

## Check against delivery

**Keynote by Patricia Kosseim, Information and Privacy Commissioner of Ontario  
— Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO)  
April 27, 2023**

### **Maintaining citizens' trust in a complex digital world**

#### **1. Introduction**

Good morning and thank you for inviting me here today.

With me today is Assistant Commissioner Warren Mar, who comes from the municipal world, having served as town solicitor of a couple of municipalities. Warren does a great job of reminding us of the challenges municipalities face and infusing a dose of reality into our in-house conversations.

It's always a great pleasure to connect with people from the municipal sector, which, after all, represents the largest proportion of respondent institutions we deal with.

It's important that my office build relationships with municipalities by opening lines of communication, working collaboratively together and learning from each other to face the challenges before us.

Henry Ford once said that, "Coming together is a beginning, staying together is progress, and working together is success."

Even though we may not always decide appeal cases in your favor, and we each have different roles to play, I believe we share a lot more in common than meets the eye.

Fundamentally, I believe that as public servants, we all share a common commitment to work in the public interest. Our common mission is to serve Ontarians and improve their lives. For those in the freedom of information and protection of privacy (FOIP) community, that means enabling them to exercise their access rights and making sure their privacy is protected.

We also strive to earn and maintain the public's trust. As public institutions become increasingly digital, we know only too well that for the public to feel comfortable using online programs and services, they must first trust them.

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And we all wish for the same thing, that Ontario's access and privacy laws, now several decades old, be updated and modernized to reflect current reality and make things easier and more efficient for everyone.

The IPC has long advocated for updating and modernizing Ontario's access and privacy laws. These laws need to catch up to technological advances to ensure they reflect the society they are meant to regulate.

In fact, Ontario's laws in their current form are not sustainable. They lack the many hallmarks of modern data governance. They're not harmonized across sectors, and they lag far behind the access and privacy laws of other jurisdictions in Canada and internationally.

And yet, as quasi-constitutional rights, privacy and access rights form the very backbone that supports and enables a modern, digital government. Far from prohibiting progress, these rights are critical for nurturing innovation and building the foundation for public trust.

An access to information regime that takes weeks or months to process requests and release information does not allow for a promising digital future when that information loses its relevance in a world where data is instantaneous and flows non-stop.

On the privacy side of things, Ontario's laws need to incentivize the proactive mitigation of privacy risks, with greater transparency and accountability of organizations, if these laws are to be aligned with the realities of our economy and society.

## **2. Process Enhancements and Education**

I want to reassure you that my office understands the challenges you face — working with outdated legislation, compounded by real resource constraints, because we also face some of the same challenges.

Despite these challenges, we all continue to do the best with what we've got to improve our quality of service to the people of Ontario.

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For the IPC, that means striving to become a modern and effective regulator by, among other things, “Addressing complaints and appeals in a fair, timely and meaningful manner.”

To do that, we’ve undertaken work on three things:

The **first** is to provide timely resolutions for access appeals and privacy complaints by defining and upholding applicable service standards.

The **second** is to issue concise and plain language decisions that are fair and meaningful to the parties, and that support compliance with the law.

The **third** is to support broader understanding of the law and enhance participation in the appeals process by producing and publishing actionable guidance based on trends and lessons learned from individual cases.

We’re putting those words into action.

For example, throughout 2022, the IPC undertook a thorough review of its FIPPA and MFIPPA [Code of Procedure](#) and related practice directions. These are key documents that guide the appeals process and yet, have not been reviewed or revised since 2004. A lot has changed since then.

The code needs to better reflect the current state of our tribunal department’s operations and procedures, including our new electronic methods of communication and records submission, and our new e-appeals process.

Through greater digitization and continuous improvements, our processes have evolved to become more streamlined and efficient while still respecting rules of procedural fairness.

Among some of the changes you’ll see is a new expedited appeal process we’ll be introducing as a two-year pilot project to streamline and expedite certain types of appeals that don’t involve exemptions. Issues to be addressed through our expedited process include:

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- custody or control
- deemed refusals
- failure to disclose
- fees and/or fee waiver
- inadequate decision
- reasonable search
- frivolous and vexatious

We expect to release a draft of our revised code this spring, reflecting these and other changes. Implementation is currently slated for later in 2023 following a reasonable public/institutional notice period to answer any questions and receive feedback.

We're also in the process of developing interpretation bulletins to codify established principles, legal tests and thresholds from prior IPC and court decisions that have interpreted certain exemptions and other key provisions of FIPPA and MFIPPA over the years.

By making these interpretation bulletins publicly available on our website, we aim to bring this information to FOIP coordinators and the public much earlier in the process, so they can benefit from this guidance up front, at the very outset of the request stage.

We hope these interpretation bulletins will be useful, particularly for the smaller municipalities.

The intention is to release a first batch of interpretation bulletins in the coming weeks or months, with more to follow periodically throughout 2023 and 2024.

### **3. Annual Statistical Reporting**

Next, I'd like to talk about annual statistical reporting. As all of you know, public institutions subject to MFIPPA are required to submit an annual statistics report to the IPC. This includes the number of access requests they have received and their progress completing them.

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If you are not familiar with the process of submitting annual statistics to my office, we have many [resources](#) and are available to answer questions.

We also have answers to [frequently asked questions](#) on our website and [webinars](#) on our YouTube channel to help you understand the requirements and process for submission.

We are currently examining the statistical reports we received for 2022 and will be publishing the data in our upcoming annual report, to be released in June.

But, in the meantime, let me give you a little sneak peek at some of the numbers for 2022.

In 2022, there were nearly 60,000 freedom of information (FOI) requests filed across Ontario — representing a five per cent increase over the previous year. Of those, 57 per cent were FOI requests in the municipal sector, nearly 34,000.

The increased volume of requests received in 2022 indicates a return to pre-pandemic numbers, before they dropped off in 2020 and 2021.

In 2022, municipal institutions completed almost 33,000 requests with an overall 30-day compliance rate of 81 per cent, and extended compliance at 86 per cent.

I want to assure you that the statistical submission process is more than just a bureaucratic exercise.

As the responsible oversight body, we study these numbers and analyze trends to determine the evolving state of FOI in Ontario.

Reviewing these statistics provides a first indication of how effective, responsive, and adequately resourced FOI units are.

Following up with certain institutions that appear to be struggling, gives a better understanding of problems that may exist below the surface, or at

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least raises questions and invites conversations to better understand their challenges.

For example, for the last 25 years, the Ministry of the Environment, Conservation and Parks (MECP) has received the highest number of access requests, compared to all institutions in Ontario.

When the pandemic struck, the ministry's reliance on paper-based records meant that it could not process access requests and both its 30-day and extended compliance rate sank to under 1.5 per cent in 2021.

MECP's leadership was proactive in responding to the drop. They were also receptive to our questions and our input as we monitored their progress to reduce their backlog and advised on their plans to provide information through other channels, such as its Environmental Property Information Program.

The ministry is making good progress, and a significant majority of new requests received in the second half of 2022 were completed on time, with the number continuing to trend upward.

This is a great example of my office working with an institution to understand a systemic issue they are facing and finding solutions to address it. So, I encourage you to reach out proactively to my office if you're facing challenges with meeting statutory timelines, or to respond openly and collaboratively to our questions if we come knocking for more information or to lend an ear or a hand.

## **4. IPC Performance**

Our annual report of 2022 will also be transparent about our own performance in handling appeals and complaints before our office.

Overall, my office opened over 2,500 files in 2022, across the provincial, municipal, health, and children and family services sectors, and we closed 2,857. For context, 772 of those related to municipal appeals.

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This represents the first time in over six years that my office was able to close more files than we opened.

Like so many of you, we've been hard at work clearing the backlog of files resulting from the pandemic.

And while we still have more work to do, we are making significant progress in bringing down our queue.

To this end, we continuously look for new and more efficient ways of doing business. For example, in 2022, we launched a pilot project to mediate single-issue files and reduce the time to resolve an appeal.

We identified a subset of mediation files that seemed appropriate for "same-day" mediation. Parties were invited to participate on consent. They were advised of the teleconference date, and that a condensed timeframe would be used to resolve or move the file to adjudication.

Bringing willing parties together on a specific day to discuss and resolve clearly identified issues in real time, with the assistance of a professional mediator, certainly helps focus the mind.

Some of the files we identified as suitable for an expedited process were fee estimates, frivolous and vexatious requests, and publicly available information.

I'm happy to report that of the cases in which we tried one-day mediations, 90 per cent resolved, compared with our average mediation success rate of 59 per cent. It also took less time to resolve with an average of 42 days to resolve files, compared with the average 163 days it takes to resolve our regular stream mediation cases.

We found the key to success was making sure that all parties were well-informed and prepared to address the issues.

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Written summaries confirming agreements and next steps ensured that everyone was on the same page moving forward on issues, clarifying requests, and timelines.

Based on these successful results, we plan on integrating one-day mediations as part of our new expedited review process I mentioned earlier.

### **5. Orders of Note/Key Decisions**

Every year, the IPC issues hundreds of access to information orders, and a number of PHIPA Decisions. While I obviously can't describe all of them, I want to mention a few of interest.

You can find all of our orders and decisions on our website under [decisions](#).

### **Frivolous and Vexatious**

One order in particular reflects a growing trend we've noticed related to frivolous and vexatious claims among municipalities.

[Order MO-4257](#) involved an appeal related to requests to the Town of Oakville.

The appellant, a law clerk acting for plaintiffs in a class action against the town, was working in collaboration with a lawyer at another law firm, also acting for the plaintiffs.

Together, they submitted 83 requests totaling 353 parts. To the town's credit, they responded to 69 of them before denying access.

The appellant responded to the denial of access, claiming their charter rights were being violated and citing the importance of transparency and accountability.



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The IPC found the appellant's claims to be without merit and upheld the town's decision to deny the access requests on the basis that they were frivolous or vexatious.

In our order, the appellant was limited to two active requests and must notify the IPC's registrar if they wish to file any further appeals. Also, any future access requests must be limited to two parts.

## PHIPA and MFIPPA Exemptions

In [PHIPA Decision 194](#), we dealt with a complex and interesting appeal involving both MFIPPA and Ontario's health privacy law, the *Personal Health Information Protection Act*, (PHIPA).

A request was submitted under PHIPA for access to a report resulting from a complaint to Peel Regional Paramedic Services.

Given that the paramedic service is governed by the Region of Peel, the service claimed that the report was exempt under MFIPPA as "records related to labour relations and employment-related matters."

In our review, we found that MFIPPA did not apply to the requested records as they comprised personal health information, which falls under PHIPA.

Access under PHIPA was then denied based on two exemptions:

With regards to the first exemption, the paramedic service claimed that the report was prepared "for use in proceedings" arising out of the allegations of paramedic misconduct. The institution submitted that because the matter had the potential of involving disciplinary proceedings, it prepared and collected the report to assist in defending the allegations of misconduct, including in contemplation of potential civil litigation.

For the second exemption, the institution claimed that the report was created for an "internal investigation" authorized under the *Ambulance Act*. Further it claimed that, although its own internal investigation concluded, the report was also prepared and maintained in contemplation of another

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investigation being conducted by the Ministry of Health and Long-Term Care (MOHTLC).

The IPC found that the paramedic service provided insufficient evidence that the “for use in a proceeding” exemption applied and that no provisions under the *Ambulance Act* could support the claim that their internal investigation was “authorized by law”.

Finally, in the IPC’s view, any investigation into the matter conducted by the MOHTLC was separate and distinct from the paramedic service’s internal investigation and there was no evidence to support that such an investigation can be characterized as an appeal of, or process arising from, the paramedic service’s own internal investigation.

Consequently, we ordered the report to be released to the requester.

## Custody and Control

In [MO-4187-F](#), an appeal was filed after the Haliburton, Kawartha, Pine Ridge District Health Unit denied access to seven categories of specific COVID-19 statistics for 12 municipalities, and denied a further request to publish all of the requested information daily on its website.

The health unit responded to the request by asserting that records were not under its custody and control.

After finding that the information was in its custody and control and could be used to produce records in response to the request, the IPC issued an interim order for the health unit to issue a new decision. The order also invited the health unit to consider making the information publicly available.

In response, the health unit did not issue a new decision, but instead posted the information on its website.

In its letter to our office, the health unit explained the reason for claiming it did not have custody or control of records of cases “isolating” at home, because it did not follow up with individuals and had no information on who

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may be isolating at home after a self-administered positive rapid antigen test.

The health unit also addressed the request to post information on a daily basis by explaining that it may not always be possible because the frequency of updates changes depending on the information as it changes. As virus activity decreases, reporting updates may decrease, and as virus activity increases, reporting updates will increase.

The health unit concluded by providing a screenshot of the public website and the appellant was satisfied with the reasons provided by the health unit and the steps it took to proactively publish the information. As a result, the IPC dismissed the balance of the appeal

Perhaps this is a case which demonstrates why clarity, reasonableness of positions, and clear communication between a requester and the institution are crucial.

## **6. Privacy and Transparency in a Modern Government**

Let me turn now to the strategic priorities that guide our office.

When I began my term as commissioner, I wanted to focus on the access and privacy issues that matter most to Ontarians.

We adopted four [strategic priorities](#) that serve as a road map for proactively addressing key access and privacy issues and where the IPC can have the greatest positive impact.

If you aren't familiar with them, I encourage you to visit our website for more details.

In particular, I'd like to focus today on our priority of *Privacy and Transparency in Modern Government*.

Our goal there is to advance Ontarians' privacy and access rights by working with public institutions to develop bedrock principles and

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comprehensive governance frameworks for the responsible and accountable deployment of digital technologies.

To further this goal, you may be aware that last year we launched a Transparency Challenge.

We called on all Ontario's public institutions to show us creative examples of projects or programs that modernize and improve government transparency, promote civic engagement, and show how open government and open data initiatives can have a real, positive impact in improving the day to day lives of Ontarians.

We received 25 submissions, including from several municipal institutions across Ontario. So, thank you.

While we did not pick 'winners' or 'losers', our aim was to shine a light on some compelling examples of transparency to encourage others towards greater openness.

We've curated these examples and will feature them in a Transparency Showcase, which will be unveiled very soon. So, stay tuned!

## 7. AI Technology

Another area of focus under the *Privacy and Transparency in Modern Government* priority is artificial intelligence — or AI.

The use of AI technologies by public institutions, and particularly generative AI chatbots like ChatGPT, are a very hot topic at the moment given the exciting new promises they hold, especially relating to increased efficiency in service delivery and improved public health and safety.

But with these promises that hold potential to change our world, come important and serious implications that we need to consider very carefully.

Even well-meaning applications of artificial intelligence can inadvertently cause harm. AI raises considerable risks of discriminatory decisions or

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suggestions through the potential biases inherent in the datasets on which the algorithms are trained.

We've seen multiple instances of people, particularly from marginalized groups, who have been unfairly treated or targeted as a result of erroneous conclusions or inferences that are perpetuated through flawed AI applications.

To cite a couple of examples, the algorithm that Amazon used to accelerate their recruitment process was inherently biased against women. This was due to the gender disparities in ten years' worth of resumes that were used to train the AI system.

An algorithm used in the U.S. to predict the likelihood of criminals to re-offend predicted twice as many false positives among Black offenders compared with white offenders. The use of predictive policing is the subject of a very interesting conversation I had with Dr. Chris Parsons in a recent episode of my [Info Matters](#) podcast called, [Predicting crimes before they occur: not so sci-fi anymore](#).

The advent of generative AI with powerful language processing chatbots like ChatGPT to challenge our perception of truth through inaccurate information or misinformation by portraying pictures or voices of us in very believable ways that never actually happened.

Think of the recent photos of the Pope in a white puffy jacket that he never wore, pictures of Donald Trump being whisked away in handcuffs after his arraignment that never actually happened, and the simulated Drake and The Weeknd video that was never really recorded.

In the next episode of my [Info Matters](#) podcast soon to be released, I had a fascinating, if not scary, conversation with Dr. Alex Himelfarb about the upending effects of misinformation and how they risk aggravating social divides, further marginalizing minority groups. Misinformation is thwarting efforts to improve global health and address climate change and fundamentally undermines trust in public institutions and democracy as we know it.

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As we move towards a future enabled and defined by AI, we need to act now to develop the legal and ethical frameworks and the guardrails needed to protect privacy, transparency and other fundamental human rights and fundamental values we cherish and hold dear as a society.

In Canada, the proposed *Artificial Intelligence and Data Act* is part of a larger suite of data protection reforms, contained in Bill C-27, that would regulate certain activities related to artificial intelligence systems.

While I won't comment on a bill outside my jurisdiction, I will say that whatever final form it takes, it will not, and cannot — constitutionally speaking — cover Ontario's public sector.

As a hub of AI innovation, it is incumbent on the province to develop its own legal and policy framework, with clear and transparent guardrails in place to responsibly govern the use of AI in the delivery of government services and programs.

In the summer of 2021, I submitted [comments](#) in response to the Ontario's government's public consultation on Ontario's [Trustworthy Artificial Intelligence Framework](#).

In a nutshell, Trustworthy AI aims to improve the lives of all Ontarians by promoting economic growth and improving government programs while saving time and money.

While the framework committed to fundamentally important principles we could all get behind, I still think there is an urgent need to further clarify the scope, specificity, and accountability measures in more granular detail.

In my submission, I drew particular attention to the need to clearly define key concepts around AI, specify the forms of AI and which institutions will be subject to the framework, and identify clear no-go zones that should not be permitted.

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The government has since issued beta principles for ethical use of AI and alpha guidelines on transparency.

While all of these are laudable attempts at agile regulation in a fast-changing area, I urge the government to land these documents into a more certain and binding regulatory framework that is operational on the ground.

The technologies that we seek to govern are continually evolving. Without solid ethical and legal guardrails in place, they could very well one day become so pervasive as to be uncontainable.

### **8. Cybersecurity/Ransomware**

I'd like to turn to another timely and relevant issue — cyberattacks and ransomware.

One only has to look at the daily news to see how widespread cyberattacks have become, threatening the security of personal information and electronic records of all organizations.

Cybercrime is part of a rising global trend, which has gained momentum since the onset of COVID-19 with more employees working remotely. Public sector institutions and critical infrastructure providers are becoming increasing targets, particularly for municipalities, universities, school boards and hospitals, or the MUSH sector.

According to the 2022 [CIRA Cybersecurity Survey and Report](#), 62 per cent of public-sector and 59 per cent of organizations in the municipal, university, school and health care sectors characterize their organization as more vulnerable to cyber threats because their employees work remotely. And 25 per cent of those do not believe that their cybersecurity budget is sufficient.

According to the same report, 52 per cent of public-sector organizations indicate that they have experienced a cyberattack in the last 12 months. Of these, 22 per cent reported they were the victim of a successful ransomware attack, up from 17 per cent in the previous year.

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When it comes to Ontario's municipalities, a [meeting of IT security experts](#) organized by the Ontario division of the Municipal Information Systems Association found that municipalities are at a heightened risk of cyberattacks and ransomware.

This is not only because they transact large amounts of money with contractors and vendors, but also because they often have large and complex data networks operated on legacy infrastructure.

To give you an idea of the impact of ransomware on municipalities, last year TELUS published the results of a [survey](#) they conducted on the ransomware experiences of nearly 500 organizations across Canada. In that survey, 84 per cent of municipalities reported they experienced ransomware incidents.

The same survey found that of the organizations that paid a ransom, only 42 per cent experienced a full restoration of their data, while 49 per cent of respondents indicated that their data was only partially restored, resulting in additional costs for unrecovered data.

One particular case that serves as a cautionary tale for organizations using decades-old legacy systems is the cyberattack experienced by the Regional Municipality of Durham. You can read about this in more detail in the [report](#) on our website.

Hackers were able to gain access to data through a third party file sharing application. The file transfer application was a 20-year-old product no longer supported by the vendor. It had been linked to breaches in organizations around the world as part of a massive spree of cyberattacks.

Outdated technologies and systems allowed sophisticated cybercriminals to easily access sensitive and personal information.

The key message from our report is that not only do you need to ensure that your defences are strong, you also need to keep up with evolving technology and the latest security features to defend your organizations from changing threats.



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A particular challenge for many smaller municipalities is that they often lack the cybersecurity expertise, guidance, and resources of larger organizations.

This disparity is heightened when you consider that despite not having the same financial resources, municipalities are still obligated to continue operating and provide essential services even after a ransomware attack.

This is especially daunting for smaller municipalities and institutions — especially in rural areas — whose budgets are already stretched thin on the ground.

But expensive IT security systems is only part of the picture when it comes to defending your organization against cybercriminals.

It's also important to invest in people. This means not only making risk-based investments in technological safeguards, but ensuring your staff are aware of the threats, how to avoid them, and what to do if a breach occurs.

A good resource that I encourage you to take a look at is my office's fact sheet, [Protecting against ransomware](#).

In addition to providing technical tips, it also emphasizes the importance of staff awareness and training when it comes to cyber threats.

Ensuring employees understand the threat landscape through ongoing cybersecurity awareness training is essential to shielding any organization from trouble, especially when it comes to phishing.

Just as important is giving employees the proper tools. This includes having a well-coordinated and well-practiced cybersecurity incident response plan with clear roles and responsibilities, communication protocols, and escalation procedures.

Smaller organizations with limited resources can be strategic about their cybersecurity measures. One way to do this is by adopting a collective mindset and banding together to share resources and know-how.

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A great example of this is Ontario Health partnering with the Ministry of Health to develop operational centres that can assist smaller players in building their cyber resiliency.

You can learn more about this by watching our [Privacy Day event](#) on YouTube. Sylvie Gaskin, chief privacy officer at Ontario Health, spoke at length about establishing a [provincial cyber security model](#) that supports a collective and “strength-in-numbers” approach to cybersecurity for health care providers both large and small.

This model equalizes resources, capabilities and technologies that health care providers need access to, and removes silos so that no organization is left behind.

Before I conclude, I would like to spend a moment on what is probably the most important factor when it comes to your organization and protecting personal information — building a privacy respectful culture across the organization.

Fostering an organization-wide culture that values an individual’s right to privacy starts from the top, by prioritizing privacy protection relative to other competing demands and integrating privacy and security risks as core components of an enterprise risk management framework.

Attitudes toward privacy within an organization start with the senior leadership who lead by example and model behaviour for the rest of the organization to follow. If senior leaders take it seriously, others will take it seriously as well.

By building a privacy respectful culture based on the values of continuous learning and collaboration, we’re creating a solid foundation for our public institutions. A foundation that supports the confidence and trust of the citizens we serve.

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## **9. Conclusion**

I'd like to conclude my talk today with a quote from self-help author, Napoleon Hill, who once said that, "It is literally true that you can succeed best and quickest by helping others to succeed."

I think that captures the very spirit of the kind of relationship I would like to see between my office and your organizations.

As a modern and effective regulator, the IPC is not here just to enforce the law, by doling out orders and naming and shaming institutions. More fundamentally, we want to build trusting relationships with you and your sector, so that we can help you succeed through collaborative approach that has greater chance of achieving compliance with Ontario's access and privacy laws.

Because, ultimately, the IPC's success rests on your success.

Thank you. I would now be pleased to answer any questions you have.