

Chapter 50

Justice – Protecting Saskatchewan Data

1.0 MAIN POINTS

This chapter reports the results of our second follow-up on a recommendation we initially made in 2011 that the Ministry of Justice consider the benefits, in consultation with Saskatchewan's Information and Privacy Commissioner, of changes to Saskatchewan legislation to mitigate risks related to the *USA Patriot Act*.¹

At September 30, 2015, the Ministry of Justice had not implemented the recommendation. Since September 2013, the date of our last follow-up, the Ministry has not consulted with the Commissioner on risks posed by the *USA Patriot Act* or its successor, the *USA Freedom Act*,² or how legislative changes could mitigate those risks.

2.0 INTRODUCTION

This is our second follow-up of management's actions on a recommendation we initially made in *2011 Report – Volume 2*, Chapter 20 resulting from a study undertaken at the request of the Standing Committee on Public Accounts (Committee). The Committee was concerned about the accessibility of Saskatchewan government data that may reside on computers in the United States (US), travel electronically through the US, or that resides on service provider computers in Saskatchewan but be accessible to US parent companies given the provisions of the *USA Patriot Act*. As noted in **Figure 1**, in June 2015, this Act was replaced with the *USA Freedom Act* that has similar provisions in this area.

Figure 1 – The *USA Patriot Act* and the *USA Freedom Act*

The *USA Patriot Act* introduced changes to US laws that permitted US law enforcement agencies to require US persons or entities to furnish information. The orders could be applied to information in the US, Canada, or elsewhere. A US company could be ordered to provide information that existed (for example on a computer server) in the US. But the US company could also be ordered to provide information to which it had access even if that information was in Canada. The US company subject to the order was not permitted to reveal the existence of the order or that it provided information. On June 1, 2015, The *USA Patriot Act* expired.

On June 2, 2015, the *USA Freedom Act* came into effect. The *USA Freedom Act* does not significantly affect the operation of the orders described above, except that the court that grants the orders has some additional requirements for transparency in terms of its opinions and companies receiving surveillance requests can publicly report limited information (e.g., numbers of requests they receive).*

* Source: www.ipblog.ca/?p=868&utm_source=Mondaq&utm_medium=syndication&utm_campaign= (6 October 2015).

In 2011, we reported that the protections put in place by the then Information Technology Office (now Ministry of Central Services) could not ensure Saskatchewan data would not be accessible through the operation of the *USA Patriot Act*. We made two recommendations. Our *2013 Report – Volume 2* reported that the Ministry of Central Services had implemented its recommendation, but that the Ministry of Justice had not implemented its recommendation.

¹ The *USA Patriot Act* refers to United States Public Law 107-56.

² The *USA Freedom Act* refers to United States Public Law 114-23.



To conduct this review engagement, we followed the standards for assurance engagements published in the *CPA Canada Handbook – Assurance*.

3.0 STATUS OF RECOMMENDATION

This section sets out the recommendation including the date on which the Standing Committee on Public Accounts agreed to the recommendation, the status of the recommendation at September 30, 2015, and the Ministry's actions up to that date. We found that the Ministry has not implemented the recommendation.

3.1 Consultation Needed on Legislation to Mitigate Risks to Saskatchewan Data

We recommended that the Ministry of Justice consider the benefits, in consultation with Saskatchewan's Information and Privacy Commissioner, of changes to Saskatchewan's general access and privacy legislation, which could serve to mitigate risks related to the *USA Patriot Act*. (2011 Report – Volume 1; Public Accounts Committee agreement June 25, 2012)

Status – Not Implemented

Since September 2013 (the date of our last follow-up), the Ministry of Justice asked the Information and Privacy Commissioner, appointed July 1, 2014, to propose changes to Saskatchewan's general access and privacy legislation, *The Freedom of Information and Protection of Privacy Act*. The Commissioner provided the Ministry with his proposals and summarized them in the Commissioner's *2014-15 Annual Report*.³

However, since 2013, the Ministry has not specifically consulted with the Commissioner on risks posed by the *USA Patriot Act* or its successor, the *USA Freedom Act*, or how legislative changes could mitigate those risks. As such, the Commissioner's proposals did not include specific consideration of those risks. The Commissioner advises that he intends to discuss the risks with the Ministry.

³ www.oipc.sk.ca/Annual_Reports/Annual_Report_2014-2015.pdf, pp. 10-19 (7 October 2015).