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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*

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A QUARTERLY NEWSLETTER PUBLISHED BY THE
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This edition highlights a recent collaborative effort between the federal Office of the Privacy Commissioner of Canada, and several provincial and territorial offices, in creating a new Privacy Emergency Kit aimed at both public and private sector organizations dealing with emergent situations. It also offers a summary of a recent OIPC Report, updates on Privacy Awareness Week, Right to Know Week 2013, as well as our regular features, and an updated Resource List, which includes the new Policy and Procedures Manuals published by the ATIPP Office. We would like to highlight too that plans are underway for an access, privacy and records management conference in St. John's on November 21 and 22, 2013. Please stay tuned for confirmation and more information!



Report: A-2013-013

An application was made to the College of the North Atlantic seeking, “all records containing my personal information which have not previously been released to me.” The College notified the Applicant that due to the broad scope, it would not be responding to the request. Attempts were made to clarify the request by timeframe or key words, but ultimately the College determined it could not properly address the request due, in part, to the Applicant providing insufficient detail about the information requested. The Applicant then made a request for review to our office and the issues to be addressed included the applicability of section 8 of the *ATIPPA* to the Applicant's request, and section 10 to the requested information. The Commissioner found that section 10 of the *ATIPPA* applied to the electronic



records, as given the broad scope of the search, producing the records would interfere unreasonably with the operations of the College. However, the *ATIPPA* as it existed prior to the 2012 amendments (under which this request was filed), contained no similar provision for paper records, and as such, there was no basis in that version of the *ATIPPA* upon which to refuse to search for and provide paper records. The Commissioner recommended that the College perform a search of paper records and provide the results of that search to the Applicant. This should be considered a new request (for the purpose of resetting timelines), commencing on the date of acceptance of the recommendation. The “old” pre-amendments *ATIPPA* would still apply, however, as the original request was filed prior to the passing of Bill 29.

Privacy Emergency Kit



Personal information often plays a role in emergent situations such as the Asian Tsunami (2004) and Hurricane Katrina (2005). There have been concerns around the uncertainty that has arisen regarding the sharing of personal information in such emergency circumstances, and how this uncertainty could result in unnecessary confusion, delays in assistance or service, and ultimately cause significant consequences for people.

However, privacy laws should not be considered a barrier to appropriate sharing, nor should they be used as an excuse for inaction.

The Office of the Privacy Commissioner of Canada, in consultation with several provincial and territorial privacy oversight offices across Canada, has therefore developed a [Privacy Emergency Kit](#). Our office was involved in the development of this kit, which followed the adoption of the [Resolution on Data Protection and Major Natural Disasters](#) at the November 2011 [33rd International Conference of Data Protection and Privacy Commissioners](#).

The kit aims to help public and private sector organizations, subject to federal privacy laws, enhance the timeliness and content of communications during an emergency, while also giving people confidence that their personal information will be handled appropriately. While this guidance is largely aimed at decision-makers in organizations that are subject to federal privacy laws, the practices outlined are also largely applicable to all organizations regardless of jurisdiction.

We recommend familiarizing yourselves with the kit via the link above, as it emphasizes that considering privacy issues in advance of an emergency situation will better assist in avoiding problems in the event of a crisis, particularly making such preparations as drafting policies and information-sharing protocols, and planning a risk management strategy. Key topics discussed in the kit include:

1. [Frequently Asked Questions About Emergencies and Legal Authorities for Sharing Personal Information](#)
2. [Before an Emergency: A Checklist for Appropriate Handling of Personal Information](#)
3. [During an Emergency: A Checklist for Appropriate Handling of Personal Information](#)
4. [After an Emergency: A Checklist for Appropriate Handling of Personal Information](#)
5. [Privacy in the Time of a Pandemic: Fact Sheet for Employees \(October 2009\)](#)
6. [Privacy in the Time of a Pandemic: Guidance for Employers \(October 2009\)](#)



Recent OIPC Events and Activities



Right to Know (RTK) Week 2013 September 23 to 28, 2013

The purpose of the *Right to Know Week* is to raise awareness of an individual's right to access government information, while promoting freedom of information as essential to both democracy and good governance.

Each year on September 28, *Right to Know Day* is officially celebrated in over 40 nations worldwide. In Canada and in many countries around the world, celebrations have expanded into a week-long event. It is an annual celebration of an individual's right to access information held by public bodies, and serves to mark the benefits of a transparent and accessible government.

Right to Know Day:

Right to Know (RTK) Day is an idea that originated in 2002 in Sofia, Bulgaria at an international meeting of access to information advocates, who proposed that September 28 be dedicated to the promotion of freedom of information worldwide. Since 2002, the popularity and scope of *RTK Day* has grown immensely, and celebrations now include more than 60 non-government organizations and information commissions. *RTK Day* is also officially celebrated in over 40 countries worldwide, and in many countries those celebrations have expanded into a week-long event.

Over 60 countries have legislation promoting access to information, and more countries are in the process of developing such laws. Over the years, certain principles have emerged that form the core of the *Right to Know* movement. To mark *RTK Day* a decade ago, the [Open Society Justice Initiative](#) announced the following set of 10 principles on the right of access to information developed with partnering organizations.

The 10 Right to Know Principles:

1. Access to information is a right of everyone.
2. Access is the rule — secrecy is the exception!
3. The right applies to all public bodies.
4. Making requests should be simple, speedy, and free.
5. Officials have a duty to assist requesters.
6. Refusals must be justified.
7. The public interest takes precedence over secrecy.
8. Everyone has the right to appeal an adverse decision.
9. Public bodies should pro-actively publish core information.
10. The right should be guaranteed by an independent body.

For more information on all of the above, please visit:

<http://oipc.nl.ca/events.htm>



Resource List

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

<http://www.atipp.gov.nl.ca/> (ATIPP Office)

http://www.atipp.gov.nl.ca/publications/ATIPP_Policy_and_Procedures_Manual.pdf (Access to Information Policy & Procedures Manual)

<http://www.atipp.gov.nl.ca/info/Protection-of-Privacy-Policy-and-Procedures-Manual.pdf> (Privacy Policy & Procedures Manual)

<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.priv.gc.ca/information/pub/gd_em_201305_e.asp (Privacy Emergency Kit)

COURT UPDATES

Two individuals, one employed by Western and one by Eastern Health, were each charged with an offence under the *Personal Health Information Act (PHIA)* after two unrelated OIPC investigations. The *PHIA* offence provision is section 88(1): "A person who willfully obtains or attempts to obtain another person's personal health information by falsely representing that the person is entitled to the information is guilty of an offence and liable, on summary conviction, to a fine of not more than \$10,000 or to imprisonment for a term not exceeding 6 months, or to both." Both matters are currently before the courts.

Since the Bill 29 amendments to the *ATIPPA* came into force, the OIPC has been barred from reviewing any matter involving a claim of section 21 (solicitor-client privilege). The *ATIPPA* now sets out two options – the applicant can initiate an appeal to the Trial Division, or the applicant can ask the OIPC to do so. The latter has recently occurred, with the OIPC initiating a case where the College of

the North Atlantic (CNA) refused access to some legal bills, citing section 21. The records were provided under seal to the judge, for review. The case was argued in June, however near the end of the proceedings CNA raised an additional argument, which it sought consent to have heard privately with the judge, or with undertakings from the OIPC and the Law Society (an intervener) to keep secret. Furthermore, the judge was requested not to reference anything relating to the new argument in his decision. There was no agreement by the parties to proceed on that basis, so a new court date was set to argue whether CNA should be allowed to present its additional argument under the conditions as requested. Judge Orsborn rendered an oral decision on September 12, denying CNA's application to have the additional argument heard under its proposed conditions and advising he would review the records and arguments put forward by the parties at the original hearing in June. A decision is pending.

Time Extensions

Extensions of Time (s.16 ATIPPA)

An increasingly frequent request to the OIPC is for an extension to the response time for Public Bodies handling Applicant's requests. Please note that extensions of time are not granted automatically! Public Bodies seeking an extension to the time period for responding to an Applicant under the *ATIPPA* should note the following:

- 1) requests must be made to the OIPC in writing;
- 2) requests should outline the reasons why an extension of time is being sought as well as an estimate of the amount of extra time needed to complete the Applicant's request; and
- 3) A request should be made as soon as it is clear that an extension is needed, as opposed to right before the time period has run out.