



Protection of Privacy and Access to Information Presentation

Saskatchewan Land Surveyors Association
Friday, November 29



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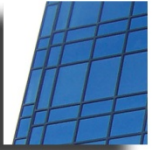
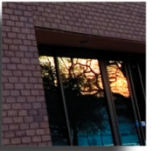
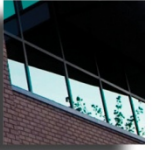
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Part 1 – Overview of Applicable Statutes



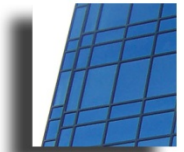
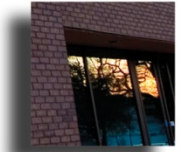
SLSA and its Members

- Members are mainly in private practice, conducting survey work for companies or as sole practitioners.
- Members may be asked to provide documents in relation to:
 - Subdivision work through Community Planning;
 - Highway work done for Ministry of Highways;
 - Pipeline work through Ministry of Energy and resources;
 - Fibre line or utility line surveys for SaskPower or SaskTel;
 - Survey work that crosses a provincial border.

PIPEDA, FOIP and LA FOIP

- Federal statute:
 - PIPEDA – The *Personal Information Protection and Electronic Documents Act*
- Provincial statutes:
 - FOIP – The *Freedom of Information and Protection of Privacy Act*
 - LA FOIP – The *Local Authority Freedom of Information and Protection of Privacy Act*

Part 2 – PIPEDA



PIPEDA – Who does it apply to?

- Federal Institutions and Federally Regulated Organizations
 - Examples include:
 - Airports, aircraft and airlines
 - Banks
 - Inter-provincial transportation companies
 - Radio and television broadcasters

PIPEDA – Who does it apply to?

- Private sector organizations across Canada that collect, use or disclose personal information in the course of a commercial activity
 - “**Personal information**”: Any factual or subjective information, recorded or not, about an identifiable individual. This includes information in any form such as an individual’s name, age, income, ethnic origin, opinions, evaluations, comments, disciplinary action, credit records, loan records, and records regarding a dispute between a consumer and a merchant.

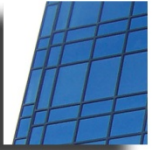
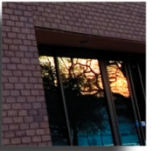
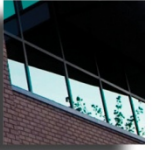
PIPEDA – Who does it apply to?

- “**Commercial activity**”: Any particular transaction, act or conduct or any regular course of conduct that is of a commercial character.
- All businesses that operate in Canada and handle personal information that crosses provincial or national borders are subject to PIPEDA

PIPEDA's Ten Principles

- PIPEDA is based on ten principles which govern the collection, use and disclosure of personal information by organizations
- The ten principles are accountability, identifying purposes, consent, limiting collection, limiting use, disclosure and retention, accuracy, safeguards, openness, individual access, and challenging compliance
- Surveyors working in private practice should consider whether they are collecting personal information, and ensure they are using and safeguarding that personal information in an appropriate manner

Part 3 – FOIP and LA FOIP



FOIP – Who does it apply to?

- Provincial Government Institutions
 - Examples include:
 - Government of Saskatchewan
 - Crown Corporations (SaskPower, SaskEnergy, SaskTel)
 - Other Prescribed Institutions (Farm Land Security Board, Saskatchewan Lands Appeal Board, Surface Rights Arbitration Board)

LA FOIP - Who does it apply to?

- Local Authorities
 - Examples include:
 - Municipalities (Cities, Towns, Villages)
 - Schools (Universities, High Schools, Primary Schools)
 - Police
 - Libraries
 - Other Prescribed Institutions
(Saskatchewan Assessment Management Agency)

Who does FOIP and LA FOIP not apply to?

- Unless you are a government institution under FOIP or a local authority under LA FOIP, neither of these statutes directly apply to you
 - Neither the SLSA nor the majority of the organizations its members work for are government institutions under FOIP or a local authority under LA FOIP.
 - The SLSA and many of its Members would be considered a “third party” under FOIP and LA FOIP

Who does FOIP and LA FOIP not apply to?

- However, FOIP and LA FOIP can indirectly apply to a number of individuals, organizations, and entities by virtue of the fact that many individuals, organizations, and entities communicate and transact with government institutions and local authorities.
- Therefore, where the SLSA or its members are communicating with or transacting with government institutions or local authorities, there is a possibility that any communication by the SLSA or its members with the government institution or local authority will be subject to release to the public.

What is a “third party” under FOIP and LA FOIP?

- FOIP – “**third party**” means a person, including an unincorporated entity, other than an applicant or a government institution.
- LA FOIP – “**third party**” means a person, including an unincorporated entity, other than an applicant or a local authority.

What is a “third party” under FOIP and LA FOIP?

- Effectively, any individual, organization and entity is a third party under FOIP and LA FOIP if they are communicating or transacting with a government institution or local authority.
- As a result, third parties must be cognizant of the implications of FOIP and LA FOIP when engaging with government institutions and local authorities.

What communications may be subject to release under FOIP and LA FOIP?

- Both FOIP and LA FOIP subject the “records” of government institutions and local authorities to public release where a request for the records is made.
- FOIP and LA FOIP have the same definition of “record”:
 - “**record**” means 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.

What communications may be subject to release under FOIP and LA FOIP?

- Effectively, anything in the possession of a government institution or local authority is a record that may be subject to public release excluding those programs or tools used to create the records.
 - Examples of records – email communications, contracts, videos, audio recording, minutes of meetings, human resources files, financial records, etc.
 - Examples of non-records – PDF programs, word processing programs, dictation software, editing software, accounting systems, etc.

What records are not releasable under FOIP and LA FOIP?

- Part III of FOIP and Part III of LA FOIP each contain a number of exemptions, some mandatory and some permissive, which require and/or allow government institutions and local authorities to withhold records from public release where an application for release has been made.
 - Mandatory exemptions from release – a record or information within a record that must be withheld and not released to the public.
 - Examples include information obtained in confidence from other governments, cabinet documents, personal information, and certain third party records and information.

What records are not releasable under FOIP and LA FOIP?

- Permissive exemptions from release – a record or information within a record that may be withheld from public release at the discretion of the government institution or local authority.
 - Examples include records that disclose advice from officials, records that disclose information that could negatively effect economic interests, and records that are subject to solicitor-client privilege.

What records are not releasable under FOIP and LA FOIP?

- However, where a record contains information to which access is refused, the government institution or local authority must still give access to as much of the record as can reasonably be severed without disclosing the information to which the applicant is refused access (section 8 of FOIP and section 8 of LA FOIP). This is done through redacting the non-releasable information.

Third Party Records and Information

- The specific exemptions for third party records and information are contained in section 19 of FOIP and section 18 of LA FOIP.
- The records and information of third parties that must not be publicly released are as follows:
 - trade secrets of a third party;
 - financial, commercial, scientific, technical or labour relations information that is supplied in confidence, implicitly or explicitly, to a government institution or local authority by a third party;

Third Party Records and Information

- information, the disclosure of which could reasonably be expected to result in financial loss or gain to, prejudice the competitive position of, or interfere with the contractual or other negotiations of a third party;
- a statement of a financial account relating to a third party with respect to the provision of routine services from a government institution or local authority;

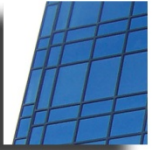
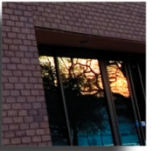
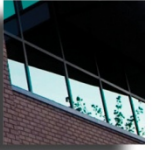
Third Party Records and Information

- a statement of financial assistance provided to a third party by a prescribed Crown corporation that is a government institution; and
 - information supplied by a third party to support an application for financial assistance.
- A government institution or local authority may, however, give access to the records or information of a third party in its possession if the third party consents to the release of the information.

Third Party Records and Information

- In some cases, a government institution or local authority may also give access to the records or information of a third party in its possession if disclosure of that record or information could reasonably be expected to be in the public interest as it relates to public health, public safety or protection of the environment and the public interest in disclosure could reasonably be expected to clearly outweigh in importance any financial loss or gain to, prejudice to the competitive position of, or interference with contractual or other negotiations of a third party.

Part 4 – The Access Landscape in Saskatchewan



Accessing Information from a Government Institution or Local Authority

- Section 5 of FOIP and section 5 of LA FOIP
- Every person has a right to, on making an application in accordance with FOIP or LA FOIP, access records that are in the possession or under the control of a government institution or local authority.
- Government institutions and local authorities must respond to access requests openly, accurately and completely.

Accessing Information from a Government Institution or Local Authority

- Section 7 of FOIP and section 7 of LA FOIP
- On receiving an application, a government institution or a local authority must provide a response to the applicant. A number or combination of responses can be provided to an access request provided it complies with the legislation, including among other reasons:
 - granting access to the record requested or part of it on payment of the prescribed fee and setting out the place where, or manner in which, access will be available;
 - if the record requested is published, referring the applicant to the publication;



Accessing Information from a Government Institution or Local Authority

- if the record is to be published within 90 days, informing the applicant of that fact and of the approximate date of publication;
- refusing access and setting out the reason for the refusal and identifying the specific provision of FOIP or LA FOIP on which the refusal is based; or
- refusing access for the reason that the record does not exist.

Accessing Information under PIPEDA

- Individuals have a right to access any of their personal information held by an organization that is subject to PIPEDA.
- A request can be made by the individual directly to the organization in writing and a response must be provided by the organization within 30 days.
- The information must be provided to the individual at little or no cost.

Accessing Information under PIPEDA

- If the request is refused, an organization must provide the reasoning for the refusal in writing and inform the requestor of any recourse available to them. Recourse includes the option to make a formal complaint to the federal Office of the Privacy Commissioner
 - An example of a grounds for refusal is if the request is for “confidential commercial information”

What happens if an applicant is unsatisfied with the response of a government institution or local authority?

- Where an applicant is not satisfied with the response of a government institution or local authority, the applicant may apply to the Office of the Saskatchewan Information and Privacy Commissioner (OIPC) for a review of the government institution's or local authority's decision.
 - Section 49 of FOIP
 - Section 38 of LA FOIP

What happens if an applicant is unsatisfied with the response of a government institution or local authority?

- The OIPC can elect to refuse to conduct a review but, in the majority of cases, the OIPC will review the decision of the government institution or local authority.
 - The OIPC has published “Rules of Procedure” for how this process will proceed.
 - The process is conducted in private by the OIPC and requires the government institution or local authority to submit the records subject to the application to the OIPC for its review.



What happens if an applicant is unsatisfied with the response of a government institution or local authority?

- After completing its review, the OIPC will typically prepare a written review report that makes recommendations as to whether a record or information within the record should be released or withheld by a government institution or third party.

After the OIPC Review

- After the OIPC has conducted a review and released its decision and written report, the government institution or local authority must render a decision to follow the recommendations of the OIPC or take any other decision it considered appropriate.
- Depending on the decisions made by the OIPC, government institution or local authority, and applicant the access request may come to an end or further action may be taken.

After the OIPC Review

- For example, if the applicant is not satisfied with the decision of the OIPC or the government institution or local authority, the applicant may appeal to the Court of Queen’s Bench for Saskatchewan for a determination by the Court.
 - Unlike the OIPC, which makes recommendations that a government institution or local authority may or may not follow, a determination by the Court must be followed unless a further appeal is instituted.

Does a third party have a say?

- Throughout the process of an access request, there are sections of both FOIP and LA FOIP that allow third parties to make submissions to government institutions and local authorities, the OIPC, or the Court, as the case may be, regarding the release of records or information that relate to the third party.

Does a third party have a say?

- Part V of FOIP and Part V of LA FOIP
 - A government institution or local authority must give notice to a third party if it intends to release records or information which relate to a third party and contains information believed to affect the interests of a third party (section 34 of FOIP and section 33 of LA FOIP)
 - A third party may waive the requirement of the government institution or local authority to give notice.

Does a third party have a say?

- A third party is entitled to make representations to a government institution or local authority as to why access to a record should not be given.
- A third party may also consent to release.
- There are other provisions that govern notice to and representations by third parties in the case of an OIPC or Court review; however, the most notable provisions are those relating to the decision of a government institution or local authority as this is when a third party will typically first receive notice of an access request.

Complaints to the federal Office of the Privacy Commissioner

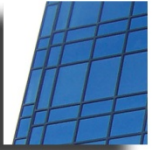
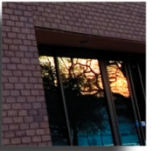
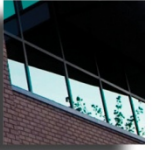
- If an individual is unhappy with an organization's response to their request for personal information under PIPEDA, they can make a complaint to the OPC
- The Commissioner will then investigate whether individuals' privacy rights have been contravened or whether individuals have been given their right of access to their personal information

Complaints to the federal Office of the Privacy Commissioner

- If a complaint is found to be substantiated, the Commissioner will release a Report of its Findings, which will include recommendations and request that the organization report on any action taken as a result of the Report
- The Commissioner may enter into a Compliance Agreement, enforceable by the Federal Court, whereby the respondent commits to implement certain measures with a view to resolving the complaint
- The Commissioner cannot impose fines for contraventions. However, the Federal Court, which is the next level of review, has the power to award damages to a complainant



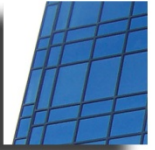
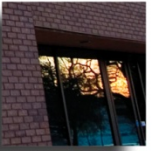
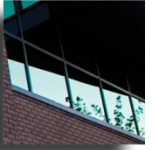
Part 5 – Conclusion



Resources to Consider

- The Freedom of Information and Protection of Privacy Act
- The Local Authority Freedom of Information and Protection of Privacy Act
- Personal Information and Protection of Electronic Documents Act
- The Office of the Saskatchewan Information and Privacy Commissioner (<https://oipc.sk.ca/>)
 - Rules of Procedure (<https://oipc.sk.ca/resources/rules-of-procedure/>)
 - Access (<https://oipc.sk.ca/resources/access/>)
 - Privacy (<https://oipc.sk.ca/resources/privacy/>)
- Privacy laws in Canada (<https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/>)
- The Office of the Privacy Commissioner of Canada (<https://www.priv.gc.ca/en>)
 - PIPEDA in Brief (https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/#_h1)

Questions?





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