

**REACHING OUT
TO ONTARIO**

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Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

www.ipc.on.ca

What We Do: Policy & Corporate Services

Policy, Health Policy, Legal, Communications

- conduct research, provide advice on proposed programs/legislation affecting privacy and access
- develop guidance documents, fact sheets to help organizations and the public understand privacy and access laws
- represent IPC in judicial reviews and appeals of our decisions
- media relations, public contacts, IPC website and events
- information services and statistics



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ACCESS TO INFORMATION



Public Sector and MPP Accountability and Transparency Act, 2014

- effective January 2016
- amends *FIPPA/MFIPPA*, institutions must take **reasonable measures** to preserve records (based on already existing recordkeeping requirements)
- new offence to alter, conceal, destroy record with intention of denying access
- reflects most IPC recommendations in 2013 investigation report *Deleting Accountability: Records Management Practices of Political Staff* (Gas Plants)

Councillor Records

- IPC orders: members of municipal councils (except mayor) not officers/employees of municipality, thus many councillors' records not subject to *MFIPPA*
- some councillor records are covered by *MFIPPA* if in the municipality's "custody or control"
- law is technical, not easy to understand; largely comes down to whether record is about **municipal business**
- IPC recommends changes to *MFIPPA* to clarify law, ensure business of municipalities is fully open

Councillor Records Decision

- request for emails between a councillor and individual hired by the city to investigate alleged wrongdoing by Oshawa staff
- city denied access, claimed it did not have custody of records because they came from a **personal email** account
- IPC ordered the information released
- records related to **government business** sent from personal email are subject to access laws

The Oshawa Express
"WELL WRITTEN. WELL READ" Oshawa's Community Newspaper

HOME NEWS LIFESTYLES SPORTS POLICE BRIEFS COLUMNISTS

BREAKING NEWS March 24, 2016 in Lifestyles: **Night with The Boss**

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Commissioner orders release of emails

Messages between councillor, lawyer to be made public; city can still file appeal

Posted on January 27, 2016 in News



The province's Information and Privacy Commissioner has ruled that email correspondence between Councillor Nancy Diamond and municipal lawyer George Rust-D'Eye be released. The two exchanged emails prior to Rust-D'eye being brought in by the city to investigate the findings in AG-12-09, the report by former auditor general Ron Foster detailing the purchase of 100 Wentworth St. E., now the city's consolidated operations depot.

By Joel Wittnebel/The Oshawa Express

For more than two years, Rob Vella has been at war.

It's not a battle fought with bullets and manpower, but one with paperwork, appeals and patience.

In 2013, the Oshawa resident filed a Freedom of Information request with city hall. Vella was looking to get his hands on a key piece of correspondence that, he figures, could shine a spotlight on the circumstances behind one of the most controversial decisions made by Oshawa councillors in recent memory; the hiring of municipal lawyer George Rust-D'Eye to look into the allegations made by former city auditor general Ron Foster in AG-13-09. In this report,



Councillor Records

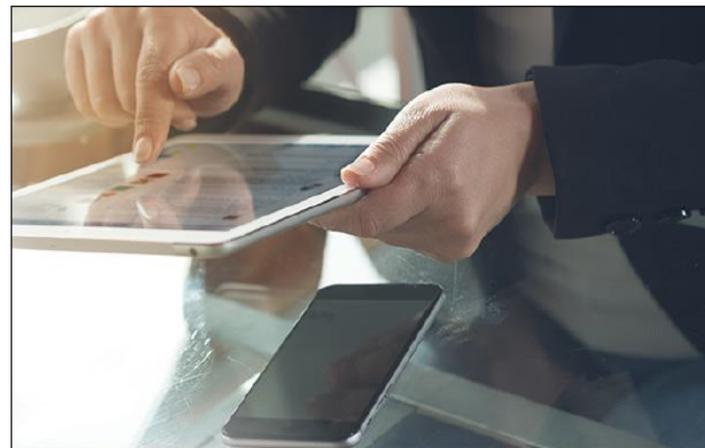
- new fact sheet helps councillors understand their responsibilities
- summary of recent orders
- factors to consider when deciding whether record in custody or control of institution

while others do not.



Personal Email/Instant Messaging

- personal email and instant messaging (such as BBM) are subject to freedom of information requests
- institutions need to educate staff and have policies to either **prohibit** or strictly control their use when conducting business
- they also need to ensure records are preserved
- new guidance provides advice on how meet access and privacy obligations



Instant Messaging and Personal Email Accounts: Meeting Your Access and Privacy Obligations

June 2016



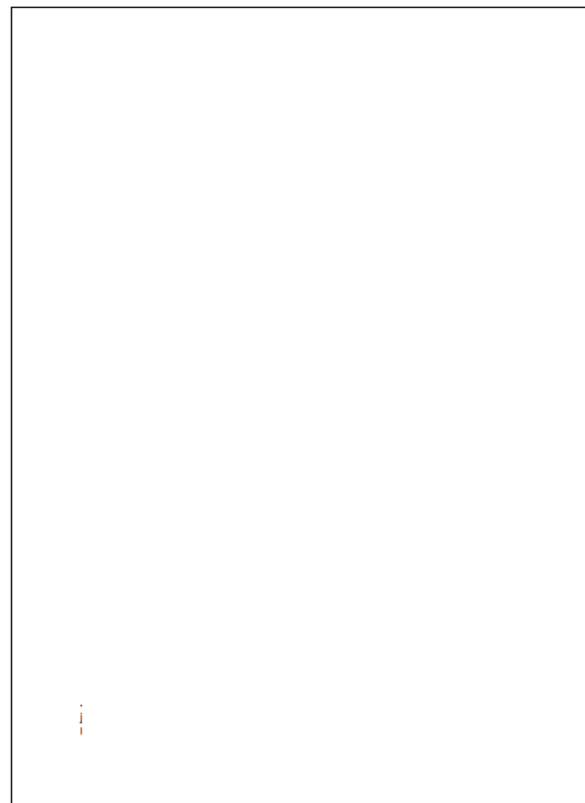
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What You Need to Know If You are Affected by an FOI Request

- anyone can request access to government records, including those that contain your **personal information**
- institutions must consider your privacy when deciding whether to release
- you have certain rights if a requester asks for records containing your PI



Coming Soon:

What You Need to Know If Your Business is Affected by an FOI Request

- requesters can also seek records containing information about your business or organization
- impact on your business is a **key consideration** when deciding to release records
- similarly, you have **certain rights** if a requester asks for records that include information about your business

Coming Soon:

What You Need to Know About the Meaning of “Personal Information”

- Ontario’s access/privacy laws define personal information as **recorded information about an identifiable individual** such as ethnic origin, age, financial/medical history
- “recorded information” can be paper, electronic, photographs, videos, maps
- information is “personal” if it reveals something of a personal nature, and there is a reasonable expectation that an individual can be **identified** from the information

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PRIVACY



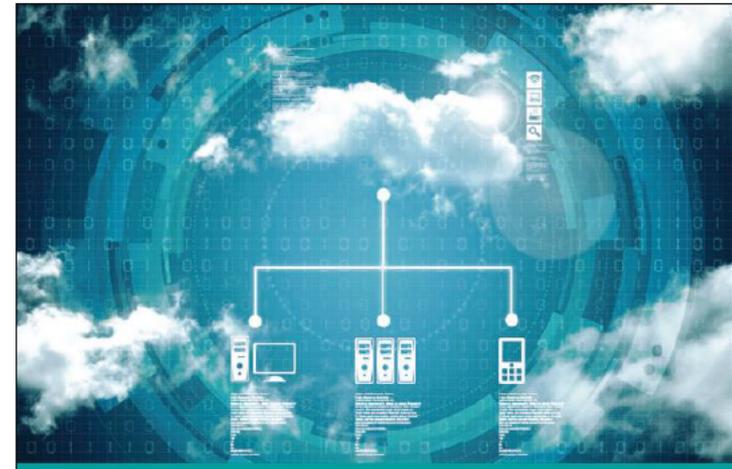
Protecting Against Ransomware

- ransomware encrypts files on your device or computer, then demands payment in exchange for decrypting
- hackers use different techniques to install ransomware on computers, such as “phishing” attacks and software exploits
- you can protect yourself and your organization through employee training, data backups, antivirus software, email quarantines, minimizing user privileges



Thinking About Clouds?

- cloud computing services increasingly popular due to cost savings, reduced workload
- raises privacy risks such as unauthorized use, covert surveillance, insider threats, remote access
- risk mitigation can begin with knowing your legal and policy obligations, minimizing personal information, knowing your service provider, negotiating the right contract, incident management plan



Thinking About Clouds?
Privacy, security and compliance
considerations for Ontario public
sector institutions

February 2016



Police Record Checks

- problem across Canada: police background checks for employment, volunteer positions inconsistent
- sometimes non-conviction information (e.g. mental health) is disclosed without justification
- IPC *Crossing the Line* report
 - attempted suicide on CPIC due to 911 call
 - US border officials have direct, instant access
- we called for Ontario police services to restrict disclosures to CPIC using Mental Health Disclosure Test
- police have complied

Police Record Checks

- *Police Record Checks Reform Act* [not yet in force]
 - 1st in Canada; based on OACP guidelines
 - three types: criminal record, criminal record and judicial matters, vulnerable sector
 - says precisely what information can be disclosed
 - **non-conviction information** disclosed only in vulnerable sector check, only if it meets “exceptional disclosure” test

Police Street Checks

- since 2014, IPC working with Toronto Police on improving street check related practices
- Ministry of Community Safety and Correctional Services (MCSCS) consulted with IPC, OHRC, police, community groups, general public in developing draft street check regulation
- MCSCS also published draft on Regulation Registry for further feedback
- we commend government for undertaking to regulate street check practices, open consultation

Street Check Regulation

- March 2016, regulation filed, many IPC recommendations included:
 - arbitrary, race-based stops banned
 - involuntary interactions – police must explain that person does not have to provide information
 - must provide written record of interaction, officer's name, how to contact police complaints
 - police annual report must include number of attempts to collect personal information, including race, age, gender
 - rules on how information collected, retained, destroyed
 - independent reviewer of regulation
 - independent training and oversight



Exercising Discretion: SIU

- privacy laws allow institutions to use discretion in releasing PI
- Special Investigations Unit (SIU) investigation of shooting of Andrew Loku attracted significant public attention
- institutions may disclose details for accountability and transparency, public confidence

The life and bloody death of Andrew Loku: Toronto police officer's face 'went white as a ghost' after shooting



RICHARD WARNICA | July 17, 2015 | Last Updated: Jul 19 2:06 PM ET
More from Richard Warnica



Exercising Discretion: SIU

“I continue to believe that there is a significant public interest in the release of some personal information in reports of this nature, for example, the names of subject officers. Going forward, I believe the rules need to be revised immediately so that families and the public have all the information they need, including personal information, to assess SIU investigations and findings.”

*~ Brian Beamish,
Information and Privacy Commissioner of Ontario*

Our New Website

- user friendly format for both public, professionals
- easy to find answers on basic questions
- direct access to forms to file complaints, appeals

The screenshot shows the homepage of the Information and Privacy Commissioner of Ontario. At the top left is the logo and name in both English and French. To the right is a search bar with a magnifying glass icon. Below the header is a dark blue navigation bar with links for Access, Privacy, Health, Decisions, Media Centre, and About Us. The main content area features a large green and blue background with binary code. A central text block states: "The IPC acts independently of government to uphold and protect access to information and privacy rights in Ontario." Below this is a teal "LEARN MORE" button. A row of six tiles provides quick access to: "Go to forms", "Request records", "File an appeal", "Make a complaint", "Search IPC Decisions", and "Contact the IPC". On the right side, there are three stacked boxes for "News Releases", "Blog", and "Newsroom", each with a brief description. At the bottom right is a social media widget for Twitter with the handle @ipcinfoprivacy.

What We Do in Tribunal Services

- Key part of IPC's mandate is to resolve access to information appeals under *MFIPPA* and *FIPPA*
- Three main stages to IPC's Tribunal processes:
 - Intake
 - Mediation
 - Adjudication

Intake

- Intake stage:
 - Phone line to give information about the appeal process
 - Deals with urgent matters such as time extensions for a decision or failure to issue a decision
 - Screens out appeals which are not in our jurisdiction or for other reasons do not present a basis to go forward

Mediation

- The Mediator contacts the parties, investigates the circumstances of the appeal and attempts to:
 - Settle all issues in the appeal; or
 - If not settled, narrow and clarify the issues that proceed to Adjudication
- Can provide expert opinions to parties on likely outcome at Adjudication, based on review of records
 - TIP: Index of records is key to successful mediation
- Uses shuttle mediation (phone calls to each party in turn) or conference calls; occasional face to face mediation

Adjudication

- Adjudicator conducts an inquiry in the appeal
- Usually a written process – asks each party in turn to provide their written submissions
 - TIP – make submissions detailed and specific to the situation
- Share, to the extent possible, the submissions with all parties
- Issues a written decision

Some Statistics

- In 2015, IPC received 1,403 appeals – will likely be higher in 2016
- In 2015, IPC closed 1,329 appeals
- The majority of appeals were resolved through mediation
- Some appeals were screened out at an early stage
- Over 240 decisions disposing of appeals issued in 2015
- Majority of the appeals come from individuals, although majority of their appeals were not about access to their own information but were requests for general information

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DEVELOPMENTS IN ACCESS TO INFORMATION



Recently Decided Issues

- What is “personal information” v. general or business information?
- When does the public interest in disclosure outweigh privacy rights?
- Do contracts have to be disclosed?
- What can a town withhold under the “closed meeting” exemption?
- Are councillor records available under *MFIPPA*?
- Can a government institution refuse to accept a request that it believes is frivolous?
- Does a university have to disclose its detailed operating budget?
- Does academic freedom cover a university’s survey of student and faculty views?



What is “personal information” v. general or business information?

- **PO-3617** – a journalist requested information on the total dollar amounts paid annually to the top 100 OHIP billers, their names and their medical specialties.
- The Ministry of Health and Long-Term Care disclosed the dollar amounts and most of the specialties, but withheld the physicians’ names and some of the specialties under the “personal privacy exemption.” One of the parties to the appeal also raised the third party information exemption.
- The appellant however claimed that the public interest override applied.
- The adjudicator found that: (A) the record does not contain personal information; (B) the third party exemption did not apply; and (C) there is a compelling public interest in the disclosure of the record.
- The ministry was ordered to disclose the record in its entirety to the appellant.

When does the public interest in disclosure outweigh privacy rights?

- **PO-3617** (OHIP billings), the adjudicator found that there is a compelling public interest in the disclosure of the record that would clearly outweigh the purposes of these exemptions if they applied.
- OHIP payments consume a substantial amount of the government's budget and these amounts reflect public services paid for by taxpayers.
- The concepts of transparency and accountability require the identification of parties who receive substantial payments from the public purse.
- Irrelevant whether they are providing services to public bodies under contract or providing services to the public through their own business activities.

Personal v. general information (Cont'd)

- **MO-3261** – The Sudbury District Health Unit (SDHU) received an access request for the addresses of all locations where there were investigations into mould complaints or concerns.
- SDHU denied access to the list of addresses, claiming an invasion of personal privacy of the homeowners.
- The IPC decided that the list did not contain personal information because it was about properties and did not reveal anything personal about the property owners or occupiers.

Do contracts have to be disclosed?

- **MO-3178** - The York Catholic District School Board was asked for details of the lease of a specific parcel of land.
- The board denied access claiming, among other things, that the information was the confidential business information of a third party.
- The IPC rejected that argument and ordered the lease disclosed.
- In general, contracts are not covered by the exemption for confidential business information.
- This case is only one of many in which contracts have been ordered disclosed.

What can a town withhold under the “closed meeting” exemption?

- **MO-3228** – The Toronto District School Board denied access to an audit report about a "Focus on Youth" program, claiming it would reveal the deliberations of a closed meeting.
- The closed meeting exemption only applies if the board is authorized under the *Municipal Act* to hold a closed meeting.
- Board claimed the meeting was to discuss "security of the property" of the board.
- The IPC decided the audit report was not about "security of the property" of the board and ordered it disclosed.

Are councillor records available under *MFIPPA*?

- **MO-3281** – The City of Oshawa received a request for access to emails between a councillor and an individual who was retained by the city to investigate alleged wrongdoings of city staff.
- The email discussed potential terms of a contract between the city and the individual.
- City denied access to the email saying it was not within its custody or control because it was sent from a personal email account.
- The IPC decided that the email account used is irrelevant if it is for city business and ordered the information to be released.

Can a government institution refuse to accept a request that it believes is frivolous?

- **MO-3292** – A requester made six access requests to the City of Brampton, some of which required considerable search time and covered voluminous records.
- He then filed an additional nine requests, which were almost identical to the earlier ones.
- The purpose of the additional nine requests was not to get access but to make a point. The city made efforts to address the point the requester was making and asked him to withdraw the additional requests and pay outstanding fees.
- When the requester refused, the city denied access on the new requests claiming they were frivolous and vexatious.
- The IPC agreed with the city and imposed processing limits on the requester.

Does a university have to disclose its detailed operating budget?

- **PO-3572** – A union representing employees at a university sought access to a full breakdown of the university’s expenditures budget.
- The university released some of the information but denied access to the detailed breakdown, claiming it was excluded from FIPPA because it was about “employment or labour relations” and that disclosure would harm its economic interests.
- The adjudicator decided that the records are not excluded from FIPPA, but the university could withhold access to the detailed breakdown based on the potential harm to its economic interests.

Does academic freedom cover a university's survey of student and faculty views?

- **PO-3576** – The appellant made a request to the university for records relating to a survey conducted of a specific group of students and faculty.
- The university denied access to some records on the basis that research-related records are excluded from *FIPPA*.
- The adjudicator decided that the research exclusion did not apply because the research was for the university's own purposes and was akin to "market research" rather than the type of academic research to which the exclusion was meant to apply.
- The university was ordered to issue an access decision.



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