

News release

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Landmark court ruling hailed by Commissioner Cavoukian as upholding openness and transparency of electronic records

TORONTO – A ruling handed down by the Ontario Court of Appeal today is “a landmark decision that upholds the principles of openness and transparency as applied to electronic records,” said Ontario Information and Privacy Commissioner Ann Cavoukian.

The Court allowed appeals by the IPC and a Toronto Star reporter from a Divisional Court ruling and restored the IPC’s Order applying the definition of “record” in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act* to electronic databases maintained by the Toronto Police Services Board. In that Order, the IPC held that the need to develop a computer program to anonymize personally identifiable information held in the databases would not result in the creation of new records outside the scope of Ontario’s freedom of information legislation.

In its ruling today, the Court directed the Toronto Police Services Board to respond to the Star’s requests immediately and to pay the newspaper’s legal costs.

The Star originally filed two freedom of information requests with the Toronto Police, seeking information from the police databases of arrests and occurrences, with personal identifiers removed, for its series of articles on racial profiling. When the Star was not able to obtain the information it sought, it filed an appeal with the IPC. The position taken by the police – that the information sought was not a “record” – was rejected by the IPC, which ordered the police to make a decision on access to the information.

The police then challenged the IPC Order and applied for judicial review to Ontario’s Divisional Court, which overturned the IPC’s Order, holding that the need to develop new software takes the request outside the statutory definition of “record.”

Today, the lower court decision was reversed. In its far-reaching decision, the Court of Appeal, Ontario’s highest court, agreed with the IPC’s submissions that the definition of record must be read “subject to the regulations,” which contemplate that institutions may be required to develop new computer programs to respond to requests. Because the Toronto Police Services Board had the technical expertise to develop an algorithm using its current software to create the requested records, the request satisfied the definition of record and upheld the IPC’s initial decision.

“This case,” said Commissioner Cavoukian, “represents a victory for openness and transparency in the context of electronic records – welcome to the 21st Century!”

Here is a direct link to the Court of Appeal ruling:

<http://www.ontariocourts.on.ca/decisions/2009/january/2009ONCA0020.htm>

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