourselves how much surveillance is too much and how much is actually necessary.

School Districts are public bodies under the *ATIPPA*, and by extension, schools are subject to the *ATIPPA* as well. Given the expanded use of this technology by schools, we felt it was important for the OIPC as the oversight body for the *ATIPPA* to develop a clear set of guidelines, flowing directly from the principles and specific legislative provisions of the *ATIPPA*, to help set out the legal context within which CCTV decisions must be made. With this in mind the OIPC undertook an extensive review of CCTV policies and procedures in place in Canada and other countries and consulted with the Department of Education, all five school districts, the NLTA and the Newfoundland and Labrador Federation of School Councils. The resulting *Guidelines for the Usage of CCTV Systems in Schools in Newfoundland and Labrador* will be released in the near future and will be made available to educational public bodies and the general public.

The over-arching principle of most privacy laws is that an individual has the right to control how their own personal information is collected, used or disclosed. In Newfoundland and Labrador the *ATIPPA* governs access to records in the custody of or under the control of public bodies and sets requirements for the collection, use, and disclosure of personal information by those public bodies. Images recorded using CCTV meet the definition of personal information found in the *ATIPPA*, and CCTV recording is a collection of personal information.

Schools & Education

CCTV in Schools – Where to Draw the Line continued...

The OIPC recognizes that CCTV is often a useful tool in fighting crime, but we must remain vigilant that privacy rights of individuals are not trampled by the quick fix of surveillance. It has been argued that placing students under constant electronic surveillance creates an atmosphere of distrust, and in effect tells students that they are always under suspicion for the purpose of gathering evidence for future disciplinary matters. While it has been accepted by courts that students have a lower expectation of privacy while they are in school, those rights are by no means extinguished upon entering the school building. Obviously students have a right to be safe and secure, but it is essential that decisions about CCTV by schools are based on real, ongoing problems for which other less privacy intrusive solutions have been found ineffective. In our consultations, we often heard about the perception that CCTV will make students safer, and the perception that it will resolve certain problems. In some cases this might be correct, while in others CCTV installation may serve to create a perception that the problems have been addressed, without really addressing them.

The installation of cameras must be a “necessary” part of a program or activity of a public body in order to be justifiable under the *ATIPPA*. They cannot be installed based on mere speculation of serious problems arising in the future, and cameras must only be installed in locations and operated during times when warranted based on the problems that they are meant to address. Furthermore, other less privacy intrusive means of addressing issues in the school must first be attempted prior to the use of CCTV. If CCTV is determined to be necessary and must be or has been installed, it is essential that detailed policies and procedures be established that outline the location of cameras, who is allowed to view the images, how the images are stored, when and how those images can be disclosed or destroyed, etc. Finally, the OIPC supports dialogue with students and parents prior to the installation and usage of CCTV.

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School Information Kits

The OIPC has recently put together three school information kits aimed at schools generally, as well as junior and senior high schools. These kits provide a wealth of information and resources for students, teachers and parents about a number of issues involving access and privacy. In particular these kits offer lesson plans, quizzes, activities, tip sheets, posters and more on such issues as privacy in the information age, rights and media, cyberbullying, sexual exploitation and sexting, cybersecurity (including surfing, malware, e-commerce, and social networking), and safe online rules and practices.



At present, we have been distributing these kits at schools where we have presented on these topics, and we intend to expand our reach in the future to offer these kits to interested schools who might be more difficult to reach for in-person presentations.

Some useful sites that have assisted in providing material for these kits include:

<http://mediasmarts.ca/>

<http://www.youthprivacy.ca/en/>

<http://www.connectsafely.org/>

Events & Activities Summary

Right to Know Week 2012 (September 24th-28th, 2012) Recap

The purpose of Right to Know (RTK) Week is to raise awareness about people's right to access government information while promoting freedom of information as essential to both democracy and good governance. For this year's RTK Week, the OIPC was involved with a number of activities and events to promote this purpose, including:

RTK Week Open House: hosted by the OIPC at our offices for provincial ATIPP Coordinators and individuals in the access to information field. By invitation.

Canadian Bar Association Lunch and Learn: hosted by the CBA with a presentation by Access and Privacy Analyst, Suzanne Hollett on the Bill 29 amendment changes to the ATIPPA. Open to members of the CBA.

RTK Week Information Booth: located at Memorial University's Student Center near the food court from 11:30 am to 1:30 pm. Open to the public.

Launch of the 3rd Annual RTK Week Essay Competition: See below.



RTK 2012 Essay Competition

Open to secondary and post secondary students, the competition is sponsored by the OIPC, Memorial University and the College of the North Atlantic.

This year, students have been asked to write on the following topic:

How have changes to the *ATIPPA* impacted the right of access to information, either positively or negatively, in this province? Have those changes helped to achieve a balance between: 1) protecting the right of access to information; and 2) ensuring the provincial government and other public bodies are able to keep certain information confidential in order to operate effectively? Why or why not?"

The winning essay writer will be awarded a prize valued at \$400.00 and the essay will be published on the OIPC website and/or sponsor websites and internal publications. Second and third place entries will be awarded prizes valued at \$150.00 and \$50.00, respectively.

Entries are to be a maximum of 1,000 words, and must be submitted directly to the OIPC postmarked no later than December 31st, 2012.

For more information, click link to see the full poster <http://www.oipc.nl.ca/events.htm>

Resource List



<http://www.justice.gov.nl.ca/just/info/schedule.html> (ATIPPA, Regulations and Fee Schedule)

<http://www.justice.gov.nl.ca/just/departement/branches/division/atipp.html> (ATIPP Office)

http://www.justice.gov.nl.ca/just/atipp_training/index.html (ATIPP Training)

<http://www.oipc.nl.ca/accessreports.htm> (OIPC Commissioner's Reports on Access to Information)

<http://www.oipc.nl.ca/privacyreports.htm> (OIPC Commissioner's Reports on Privacy)

<http://twitter.com/#!/OIPCNL> (OIPC Twitter)

<http://www.assembly.nl.ca/business/bills/bill1229.htm> (Bill 29 Amendments to ATIPPA)

Access & Privacy News



Data Privacy Day (January 28th, 2013) is fast approaching! This year's theme is: *Take control of your information. Don't let it come back to haunt you!*

As part of the activities in support and celebration of this event, the OIPC will be mailing out posters to all provincial public bodies in the coming weeks ahead of DPD. The federal Office of the Privacy Commissioner produces this series

of three posters featuring a couple of new editorial cartoons that speak to this year's theme of individual accountability and that list all of the provincial and territorial Privacy Commissioners' and Ombudsmen's offices to show a cross-Canada approach to the initiative.

We ask that you display these posters in a prominent location in your office either as part of a public education initiative, or as educational material for staff and employees. If your public body does not have office space, please post in a prominent public location within your community.



The new **Fee Schedule** of the *Access to Information and Protection of Privacy Act* came into effect on December 10, 2012. The Fee Schedule may be viewed at this link:

<http://www.oipc.nl.ca/legislation.htm>

As set out in section 4 of the Fee Schedule, any fee estimate already provided to an applicant for an access to information request using the previous fee schedule shall remain in effect until the completion of that request.

For all other access to information requests received by public bodies, the new schedule will be used when assessing fees for such requests.

If you have any questions, please feel free to contact the ATIPP Office at 709-729-7072.



Warmest Wishes for a Very Safe and Happy Holiday Season and a Prosperous 2013 from the Commissioner and Staff of the OIPC.