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.
Oversees Three Acts

• The *Freedom of Information and Protection of Privacy Act* (1988)
  o Provides right of access to information and appeals to the IPC;
  o 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)
  o Provides comprehensive privacy protections for personal health information; right of access to personal health information, and a right to complain to the IPC.
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.
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
Total Appeals Received Per Year

- 2003: 587
- 2008: 966
- 2013: 1,285

<table>
<thead>
<tr>
<th>Year</th>
<th>Appeals</th>
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</thead>
<tbody>
<tr>
<td>2003</td>
<td>587</td>
</tr>
<tr>
<td>2008</td>
<td>966</td>
</tr>
<tr>
<td>2013</td>
<td>1,285</td>
</tr>
</tbody>
</table>
Total Orders Issued

- **2003**: Municipal Orders 77, Provincial Orders 81
- **2008**: Municipal Orders 79, Provincial Orders 74
- **2013**: Municipal Orders 152, Provincial Orders 170
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.
Published Sunshine List

• All government salaries more than $100,000 published yearly
Ontario Government Expenses

Travel, meal and hospitality expenses

Browse or search work-related expenses claimed by government employees, elected officials and political staff.

Use the Show/hide columns button to see more detail about each expense claim. This feature displays more information about air fare, travel destination, meeting attendees, etc.

You can also sort and filter the information displayed to narrow your search.

Learn more about the rules covering these expenses.

View expenses by fiscal year

Search
## Expenses from the Council General Expense Budget

<table>
<thead>
<tr>
<th>Ward</th>
<th>Councillor</th>
<th>Constituency Office &amp; Other Expenses</th>
<th>General Entitlement for Communications with Constituents - Actual Expense</th>
<th>General Entitlement for Communications with Constituents - Allocation to Councillor</th>
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</table>
Key Recent Court Decisions
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:
  o commercial/financial information
  o supplied in confidence
  o reasonable expectation of harm

• IPC rules in 2 cases involving contracts that information not “supplied”
  o 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
  - disclosure of records to this requester would not preclude FRO staff continuing to choose form of identification in future communications

- Divisional Court upholds IPC:
  - agrees with IPC that no real conflict
  - FRO staff retain freedom to choose, despite IPC disclosure order
  - 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.
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

Registered sex offenders by postal area

Population 2011 census: 18,047
Registered sex offenders, May 20, 2006: 122
Rate per 100,000, 2006: 74.3
Registered sex offenders, April 20, 2014: 150
Rate per 100,000, 2014: 872.6

Rate per 100,000: Over 200, 150-200, 100-150, 50-100, 0-50
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
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.
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.

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.
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.
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: Make Data A Public Asset

Implement an Open by Default data policy that 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 be 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

"LET'S OPEN UP government TO NEW possibilities"

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.

Read their report
Mandate Letters

• 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.
Open Data’s Role in Modernizing Access
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 machine-readable 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*
Open Data In Ontario

Tell us what to open

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.

Search for datasets

- All ministries
- All topics

Search

Most voted on datasets

- Public sector salary disclosure
- Ministry program budgets and expenditure
- Driver statistics
- Government of Ontario workforce facts
- Government of Ontario staff directory
- Ontario provincial highway traffic statistics
- Average car travel speeds
- Vehicle statistics
- Healthy Babies Healthy Children Program
- Traffic volume on provincial highways

Show me random datasets!

Recommended for you

- Geospatial data: Land Information Ontario
- Data sharing: MaRS Data Catalyst program

Others also looked at

- Ontario top baby names (female)
- Ontario top baby names (male)
- Open Government Licence – Ontario
- Government Ministries
Toronto Open Data Apps

**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.
Ottawa Open Data Contest

OTTAWA OPEN DATA APP CONTEST

$50 000 IN PRIZES

Have a fantastic idea for using Ottawa’s open data?
Share an Idea

Ottawa’s first application creation contest has wrapped up. Congratulations to all our winners.

Want to see the apps that were submitted?
View Submissions

RECENT IDEAS

Tech Books at the Library
Rick Leir

Distillr
brian daly

ABOUT

The City of Ottawa is committed to improving citizen engagement, and enhancing transparency and accountability by providing public access to its data. To

RECENT TWEETS

about 644 days ago Votez pour votre application préférée sur le site http://www.Apps4Ottawa.ca avant le 28 janvier à 17 h HNE #apps4ottawa #opendata #ottawa
Open Data Initiative

Open Data Catalogue

<table>
<thead>
<tr>
<th>Name of Dataset</th>
<th>CSV</th>
<th>JSON</th>
<th>XML</th>
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<td>Schedule of classes: winter, spring &amp; fall, current data</td>
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<td>Fall 2011 final examination information</td>
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</table>
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.
Contact Us

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