Trends and Challenges in Access to Information Brian Beamish Commissioner (Acting) Office of the Information and Privacy Commissioner of Ontario October 7, 2014

Mandate and Role

- The Office of the Information and Privacy Commissioner of Ontario (IPC) provides an independent review of government decisions and practices concerning access and privacy;
- The Commissioner is appointed by and reports to the Legislative Assembly; remains independent of the government of the day to ensure impartiality.

Information and Privacy Commissioner of Ontario

Oversees Three Acts

- The Freedom of Information and Protection of Privacy Act (1988)
 Provides right of access to information and appeals to the IPC;
 - Privacy complaints may be filed with IPC investigations may result in recommendations or orders;
- The Municipal Freedom of Information and Protection of Privacy Act (1991)
- The Personal Health Information Protection Act (2004)
 - Provides comprehensive privacy protections for personal health information; right of access to personal health information, and a right to complain to the IPC.

Information and Privacy Commissioner of Ontario

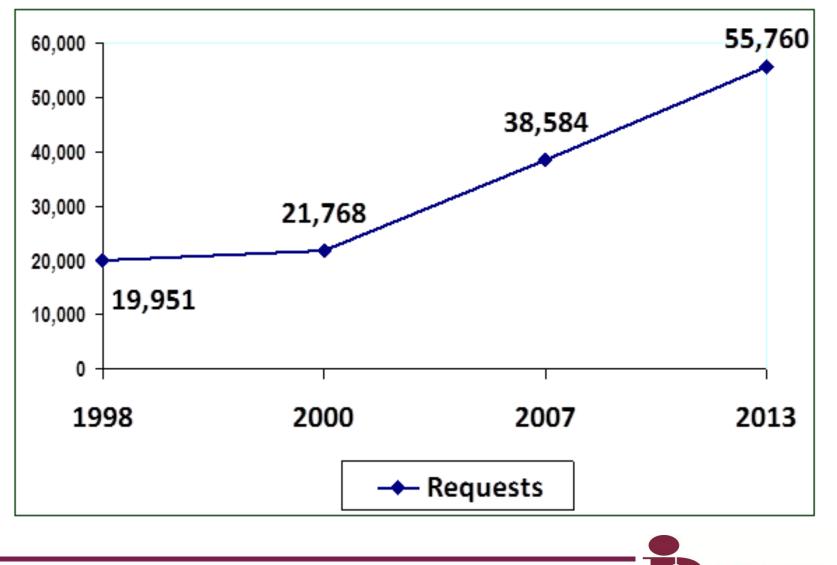
FIPPA Principles of Access

The *Freedom of Information and Protection of Privacy Act* (FIPPA) and its municipal counterpart set out these basic access principles:

- Information should be available to the public;
- Exemptions from right to access should be limited and specific; and
- Disclosure decisions should be independently reviewed.

Information and Privacy Commissioner of Ontario

Total Access Requests Per Year



Expansion of FIPPA Coverage

Gaps are being closed:

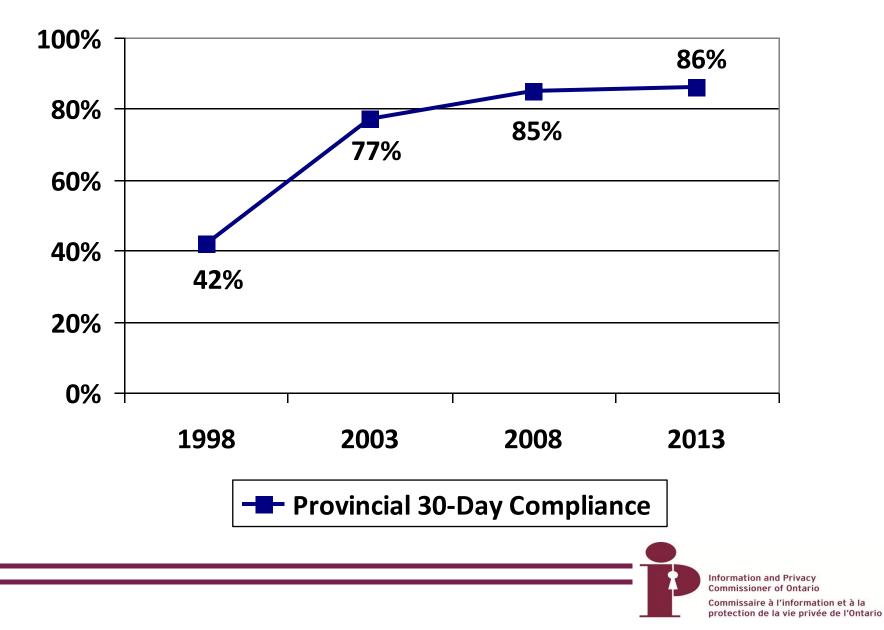
- Universities (2006)
- Hospitals (2012)

More work needs to be done to add:

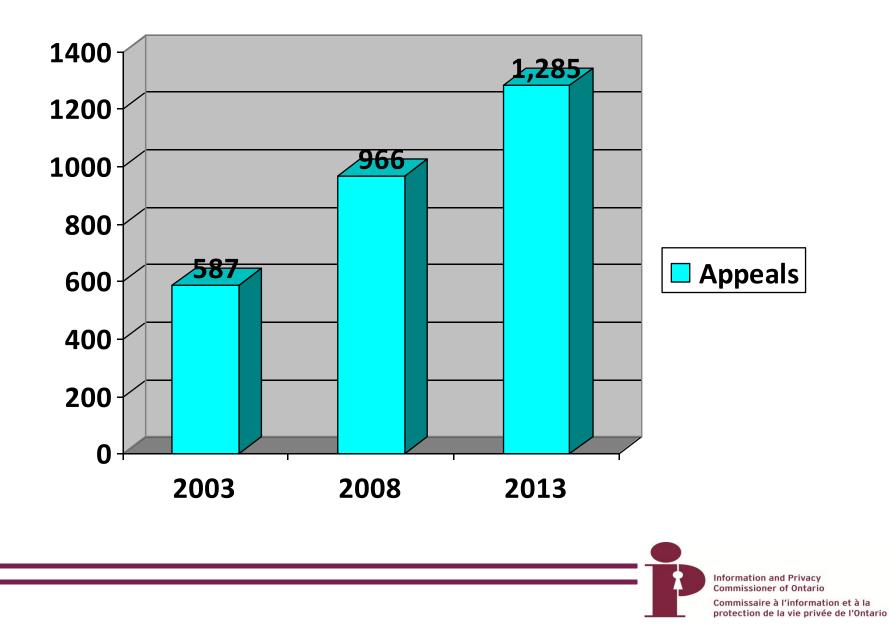
• Children's Aid Societies

Information and Privacy Commissioner of Ontario

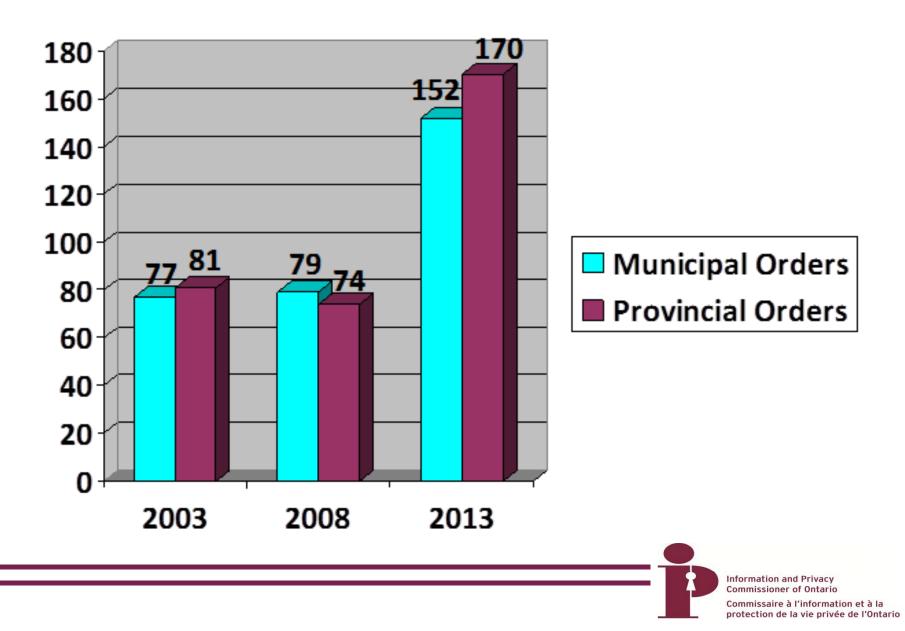
30-Day Compliance



Total Appeals Received Per Year



Total Orders Issued



Salary and Expenses Disclosure

- Public Sector Salary Disclosure Act (1996)
- Travel and Hospitality Expenses
 - Cabinet Ministers, Senior Management, etc.
 - 22 of Ontario's largest agencies.
- Broader Public Sector Accountability Act (2010)
 - Public reporting for Local Health Integration Networks and hospitals.

Information and Privacy Commissioner of Ontario

Published Sunshine List

• All government salaries more than \$100,000 published yearly

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Home > Salary Disclosure > Government of Ontario : Ministries

Public Sector Salary Disclosure for 2013: Government of Ontario : Ministries

The information contained in these pages is a copy of the official documents of these organizations. Since the Public Sector Salary Disclosure Act does not specify the language in which these documents need to be prepared, the Ministry of Finance publishes these documents in the original language in which they were prepared and presented to the Ministry.

Disclosure for 2013 under the Public Sector Salary Disclosure Act, 1996 Government of Ontario : Ministries

This category includes all ministries.

Divulgation pour 2013 en vertu de la Loi de 1996 sur la divulgation des traitements dans le secteur public Gouvernement de l'Ontario : Ministères

Cette catégorie englobe tous les ministères.

First page Previous			1 2 3 4 5 6	N	ext Last page
Employer / Employeur	Surname / Nom de famille	Given Name / Prénom	Position / Poste	Salary Paid / Traitement	Taxable Benefits / Avantages imposables
Aboriginal Affairs / Affaires autochtones	ALMOND	MARGOT	Director, Corporate Management / Directrice, gestion ministérielle	\$118,745.69	\$181.35
Aboriginal Affairs / Affaires autochtones	BENNETT	PHYLLIS	Manager, Issues Management & Media Relations / Chef, questions d'intérêt et relations avec les médias	\$110,323.09	\$167.78

Information and Privacy Commissioner of Ontario

Ontario Government Expenses

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formation and Privacy ommissioner of Ontario

City of Toronto Expenses Published Quarterly

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Year: 2013 •

> Home > Expenses from the Council General Expense Budget

Ward	•	Councillor	 Constituency Office & Other Expenses	General Entitlement for Communications with Constituents - Actual Expense	General Entitlement for Communications with 4 Constituents - Allocation to Councillor
1-Etobicoke North	Cris	anti, Vincent	\$2,318.05	\$1,888.42	\$1,959.13
2-Etobicoke North	For	d, Doug	\$0.00	\$0.00	\$2,063.47
3-Etobicoke Centre	Hol	yday, Douglas	<u>\$1,957.32</u>	\$0.00	\$2,119.69
3-Etobicoke Centre	Wa	rd 3, <mark>Vacant</mark>	\$0.00	\$0.00	\$2,119.69
3-Eto <mark>bicoke Centre</mark>	Leo	n, Peter	<u>\$403.66</u>	\$0.00	\$2,119.69
4-Etobicoke Centre	Line	lsay Luby, Gloria	\$3,269.51	\$2,280.25	\$2,280.25
5-Etobicoke-Lakeshore	Mile	zyn, Peter	<u>\$1,175.05</u>	\$0.00	\$2,952.22
6-Etobicoke-Lakeshore	Grin	nes, Mark	<u>\$1,268.05</u>	\$0.00	\$3,030.06
7-York West	Mai	nmoliti, Giorgio	<u>\$43,398.74</u>	<u>\$1,500.57</u>	\$1,814.25
8-York West	Per	ruzza, Anth <mark>on</mark> y	<u>\$49,329.52</u>	<u>\$1,903.99</u>	\$1,903.99

Previous Years (2008-2012)

Information and Privacy Commissioner of Ontario

Key Recent Court Decisions

Information and Privacy Commissioner of Ontario

Third Party Information and Contracts

HKSC Developments v. Ontario (IPC), 2013 ONSC 6776 *Miller Transit v. Ontario (IPC),* 2013 ONSC 7139

- Ontario *FIPPA* s. 17 test for exemption:
 - commercial/financial information
 - $\circ\,$ supplied in confidence
 - reasonable expectation of harm
- IPC rules in 2 cases involving contracts that information not "supplied"
 - usually considered "mutually generated" or "negotiated", not supplied
- Court agrees with IPC interpretation and upholds disclosure order in both cases.

Conflict Between Access Legislation & Another Agency Decision

Ontario (Community and Social Services) v. Ontario (IPC), 2014 ONSC 239, leave to appeal granted (ONCA)

- Requester seeks access under *FIPPA* to his own file at Family Responsibility Office
 - agency that helps collect and distribute support payments
- Ministry withholds names of staff
 - cites previous consent order of Grievance Settlement Board that permits FRO staff to self-identify using first name/employee number only
- IPC rejects argument, rules that right of access under *FIPPA* prevails over any conflict with Board order.

Divisional Court Sees No Conflict

Ontario (Community and Social Services) v. Ontario (IPC), 2014 ONSC 239, leave to appeal granted (ONCA)

- IPC also states no conflict in any event
 - o disclosure of records to this requester would not preclude FRO staff continuing to choose form of identification in future communications
- Divisional Court upholds IPC:
 - $\,\circ\,$ agrees with IPC that no real conflict
 - FRO staff retain freedom to choose, despite IPC disclosure order
 - $\circ\,$ no evidence that intent of GSB order was to override FIPPA

Personal Information: Identifiable?

- Request under FIPPA for record containing a list of the first three characters of Ontario postal codes and the number of individuals residing in each area who are listed in the Ontario Sex Offender Registry.
- Ministry resisted the request information in the record may lead to the identification of the whereabouts of offenders, leading to privacy (s. 21), law enforcement (s. 14) harms.
- IPC found no reasonable expectation that any individual may be identified from disclosure, not reasonable to expect privacy, law enforcement harms.

Information and Privacy Commissioner of Ontario

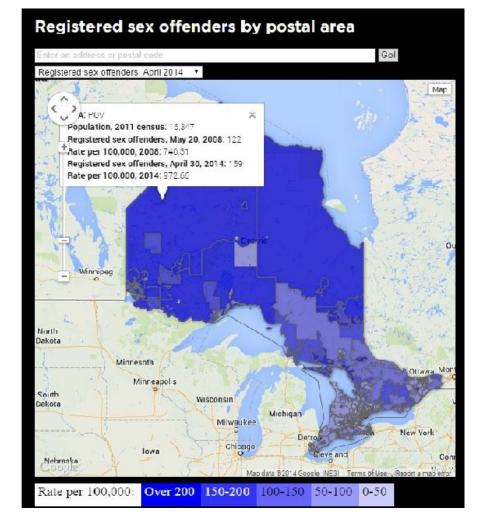
Supreme Court Backs IPC

- The Ministry applied to Ontario Divisional Court for a judicial review and it was dismissed. Ontario Court of Appeal agreed with this decision.
- Both agreed the IPC applied the correct legal test of standard of proof and the Ministry's evidence was speculative at best.
- The Ministry appealed to the Supreme Court of Canada and they rejected all of their arguments:

"The Commissioner reasonably concluded that disclosure could not lead to the identification of offenders or of their home addresses and that the Ministry did not provide sufficient evidence of the risk of the harms which the relied-on exemptions seek to prevent."

- Justice Cromwell and Justice Wagner, Supreme Court of Canada (2014 SCC 31)

Interactive Map Created by Media



Information and Privacy Commissioner of Ontario

Advice and Recommendations John Doe v. Ontario (Finance), 2014 SCC 36

- Requestor seeks options paper with "pro and cons" relating to proposed change to corporate tax legislation.
- IPC orders disclosure, finds that record does not reveal "single suggested course of action." [Order PO-2872]
- IPC also rules government must show advice "actually communicated to decision-maker."

Advice and Recommendations

John Doe v. Ontario (Finance), 2014 SCC 36

• SCC overturns IPC:

- Options paper must be fully protected, not just information revealing a "single suggested course of action."
- "Advice and recommendations" broad, protects the deliberative process, including all options and their "pros and cons."
- Also, government need not show advice actually communicated to decision-maker, as long as information part of deliberative process.

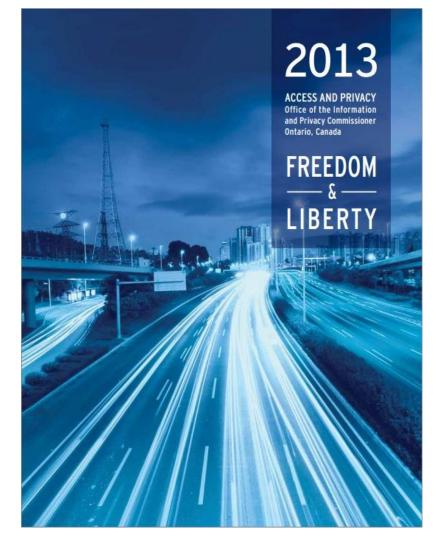
Moving Forward to Modernize Access to

Information

Information and Privacy Commissioner of Ontario

Modernizing the Acts

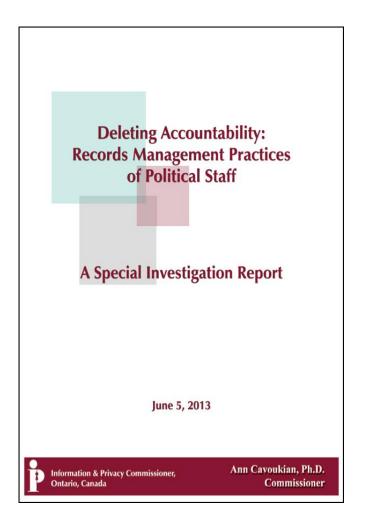
- More than 25 years since FIPPA came into effect and it can be considered first generation legislation.
- Legislators could not have envisioned the vast opportunities and challenges that have arisen.
- As a result, the *Acts* no longer fully reflect the realities of access to information.



Information and Privacy Commissioner of Ontario

Duty to Document

- IPC investigated several former staff members of the Minister of Energy's office and subsequently, former staff from the Premier's office, for deleting emails and records pertaining to the cancellation of gas plants.
- Highlighted the significant need for legislative requirements for record retention and a "duty to document."



Bill 8: Public Sector and MPP Accountability and Transparency Act

Introduced this past summer by Ontario Government, if passed Bill 8 will:

- Amend FIPPA and MFFIPA to require all institutions subject to the Acts to securely retain records,
- Prohibit the wilful destruction of records with the intent to deny access to records.
- Introduce a fine of \$5,000 for the willful destruction of records.
- Expands the Ontario Ombudsman's role to include municipalities, school boards and publicly-assisted universities.
- Legislate the online posting of expense information.

Modernizing Access and Privacy Laws

- 14 Information and Privacy Commissioners and Ombudspersons signed the 2013 Resolution.
- Resolution contained 18 key recommendations for the future of access and privacy.



News

Modernizing Access and Privacy Laws for the 21st Century

Resolution of Canada's Information and Privacy Commissioners and Ombudspersons

October 9, 2013

CONTEXT

Canadians have come to expect greater accountability and transparency on the part of both governments and private-sector organizations with respect to how they gather, create, share, disclose and manage information, including personal information.

There have been many changes in technology, changes to government practices (such as public-private partnerships, outsourcing or shared services models), and Canadians' expectations over the years. Recent revelations about government surveillance programs have heightened Canadians' concerns about the erosion of their privacy rights and have prompted calls for increased transparency and greater oversight of national security initiatives.

Information and Privacy Commissioner of Ontario

Modernizing Access to Information

Key Recommendations:

- Requiring all records, including exempt records, be disclosed if it is clearly in the **public interest** to do so;
- Establishing **minimum standards for proactive disclosure**, including identifying classes or categories of records that public entities must proactively make available to the public and, in keeping with the goals of Open Data, make them available in a usable format;
- Establishing a requirement that for any new systems that are created, public entities create them with access in mind, thus making exporting data possible and easier;
- Creating a legislated **duty to document** matters related to deliberations, actions and decisions.

Proactive Disclosure of Contracts

- Publicly funded contracts should be disclosed routinely and proactively.
- Strengthen transparency and accountability around government spending and improve public confidence.
- Significantly reduce the number of freedom of information requests and appeals.
- Too many institutions are denying freedom of information requests for contracts using sections of *FIPPA* and *MFIPPA* relating to third party information, delaying release.
- Should be pushed out similar to salary information.

Information and Privacy Commissioner of Ontario

Open Government Engagement Team Open by Default Report

Highlights need for improvement of the FOI framework:

- Reform Acts by basing them on the principals of Open by Default and requiring the proactive publication of certain types of information.
- Reform the FOI process so that government systems can receive, process and respond to information requests online and in machine-readable formats.
- Publish FOI responses online as soon as they are released to the requestor(s).

Open by Default



A new way forward for Ontario

Information and Privacy Commissioner of Ontario

Open By Default: Make Data A Public Asset

Implement an Open by Default data policy the includes:

- Publish all government data in commonly accepted open standards, unless there are privacy, security or legal reasons for not doing so.
- Publish data in a timely manner.
- Data should free of charge and in commonly-used formats
- Ensure no data is destroyed
- Waive intellectual property for data the government collects or creates
- Extend these principles to agencies and broader public sector

Open By Default: Fees

- Require ministries to pay for all costs associated with freedom of information requests when:
 - The ministry fails to meet required timelines for response (ex. 30 days) or;
 - No fees chargeable for responding to freedom of information requests for information on new IT systems.

More Open Government in Ontario



Open Government

Open by default - it's not a catchphrase.

It's a commitment to the people of Ontario to engage, collaborate and innovate. It starts with a government that freely shares information, unlocks the power of data in a digital age and brings more voices to the decision-making table.

We appointed our Open Government Engagement Team to find ways to turn these ideas into action. The team sparked conversations with people across the province about how government can do business differently. They've developed recommendations based on what they heard.



Information and Privacy Commissioner of Ontario

Mandate Letters

Ontario

Energy

- Open by Default report recommended the Premier's mandate letters to Cabinet ministers outlining departmental priorities be published within two business days of being signed.
- In September, the Premier responded by publishing the letters for the first time.

Mandate Letters 2014-2015 Read the mandate letters Premier Wynne wrote to each Cabinet Minister, outlining the key priorities for their ministry. Aboriginal Affairs Agriculture, Food and Rural Affairs Attorney General Children and Youth Services Citizenship, Immigration and International Trade Community and Social Services Community Safety and Correctional Services Economic Development, Employment and Infrastructure Education Environment and Climate Change

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How can we help you?

Treasury Board Secretariat

Women's Directorate

Updated: September 25, 2014

Information and Privacy Commissioner of Ontario

Open Data's Role in Modernizing Access

> Information and Privacy Commissioner of Ontario

Open Data

Unless there is good reason to the contrary, data should be:

- Free and open transparent;
- Easily visible and discoverable;
- Based on open standards and therefore machinereadable and user-friendly;
- Licenced to permit free re-use and transformation by others, enabling greater participation.

Benefits of Open Data, Open Government

- Transparency and accountability
- Consultative, participatory government
- Meaningful citizen engagement
- Economic spinoffs through innovation

Citizen confidence and enhanced trust = legitimacy

Information and Privacy Commissioner of Ontario

Open Data In Ontario

		contact us français
D ^{er} Ontario	Q.	Topics +
Ontario open data Ontario + open data - we like the sound of that. We're hoping to unleash a new generation of winning Open data catalogue) ideas, services and app	plications.
Tell us what to open	Others also loo	oked at
We asked every ministry to inventory the data they have. Now we need you to tell us what you'd like to see made public.	Ontario top baby n Ontario top baby n	- manufacture and the

All ministries	All topics	
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- ✓ Government of Ontario workforce facts
- ✔ Government of Ontario staff directory
- Ontario provincial highway traffic statistics
- ✓ Average car travel speeds

See all

- ✓ Vehicle statistics
- ✓ Healthy Babies Healthy Children Program
- Traffic volume on provincial highways

Ontario top baby names (female) Ontario top baby names (male) Open Government Licence – Ontario Government Ministries

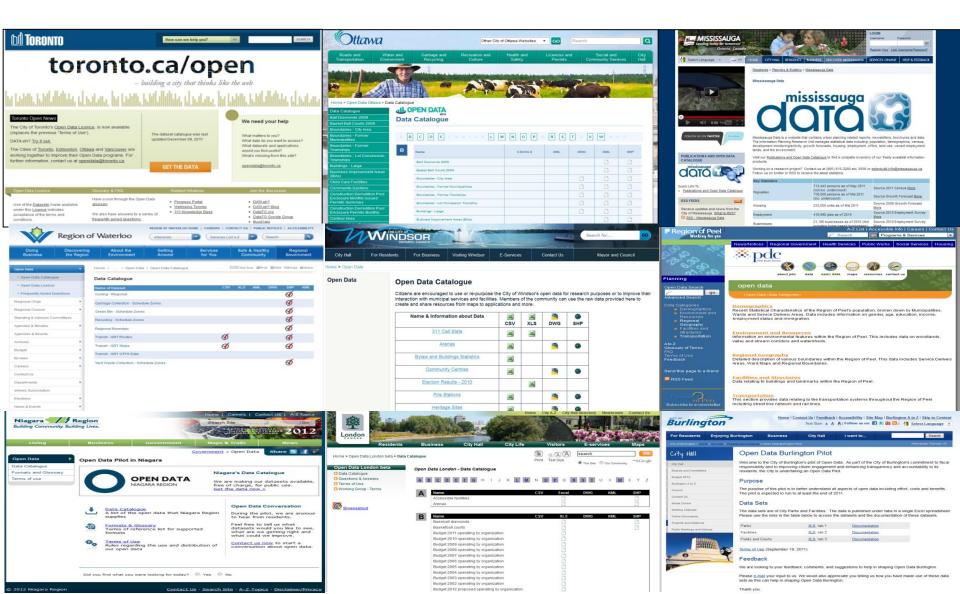
Recommended for you

Geospatial data: Land Information Ontario

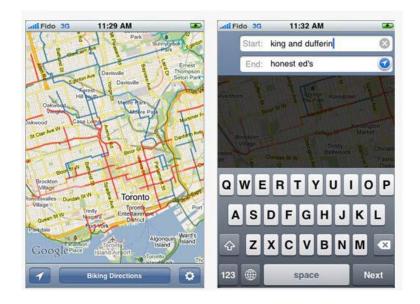
Data sharing: MaRS Data Catalyst program

> Information and Privacy Commissioner of Ontario

Open Data Ontario Municipalities



Toronto Open Data Apps



TORONTO Road Restrictions beta Address + + Find Search Results Legend Road Restrictions Type Main Road **Current Restrictions** Construction Type Main Bathgate Dr Road Lawrence Ave E Road Wanita Rd To Road Start Aug 07, 2012 1:26 PM Time End Time Aug 31, 2012 7:00 PM Bathgate Dr from Lawrence Ave E to Wanita Rd will be Lanes Affected: partially occupied due to Irilling operations

Toronto Bike Map App gives you designated bike routes and bike friendly travel directions.

Toronto Road Restrictions App gives real-time information on road closures, restrictions and traffic.

> Information and Privacy Commissioner of Ontario

Ottawa Open Data Contest

Ottawa AB	OUT DATA Apps titawa ideas	Register · Sign Ir APPS FRANÇAIS
IDEAS	OTTAWA OPEN DATA APP CONTEST \$50 000 IN PRIZES	APPS
Have a fantastic idea for using Ottawa's open data? Share an Idea		Want to see the apps that were submitted? View Submissions
RECENT IDEAS \rightarrow	ABOUT →	RECENT TWEETS →
Tech Books at the LibraryRick LeirImage: Constraint of the constrain	The City of Ottawa is committed to	<u>about 644 days ago</u> Votez pour votre application préférée sur le site http://www.Apps4Ottawa.ca avant le 28
Distillr 🗩 C brian daly 🔟 C	by providing public access to its data. To	janvier à 17 h HNE <u>#apps4ottawa.ca</u> avait le 20 #opendata <u>#ottawa</u>

Information and Privacy Commissioner of Ontario

University of Waterloo Open Data Initiative

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OPEN DATA Open Data Initiative home	Open Data Initiative »				
About the Open Data Initiative	Open Data Catalogue				
Open Data API	Name of Dataset	CSV	JSON	XML	
Open Data Catalogue	Waterloo weather				
License	Spring 2011 final examination information	1			
Requests	Spring 2011 final examination mormation	V			
Applications	Schedule of classes: winter, spring & fall, current data	~			
News	Main campus buildings outlines (JSON)		1		
Events			v		
	IST backup service				
	Fall 2011 final examination information	\checkmark			

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

Final Thoughts on Future of Access

- Access to Information remains a foundational principle of healthy democracies.
- Formal freedom of information process is working, but reform is desirable.
- Systems can be updated to recognize reality of Information Technology, need for transparency and proactive disclosure.
- Open Government/Open Data hold great promise for citizen participation and government accountability.

Information and Privacy Commissioner of Ontario

Contact Us

Brian Beamish

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