

**REACHING OUT
TO ONTARIO**

Latest Developments in Access and Privacy

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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

Thunder Bay

May 3, 2017

www.ipc.on.ca

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ACCESS TO INFORMATION



Open Contracting

- Benefits of open contracting include:
 - improved public confidence and trust
 - increased accountability on spending
 - increased fairness and competition in contracting
 - reduction in the number of access to information requests and appeals

Open Contracting



Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



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How to:

- design an open procurement process
- make records publicly available
- engage with stakeholders and contractors
- protect sensitive third-party information and personal information (PI)



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Ontario's Open Data Directive: Procurement and Contracts

- all contracts between Ontario's public institutions and vendors should:
 - give government and vendors the right to publish contracts as open data
 - require vendors to agree that financial data of contracts may be released
- information for every contract awarded (e.g., vendor name, payment data) must be published in a timely manner

Order MO-3366

City of Thunder Bay

- request for a copy of licence agreement between City of Thunder Bay, a named individual, and a named corporation, relating to the operation of a billboard, in connection with a baseball team
- city denied access, citing “third-party information” exemption under *MFIPPA*
- IPC found exemption does not apply; no evidence of “reasonable expectation of harm” from disclosure
- IPC ordered licence agreement to be disclosed in full

Do Contracts Have to Be Disclosed?

- **MO-3178** - York Catholic District School Board was asked for details of the lease of a parcel of land
- board denied access, claiming the information was the confidential business information of a third party
- IPC disagreed; board's claims did not meet three-part test to apply exemption
- in general, contents of a contract are not considered "informational assets" of a third party

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PRIVACY



Ransomware Attacks

- In 2016, six ransomware attacks reported by health information custodians (HIC), from individual practices to hospitals
- attackers demanded ransom in exchange for decryption keys to restore access to the data
- some HICs paid the ransom, others relied on back-up data
- one HIC lost two years of patient data

Protecting Against Ransomware

- only download email attachments or click on links from trusted sources
- avoid opening unsolicited email attachments
- back up all records regularly and check to ensure data is saved
- ensure automatic update of security software, anti-virus programs



Technology Fact Sheet

Protecting Against Ransomware

July 2016

Ransomware has become an increasingly common and dangerous threat to the security of electronic records. This fact sheet provides information on how public institutions and healthcare organizations in Ontario can protect themselves against it.

WHAT IS RANSOMWARE?

Ransomware is a type of malicious software, or "malware," that encrypts files on your device or computer, including any mapped or network drives, and then demands payment in exchange for the key needed to decrypt the files. It essentially locks you out of your data and holds the means of regaining access for ransom.

HOW DO COMPUTERS GET INFECTED?

Hackers use different techniques to install ransomware on computers. In general, these fall into two categories: "phishing" attacks and software exploits.

Phishing Attacks

Phishing is a type of online attack in which a hacker sends one or more individuals an unsolicited electronic communication—email, social media post or instant messenger chat—designed to trick or deceive a recipient into revealing sensitive information or downloading malware.

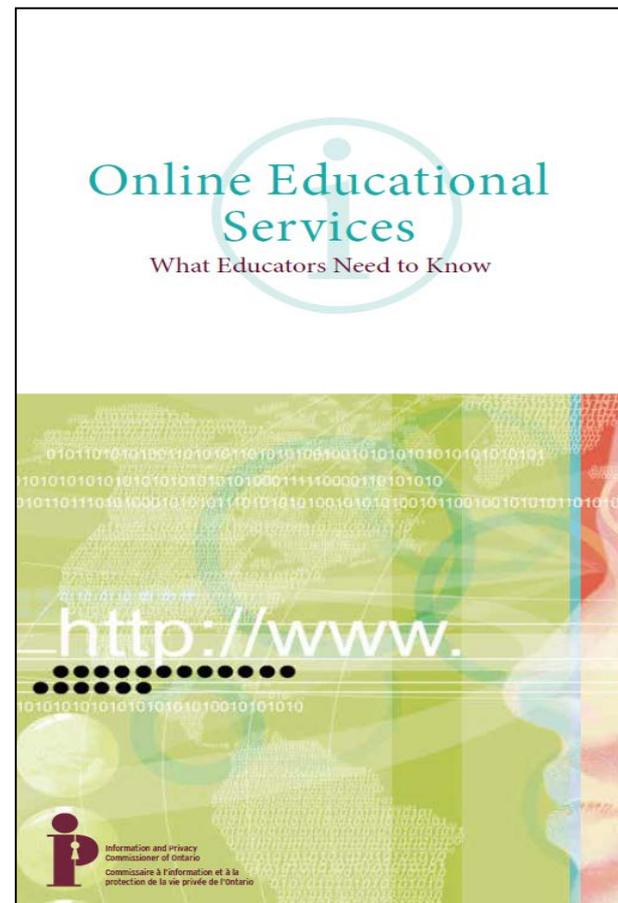
In the case of ransomware, the hacker will often try to impersonate an "official" correspondence relating to a common business transaction, such as a shipping notice or invoice from a delivery company. The hacker may also try to fake an "urgent matter," such as an unpaid invoice or notice of audit. More advanced versions (also known as "spear phishing") target specific individuals or places of business.

Ransomware may be installed if the recipient opens a file attachment or clicks on a link in the body of the message.



Teachers Must Consider Privacy Before Using Online Services

- educators use online educational services for learning, communication, evaluation
- while innovative and inexpensive, they could risk privacy of students and their families
- school boards must ensure online services used by teachers are compliant with privacy laws
- IPC and Ontario Association of School Board Officials (OASBO) created fact sheet about privacy risks of online educational services



Improving Access and Privacy with RIM

- effective records and information management (RIM) practices help institutions meet legal requirements and better serve the public
- institutions are better able to:
 - respond to access requests in a timely way
 - be transparent and accountable to the public
 - ensure the confidentiality and privacy
- publication describes best practices and how to enhance the public's ability to access information



Improving Access and Privacy
with Records and Information
Management

November 2016



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Public Interest Disclosure Special Investigations Unit

- Special Investigations Unit (SIU) investigation into shooting of Andrew Loku attracted significant public attention
- SIU report cleared a Toronto police officer of any wrongdoing
- widespread demand to see the report
- report was released, though heavily redacted

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



Public Interest Disclosure

Special Investigations Unit *(Cont'd)*

- Honourable Michael H. Tulloch appointed by government to lead review of three agencies that oversee police conduct in the province:
 - SIU
 - Office of the Independent Police Review Director
 - Ontario Civilian Police Commission

Public Interest Disclosure

Special Investigations Unit *(Cont'd)*

- IPC provided advice to Justice Tulloch, including:
 - amend *Police Services Act* so that disciplinary hearing decisions, police chiefs' SIU-related disciplinary investigation reports, SIU investigation reports are made public
 - police services should establish data collection and retention systems to record human rights-based data on key interactions with civilians

Public Interest Disclosure

Special Investigations Unit *(Cont'd)*

- in his report, Justice Tulloch referred to “... *an overwhelming need for greater transparency in cases where the SIU decides not to lay a charge.*”
- following release of Tulloch report, government committed to, among other things, “ ... *establishing a process to make all future SIU reports publicly available, while adhering to Justice Tulloch's advice regarding privacy considerations.*”

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Recent Developments in Access to Information



What's In a Name?

- **PO-3695** – individual affected by access request asked an Independent Electricity System Operator (IESO) for the name of the requester (the appellant)
- IESO disclosed the appellant's name because it was professional information, not personal
- appellant argued their name was “personal information”
- IPC disagreed, upheld IESO's decision to release their name based on such factors as the appellant's professional profile appearing on a social media website

Personal Information vs. General or Business Information

PO-3693 - Workplace Safety and Insurance Board (WSIB)

- request for information including names of members of the Drug Advisory Committee
- WSIB denied access, citing “personal privacy exemption” under *FIPPA*
- IPC disagreed; the names identify the individuals in a professional capacity, not personal
- IPC ordered WSIB to release the names

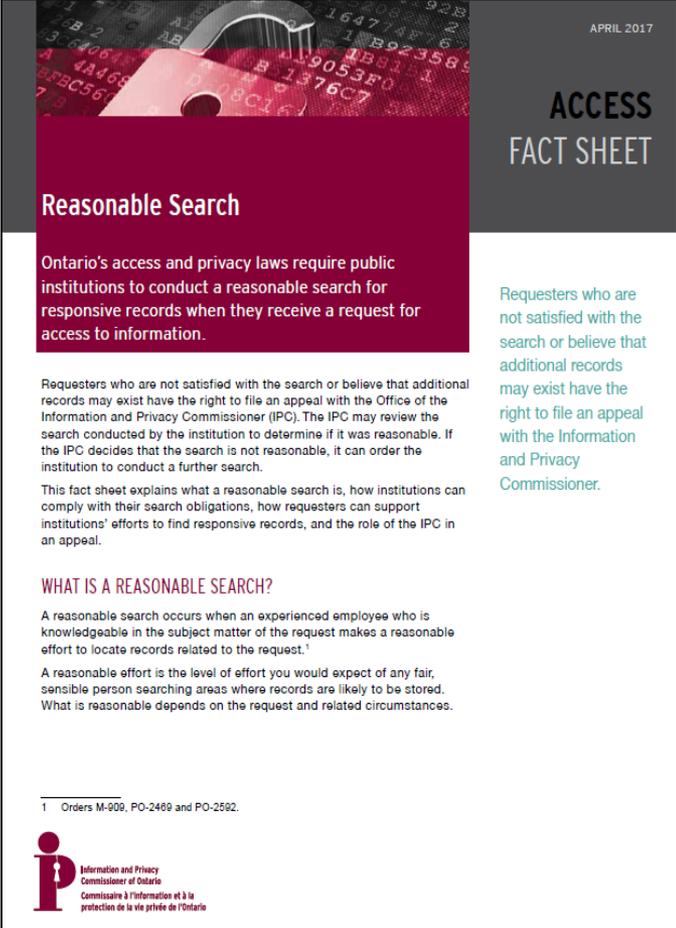
Frivolous and Vexatious

- **PO-3691** – requester made 40 requests within nine weeks to Office of the Public Guardian and Trustee (PGT) relating to a deceased person's estate
- PGT limited the number of requests the requester could make at one time
- requester appealed
- IPC viewed high volume of requests as interfering with the operations of the institution
- requests found to be “frivolous and vexatious”

New Access Fact Sheet

Reasonable Search

- requesters not satisfied with a search request, or who believe additional records exist, can file an appeal
- fact sheet explains:
 - what a reasonable search is
 - how institutions may comply with search obligations
 - how requesters can support institutions' efforts to find records
 - the role of the IPC



APRIL 2017

ACCESS
FACT SHEET

Reasonable Search

Ontario's access and privacy laws require public institutions to conduct a reasonable search for responsive records when they receive a request for access to information.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Office of the Information and Privacy Commissioner (IPC). The IPC may review the search conducted by the institution to determine if it was reasonable. If the IPC decides that the search is not reasonable, it can order the institution to conduct a further search.

This fact sheet explains what a reasonable search is, how institutions can comply with their search obligations, how requesters can support institutions' efforts to find responsive records, and the role of the IPC in an appeal.

WHAT IS A REASONABLE SEARCH?

A reasonable search occurs when an experienced employee who is knowledgeable in the subject matter of the request makes a reasonable effort to locate records related to the request.¹

A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

¹ Orders M-909, PO-2469 and PO-2592.

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Identifiable Individuals

- **PO-3643** – request to the Ministry of Community Safety and Correctional Services for number of in-patient suicides at specific hospitals and psychiatric facilities
- Ministry gave total annual number, but withheld names of facilities and number per facility, citing “personal information” exemption
- IPC determined numbers alone do not reveal information about identifiable individuals
- IPC ordered the information to be disclosed

When Does the Public Interest In Disclosure Outweigh Privacy Rights?

- **PO-3617** – reporter asked the Ministry of Health and Long-Term Care for names, specialties, and payments to OHIP's top 100 billers
- IPC issued decision regarding public interest in disclosing information relating to OHIP billings
- Ministry disclosed payment amounts and the specialties of some physicians, but withheld names and some of the identified specialties, claiming invasion of personal privacy

When Does the Public Interest In Disclosure Outweigh Privacy Rights?

(Cont'd)

- on appeal, IPC adjudicator overruled ministry's decision, ordering full disclosure of the requested information
- adjudicator stated that *"...the concept of transparency, and in particular, the closely related goal of accountability, requires the identification of parties who receive substantial payments from the public purse."*
- A judicial review has been filed; there will be a hearing in June at the Ontario Divisional Court

Access On Behalf of Children

- **PO-3599** – requester sought OPP records concerning allegations he had committed a criminal offence involving his daughter
- Ministry only disclosed part of the records, claiming the rest fell under “personal privacy” exemption
- IPC upheld the ministry’s decision
- The requester is not entitled to exercise his children’s rights to request access, or consent to disclosure

Not Everything Is Third-Party Information

- **MO-3395-I** – request to Town of Newmarket for records on a \$2.8 million loan to a local soccer club
- town denied access, citing “closed meeting” and “third-party information” exemptions
- IPC found that one record was exempt but that soccer club’s financial records are not exempt from disclosure

Student Records and Privacy

- **MO-3320** – reporter requested a chart showing number of students suspended or expelled at each high school in Durham District School Board
- board denied access, citing exemptions such as economic harm, personal privacy
- our office ordered information disclosed
- board failed to provide sufficient evidence for an exemption based on economic interests, or the presence of personal information

Public Interest in Disclosure

- **MO-3295** – Algoma Public Health (APH) received a request for access to a forensic review regarding an alleged conflict of interest in appointment of former interim CFO, and whether funds were misappropriated or lost
- APH determined that while “personal privacy” exemption applied, it granted access citing “public interest override” (first time ever!)
- an affected party appealed decision, saying disclosure would expose them to civil liability
- IPC disagreed, found compelling public interest in disclosing the record (judicial review launched, will be heard before end of 2017)

Can Councillor Records Be Accessed Through *MFIPPA*?

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

What Can A Town Withhold Under the “Closed Meeting” Exemption?

- **MO-3228** – Toronto District School Board denied access to audit report about “Focus on Youth” program
- Board claimed disclosure would reveal deliberations of a closed meeting on the “security of the property” of the board
- our office decided audit report is not about “security of the property” and ordered it disclosed
- closed meeting exemption only applies if board is authorized under the *Municipal Act* to hold a closed meeting

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