

Working Towards a More Transparent and Accountable Government

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***Reaching Out to Ontario
Sault Area Hospital
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IPC Structure

- **Tribunal**
 - Mediation, investigation, adjudication
 - Led by Assistant Commissioner Sherry Liang
- **Policy, Health Policy, Legal, Communications, Administration**
 - Research, advice, comment on proposed programs/legislation that impact privacy and access
 - Represent IPC in court
 - Led by Assistant Commissioner David Goodis



Open Government

“We do not, and never will, accept the proposition that the business of the public is none of the public’s business.”

- The Honourable Ian Scott, July 1985



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Open Government

“We want to be the most open and transparent government in the country.”

- Premier Kathleen Wynne, 2014 Mandate Letters to Ministers



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Open Government: Open Data

Proactive disclosure of government information is essential for **transparency and accountability**, but some privacy issues must be addressed

- Adequate **de-identification**
 - Data that allows person to be identified must be anonymized
 - Simply removing direct identifiers may not be sufficient
- Regular review of data to evaluate new re-identification risks
 - As new data sets emerge, it may be possible for individuals to be re-identified through data matching between more than one data set



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Open Government: Open Data

In addition to privacy, the quality and integrity of the data must be maintained to ensure that the data is accurate and useable

- Common standards
 - Data must be in useable formats
- Metadata
 - Data must be easily searchable and understood
- Openness
 - Individuals should not have to register or otherwise identify themselves to access data



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Open Contracting

- Procurement records (*e.g.*, RFP submissions, contracts)
 - IPC recommends routine publication (allowing for withholding of **truly proprietary** information)
 - IPC, court case law generally supports this approach
 - Contract disclosure has become routine for some institutions (*e.g.*, Infrastructure Ontario, LAO, some municipalities)
 - Key is **managing expectations**: parties engaging with government should expect public scrutiny [*e.g.*, include in RFP materials]



Open Contracting: Proactive Disclosure of Procurement Records



Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



Open Contracting

- Make proactive disclosure the default
 - Commitment of leadership is key
- Be transparent about transparency
 - Be upfront and clear when gathering information from third parties about your intentions to disclose
- Engage your stakeholders
 - Engage about the design of your procurement process
 - Ensure that stakeholders understand the process and how to access information
- Design your procurement with limited exceptions in mind
 - Understand how to deal with third party information and personal information



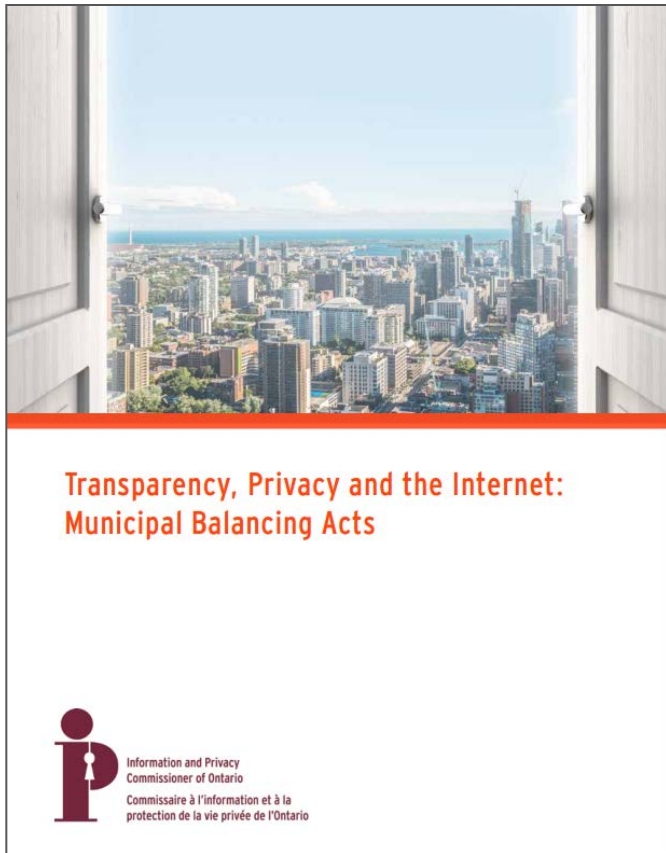
Application of Third Party Exemption in Procurement Records

In the limited cases where **confidential third party information** is collected, the guide will help you determine which information may not be appropriate for proactive disclosure

- 1. Identify types of information** – examples include trade secrets, scientific, technical, commercial
- 2. Determine if information supplied in confidence** – was the information supplied in its entirety? Was the information generated as a result of negotiations? Did the supplier of the information have reason to believe it would be held in confidence?
- 3. Identify and evaluate harms caused by disclosure** – *e.g.*, will release prejudice competitive position, interfere significantly with contractual negotiations, result in undue loss/gain to third party?



Transparency, Privacy and the Internet: Municipal Balancing Acts



- Provides municipalities with **privacy protective policy, procedural and technical** options when publishing personal information online
- Focus primarily on personal information that is required by law to be published, but **may be applied** in any situation where municipalities make information available online

Transparency, Privacy and the Internet: Municipal Balancing Acts

Privacy protection may be improved through a number of risk mitigation strategies:

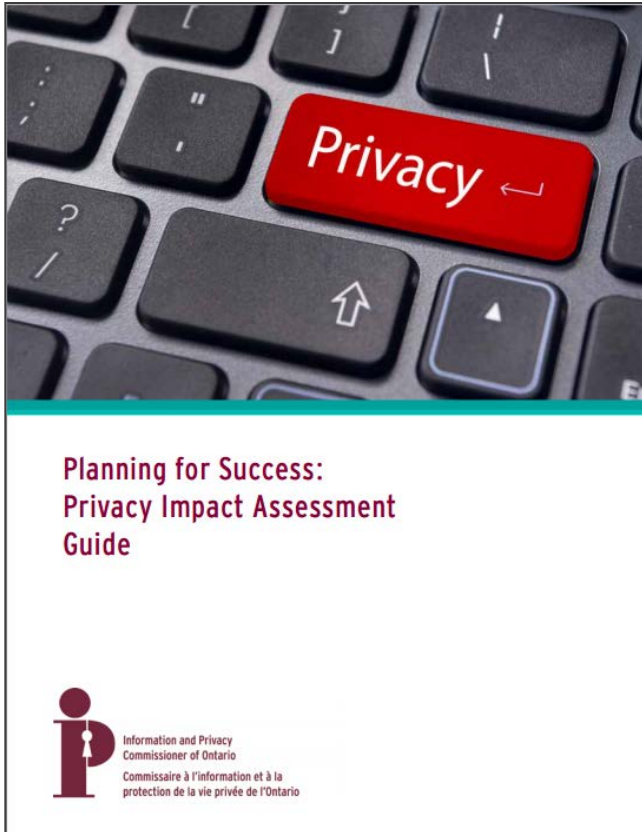
- **Redaction**
 - Remove unnecessary personal information before publishing
- **Data minimization**
 - Request and store only as much personal information as is necessary
- **Technological measures to limit searchability**
 - e.g, robot exclusion protocols, images instead of text
- **Transparent administration**
 - When information received, be clear about how it will be published; manage expectations



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Planning for Success: Privacy Impact Assessment Guide



- Provides **step-by-step** advice on how to conduct a Privacy Impact Assessment (PIA) from beginning to end
- Will help to define scope, engage internal and external stakeholders, understand information flows, **identify privacy solutions** and prepare an effective PIA report

IPC PIA Methodology

Key Steps	Tools
1. Preliminary Analysis Is personal Information involved?	Appendix A: Questionnaire
2. Project Analysis Gather project info, people and resources, and map data flows	Appendix B: Questionnaire
3. Privacy Analysis Identify and mitigate risks	Appendix C: Checklist
4. PIA Report Document findings, get approval, proceed	Appendix D: Template

Downloadable Worksheet containing all Appendices: <https://goo.gl/aRS8l4>



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Open Engagement/Dialogue: Survey Guidelines



Best Practices for Protecting
Individual Privacy in
Conducting Survey Research



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- Updated from 1999 version, co-authored with Ontario Public Service
- Changes reflect use of **online survey tools**, and use of mobile devices
- “Checklist” tool of 45 best practices



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Online Survey Tools

- In general, online survey tools raise three privacy concerns:
 1. May allow **third parties to track** survey participants online
 2. May involve a **loss of control** over the terms of use (TOU)
 3. May result in survey data being **stored outside of Canada**
- To address these concerns, the IPC recommends:
 1. Do not use online survey tools with **third-party “cookies”**
 2. If personal information is involved, ensure **TOU is not subject to change** without the express written consent of institution
 3. Evaluate the risk of extraterritorial storage of personal information and ensure **appropriate contractual provisions**



Bill 8, Public Sector and MPP Accountability and Transparency Act

- Will require institutions to take **reasonable measures** to preserve records in accordance with recordkeeping requirements
- New offence to alter, conceal, destroy a record with intention of denying access; fine up to \$5,000
- Not yet been proclaimed in force
- MGCS will publish guidance on how the legislation will affect record retention and how to ensure the preservation of records
- IPC will also be releasing guidelines before the end of the year



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Councillor Records

- IPC decisions: individual members of municipal councils (except for the Mayor) are not officers or employees of the municipality. As a result, unless municipal councillors' records are found to be in the “custody or control” of the municipality, they are **not subject to MFIPPA**
- This approach is **no longer acceptable**. The public deserves access to records relating to city business in the custody or control of its municipal councillors to ensure accountability.
- As part of proposed amendments to municipal legislation, the IPC is **recommending changes** to *MFIPPA* to ensure that the business of municipalities is fully open



Developments in Access to Information

Sherry Liang
Assistant Commissioner



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What We Do

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



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What We Do - Intake

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



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What We Do - 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
- Uses shuttle mediation (phone calls to each party in turn) or conference calls; occasional face to face mediation



What We Do - Adjudication

- Adjudicator conducts an inquiry in the appeal
- Usually a written process – asks each party in turn to provide their written submissions
- Share, to the extent possible, the submissions with all parties
- Then issues a written decision



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What We Do: Some Statistics

- In 2014, IPC received 1320 appeals
- In 2014, IPC closed 1376 appeals
- Most appeals were resolved through mediation
- Some appeals were screened out at an early stage
- Over 300 decisions disposing of appeals issued in 2014
- Great 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

1. Contracting

- Court decisions have affirmed IPC's approach to contracting:
 - Contracts presumptively available under FIPPA and MFIPPA
 - Historically received many requests for contracts between government institutions and private parties
 - Increasing number of requests for the bid documents and evaluations: case by case disclosure obligations.
 - IPC has just issued guidance document on Open Contracting



2. Email

- Increasing number of requests for emails, including deleted emails.
- Deleted emails accessible under FIPPA/MFIPPA.
 - Question of fees – how much will it cost to retrieve deleted emails from backup systems and how much can an institution charge the requester?
 - See: Orders PO-3050; MO-3014; MO-3136



3. Coverage of MFIPPA/FIPPA

- Order MO-3146: School board transportation consortium records covered by MFIPPA.
- Order PO-3365: Expert advisors to government covered by FIPPA/MFIPPA.



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4. Business v. Personal Information

Order PO-3467

- Names of driving instructors who had their instructor licences revoked were ordered disclosed.
- The revocations relate to the individuals in their business and not their personal capacity.
- This is not personal information as many of the grounds for revocation, even if linked to an identifiable individual, would not reveal anything personal about the individuals.



5. Closed Meetings

Order MO-3130

- The “**closed meeting**” exemption allows an institution to withhold records if they would reveal the substance of deliberations during a closed meeting
- In this appeal, the St. Thomas Police Services Board claimed that disclosure of the final employment contracts between high level police officials and the Board would reveal substance of deliberations as the Board went in camera to discuss the proposed contracts
- IPC decided that the closed meeting exemption did not apply: disclosing the contracts would only reveal the “subject matter” of the Board’s in camera discussion, but not the deliberations in the meeting



4. Publicly Available and Fees

Order MO-3216

- Institutions are permitted to bypass formal request process under MFIPP/FIPPA if they have a system of making the information routinely available through another method
- Ottawa Police Service denied an individual access to general occurrence reports about her because they said they had a regularized system of access for these reports
- Their “regularized system” for accessing the reports imposed a fee of \$51 per report, whereas a person making an MFIPPA request for their own information would pay much less
- The Adjudicator decided that the (lower) fee structure under MFIPPA applied to the records resulting in a permissible fee of \$7.40.



5. Compassionate Circumstances

- Under MFIPPA/FIPPA, an institution can disclose information about a deceased family member for compassionate reasons, that it might otherwise be prohibited from disclosing
- Two decisions in recent months applied this **compassionate grounds** provision

PO-3504

- Adjudicator found that there were no compassionate reasons for disclosure, as there was evidence about inheritance issues and long estrangement of the family member from his deceased brother.



Compassionate Circumstances cont'd

MO-3224

- The requested records related to a fatal **fail to remain collision** that occurred 16 years ago. The appellant's son was struck and killed by a truck and the appellant was trying to understand what happened and why no arrests were made.
- The Hamilton Police Services Board claimed that the disclosure of the records could be **expected to interfere** with a law enforcement matter.
- Adjudicator was not convinced; she **ordered the records disclosed** to the appellant for compassionate reasons.



6. Species at Risk

Order PO-3488

- Institutions can withhold information if disclosure might cause harm to a "**species at risk**"
- The appellant wanted to know the size and location of the wood turtle population in the Bow Lake Wind Farm area, to determine whether the wind farm would **harm** the wood turtles.
- The Ministry of Natural Resources and Forestry's decision to deny access to the information under the "species at risk" exemption, was **not upheld**.



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Government Use of Internet and Privacy

- Privacy Complaint Report MC13-67
 - IPC decided that posting Planning Act applications for minor variances online did not contravene MFIPPA, even though they contain personal information
 - But did recommend that the municipality explore technological solutions to minimize the ability for the personal information to be searched
 - Led to the development and issuance of our guidance document “Transparency, Privacy and the Internet: Municipal Balancing Acts”



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