

# Tribunal Processes of the IPC and Annual Breach Reporting

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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

Reporting  
Requirements for  
Health Privacy

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THIS PRESENTATION IS:

- PROVIDED FOR INFORMATIONAL PURPOSES,
- NOT LEGAL ADVICE, AND
- NOT BINDING ON THE IPC.

# Topics

1. Intro to the IPC
2. IPC's *PHIPA* Processes
3. Selected Recent Updates to *PHIPA*
4. *PHIPA* Annual Breach Reporting
5. *FIPPA/MFIPPA* Annual Reporting



What is the IPC?

# Information and Privacy Commissioner of Ontario (IPC or Commissioner)

- The IPC is an officer of the legislative assembly.
- Until very recently, the IPC only had authority under three acts:
  - *Freedom of Information and Protection of Privacy Act (FIPPA)*
  - *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
  - *Personal Health Information Protection Act, 2004 (PHIPA or the Act)*

# Information and Privacy Commissioner of Ontario (cont')

- But now there are more with an oversight role for the IPC, such as:
  - *Child, Youth and Family Services Act, 2017*
  - *Anti-Racism Act, 2017*

# IPC's *PHIPA* Processes

HEALTH

AUGUST 2019

Code of Procedure  
for Matters under the *Personal Health  
Information Protection Act, 2004*

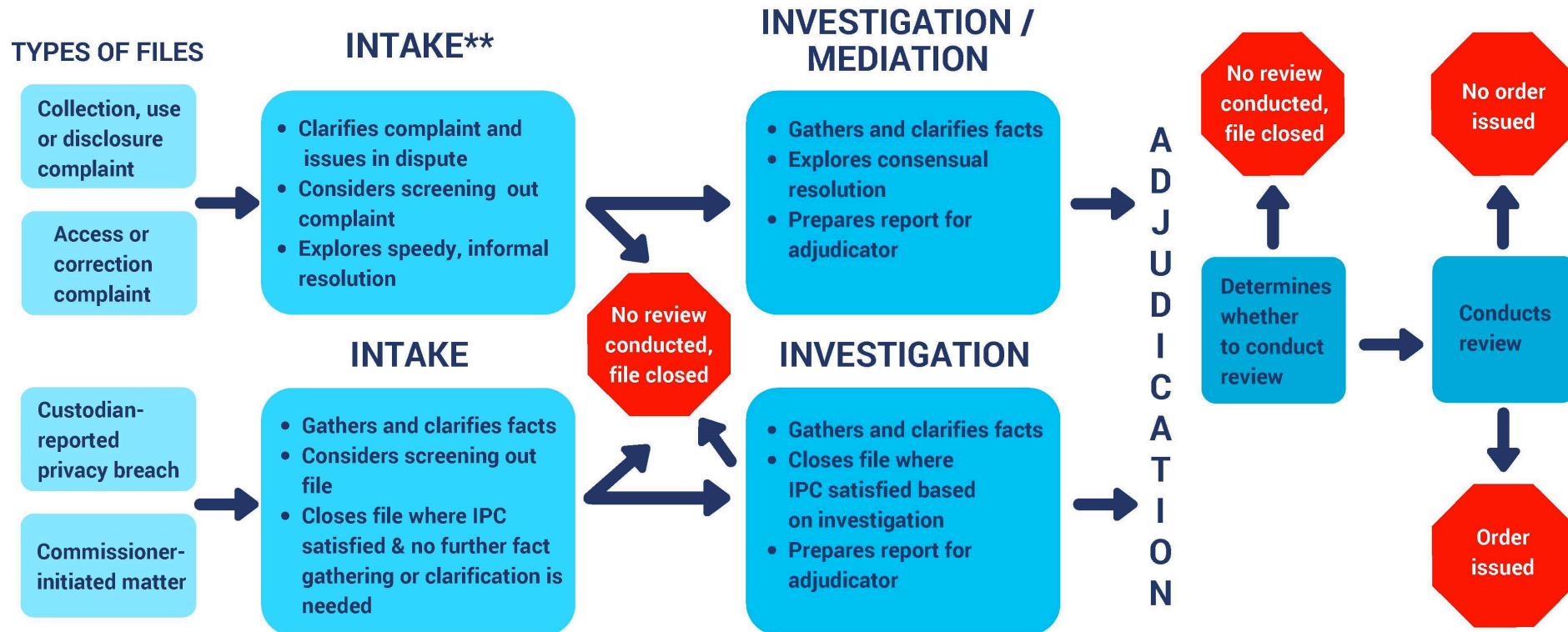


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# Stages of *PHIPA* Files

## *PHIPA* Processes Flowchart



\* The above process may be varied at the discretion of the IPC to achieve the fair, just and timely resolution of proceedings before the Commissioner or his delegates. Note specifically that urgent matters may be expedited to the adjudication stage.

\*\* In addition to the general procedures outlined in the above flowchart, Intake also adjudicates time-sensitive complaints related to deemed refusals, failures to provide access and expedited access requests.



# Selected Recent Updates to PHIPA

# Requirement to maintain an electronic audit log

- The IPC has held that electronic audit logs must be maintained and monitored by custodians to detect and deter unauthorized access to personal health information (PHI)
- This obligation flows from the requirement in *PHIPA* for custodians to take reasonable steps to protect PHI, for example, against theft, loss and unauthorized use or disclosure
- Bill 188 clarified this obligation by specifically requiring that custodians maintain and monitor an electronic audit log of accesses to PHI, subject to prescribed exceptions, and to provide that log to the IPC upon request
- These provisions are not yet in force and exceptions, if any, have not yet been prescribed

# Ontario Health Teams

- The *Connecting Care Act, 2019* was proclaimed into force on June 6, 2019
- It proposes to transform the health system through, among other things, the:
  - Establishment of Ontario Health
  - Creation of Ontario Health Teams
- The Minister may designate a person, entity or group as an Ontario Health Team

# Ontario Health Teams, cont'd

- Ontario Health Teams must comply with *PHIPA*
- *PHIPA* also now allows for regulations to be made governing:
  - (i) under what circumstances [an Ontario Health Team] may collect, use and disclose personal health information,
  - (ii) conditions that apply to the collection, use and disclosure of personal health information by [an Ontario Health Team],
  - (iii) security requirements, records retention, information practices and rules for access and correction for personal health information held by [an Ontario Health Team],
  - (iv) disclosures of personal health information that may be made by a health information custodian or other person to [an Ontario Health Team],
  - (v) any requirements with respect to the collection, use and disclosure of personal health information that [a former Ontario Health Team] must comply with;
- Also applies to persons or entities not yet designated as an Ontario Health Team but allowed to use that title and collect, use and disclose personal PHI in accordance with the conditions and other requirements made above.
- No regulations have been made under this authority

# Ontario Health Teams, cont'd

- Among other things the definition of a “health information custodian”, under *PHIPA* has also been amended to include:
  - A health service provider or person or entity that is part of an Ontario Health Team and that provides a home and community care service pursuant to funding under section 21 of the *Connecting Care Act, 2019*, including a person or entity from whom the provider or Team has purchased the home and community care service.
  - Note that this addition is also awaiting further amendment.



# *PHIPA* Annual Breach Reporting

# Annual Reports to the Commissioner

- Health information custodians must provide the IPC with annual privacy breach statistics.
- They must track incidents where personal health information was:
  - stolen
  - lost
  - used without authority
  - disclosed without authority \*
  - collected without authority (in the context of the provincial EHR)
- This annual report must also include breaches that do not meet the criteria for immediate mandatory reporting to the IPC.

\* In the context of the provincial EHR, only the custodian collecting, and not the custodian disclosing, must include the breach.

## Annual Reporting of Privacy Breach Statistics to the Commissioner

Health information custodians<sup>1</sup> are required to provide the Commissioner with an annual report on privacy breaches occurring during the previous calendar year.

This requirement is found in section 6.4 of Ontario Regulation 329/04 made under to the *Personal Health Information Protection Act, 2004*, as follows:

- (1) On or before March 1 in each year starting in 2019, a health information custodian shall provide the Commissioner with a report setting out the number of times in the previous calendar year that each of the following occurred:
  1. Personal health information in the custodian's custody or control was stolen.
  2. Personal health information in the custodian's custody or control was lost.
  3. Personal health information in the custodian's custody or control was used without authority.
  4. Personal health information in the custodian's custody or control was disclosed without authority.
  5. Personal health information was collected by the custodian by means of the electronic health record without authority..
- (2) The report shall be transmitted to the Commissioner by the electronic means and format determined by the Commissioner.

<sup>1</sup> Subsection 18.10 (5) of Ontario Regulation 329/04 requires a coroner to whom the prescribed organization provides personal health information under subsection 55.9.1 (1) of PHIPA to, in respect of that information, comply with section 6.4 of the Regulation, with any necessary modification, as if the coroner were a health information custodian.







# *FIPPA/MFIPPA Annual Reporting*

# FIPPA/MFIPPA Annual Reporting

- In addition to being health information custodians under *PHIPA*, some long-term care homes are also “institutions” or are located within “institutions” under the:
  - *Freedom of Information and Protection of Privacy Act* (e.g. long-term care homes that are part of a Hospital); or
  - *Municipal Freedom of Information and Protection of Privacy Act* (municipal long-term care homes).
- *FIPPA* and *MFIPPA* also require institutions to submit annual reports to the IPC, including additional items for institutions that are also custodians
- Information must be provided separately for each:
  - custodian that is the institution or that is acting as part of the institution, and
  - institution other than in its capacity as a custodian or institution containing a custodian

# *Content of FIPPA/MFIPPA Annual Report*

- Generally speaking, institutions must include in their annual report:
  - The # number of requests under *FIPPA/MFIPPA* and *PHIPA* for access to records
  - The # of refusals to disclose a record under *FIPPA/MFIPPA* and *PHIPA*, the statutory provisions under which disclosure was refused and the number of occasions on which each provision was invoked
  - The # of uses or purposes for which personal information/personal health information is disclosed where the use or purpose is not included in the statements of uses and purposes under *FIPPA/MFIPPA* or in any written public statement provided under *PHIPA*
  - The amount of fees collected in relation to access requests

List continued on next slide...

# *Content of FIPPA/MFIPPA Annual Report, cont'd*

...list continued from previous slide

- any other information indicating an effort by the institution/custodian to put into practice the purposes of *FIPPA/MFIPPA* and *PHIPA*, e.g.:
  - number of correction requests received under *FIPPA/MFIPPA* and *PHIPA* along with the custodian's response
  - amount of fees waived

For more information (including on filing deadlines), see the IPC's webpage:

<https://www.ipc.on.ca/access-organizations/annual-statistical-reporting/annual-statistical-reporting-and-supporting-pdf-materials/>



QUESTIONS?

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