

# Strengthening Public Sector Transparency and Privacy

Renee Barrette  
Director of Policy  
**Information and Privacy Commissioner of Ontario**

*AMCTO*  
*2015 Municipal Information Access and Privacy Forum*  
*October 29, 2015*



# Our Office

- The Information and Privacy Commissioner (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; and remains independent of the government of the day to ensure **impartiality**.



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

# The Three Acts

The IPC oversees compliance with:

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
- *Personal Health Information Protection Act (PHIPA)*



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

# What's New

1. IPC Statistics
2. Counsellors' Records
3. Video Surveillance Guidelines
4. Open Government
5. Contentious Issues Management
6. Cloud Computing
7. IPC Resources for Municipalities



Information and Privacy  
Commissioner of Ontario

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

# IPC Statistics

## Overview

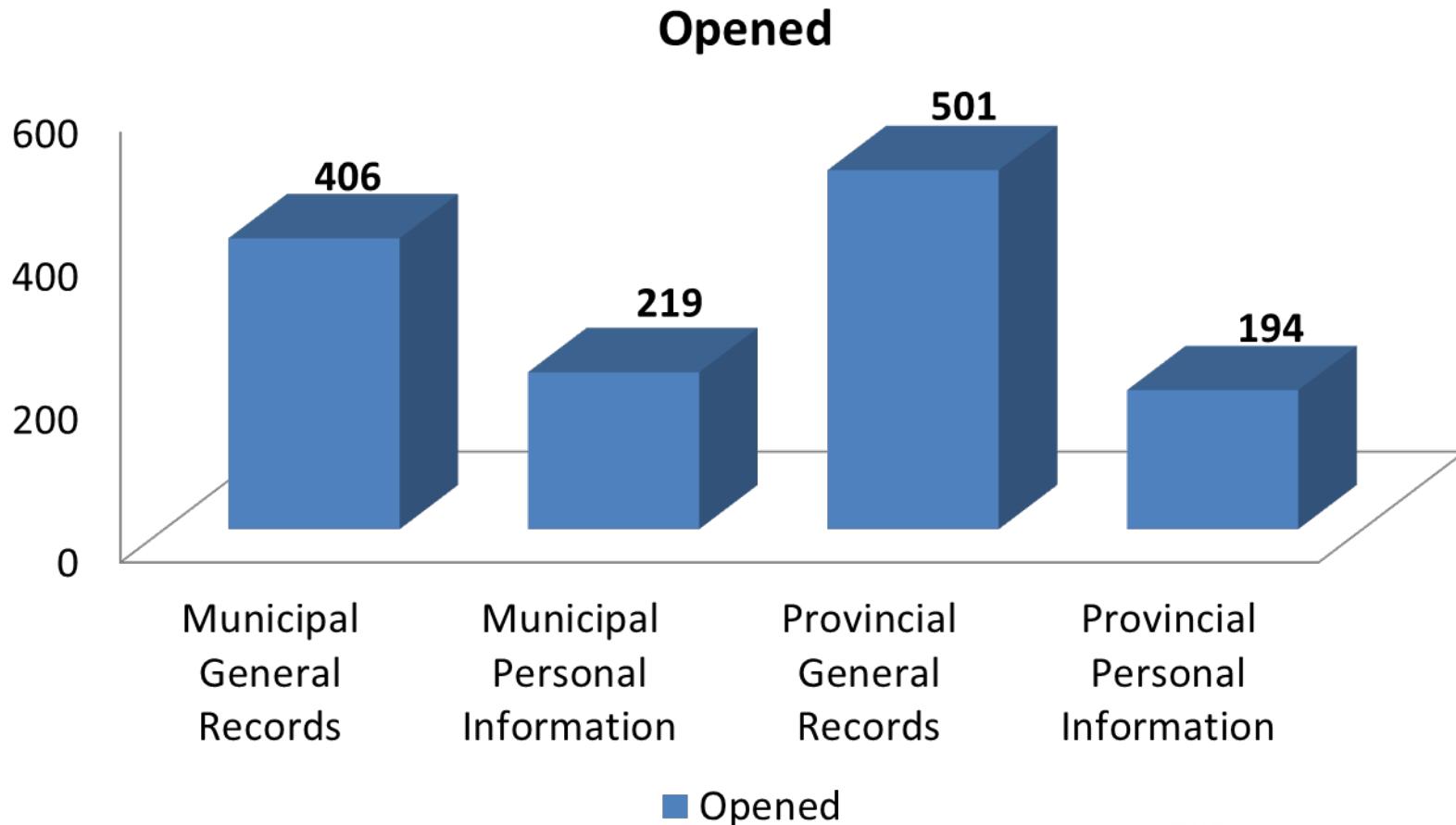
- In 2014, IPC received **1320 appeals**
- Most appeals were resolved through mediation
- Some appeals were screened out at an early stage
- Over **300 decisions** disposing of appeals issued in 2014
- Great majority of the appeals come from individuals - majority of their appeals were not about access to their own information but were requests for general information



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

# IPC Statistics

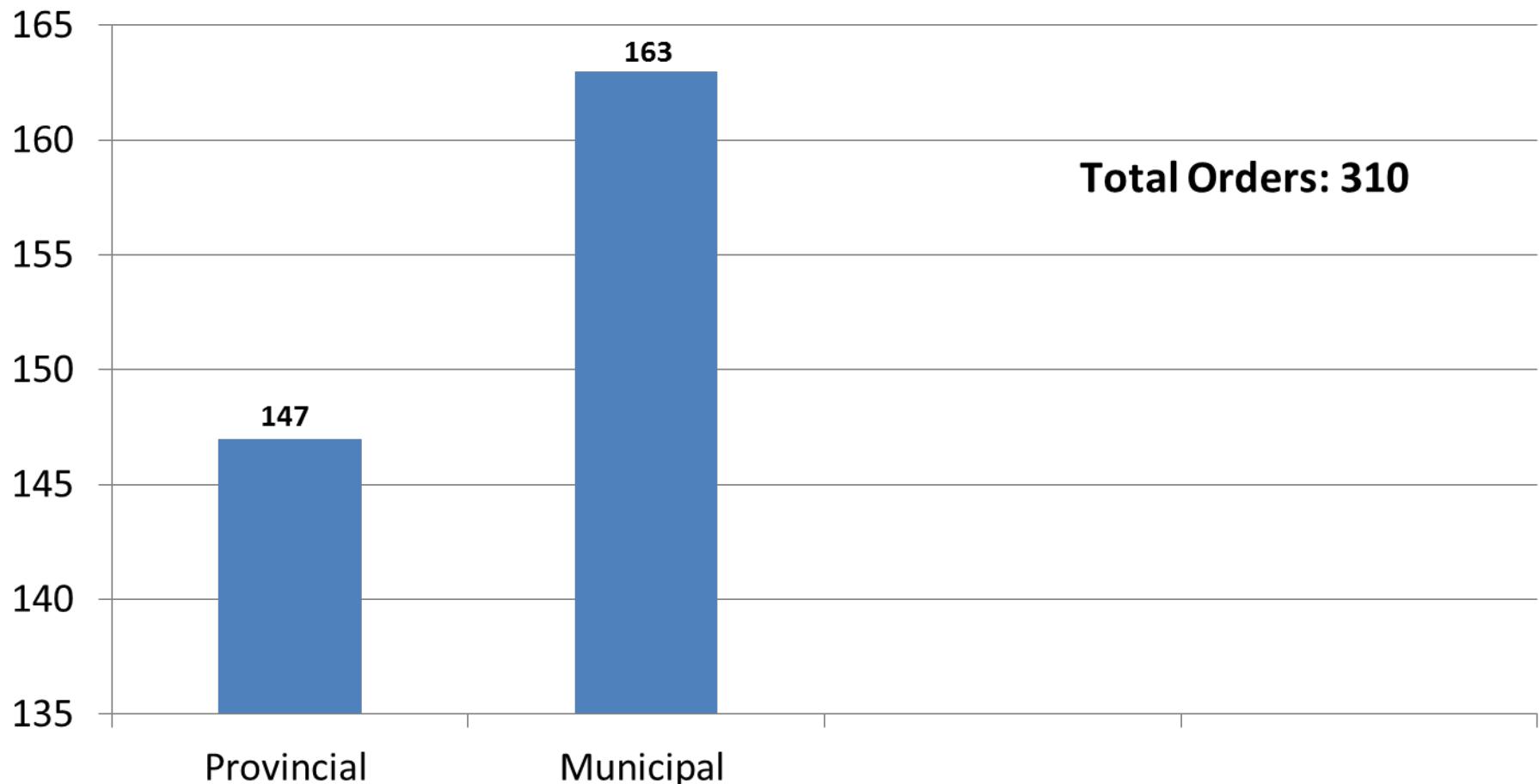
## 2014 FIPPA/MFIPPA Appeals



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

# IPC Statistics

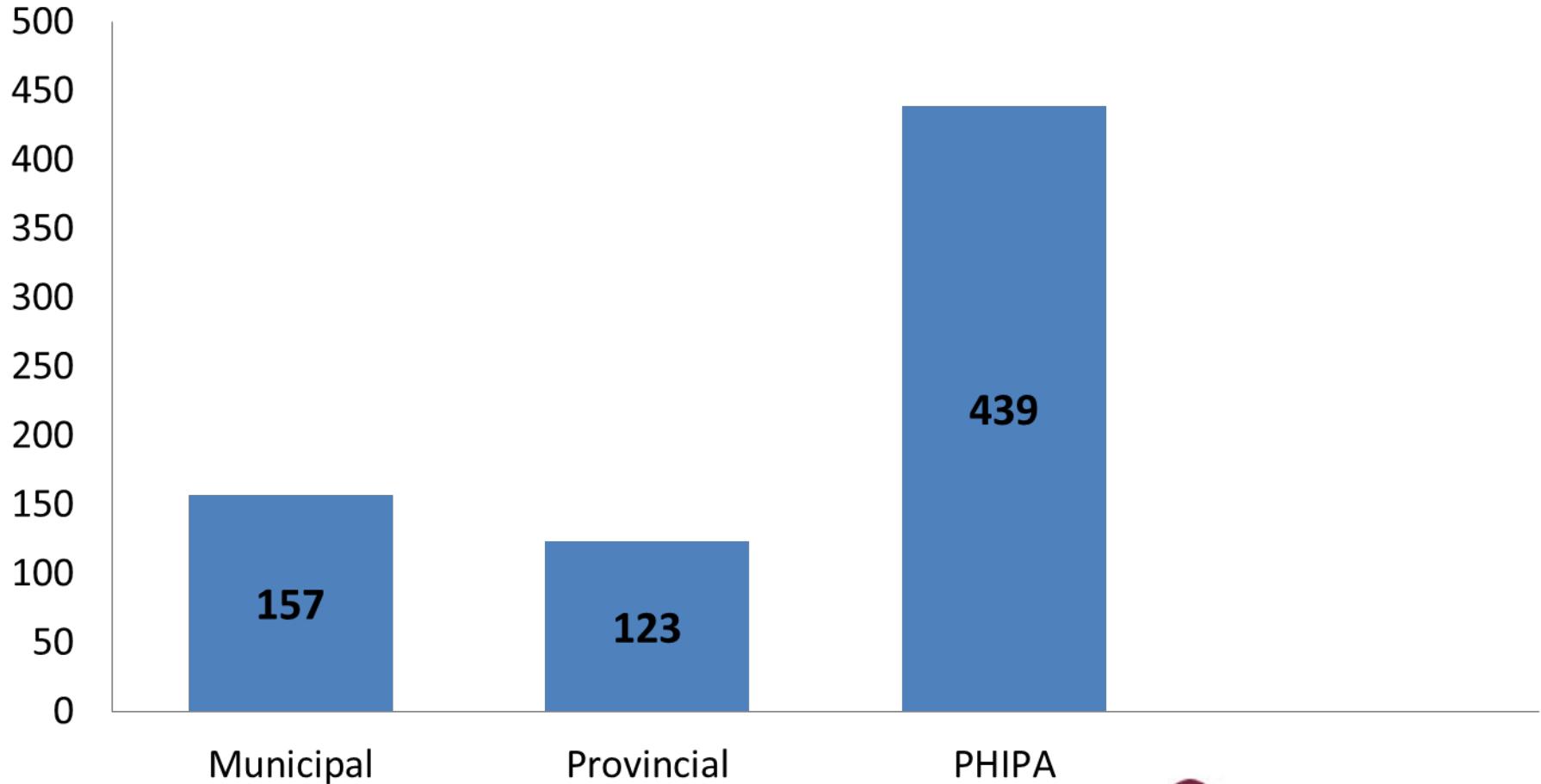
## 2014 Orders Issued



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

# IPC Statistics

## Privacy Complaints 2014



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

# Councillors' Records

- **Challenge:** individual members of municipal councils (except for the Mayor) are not officers or employees of the municipality.
- Unless municipal councillors' records are in the “**custody or control**” of the municipality, they are **not subject to MFIPPA**.
- The IPC’s approach – does the record relate to municipal business or the **councillor’s constituency**?
- This approach is **no longer acceptable**. Records about municipal business in the custody or control of municipal councillors should be accessible to ensure accountability.
- As part of the current review of municipal legislation, the IPC is **recommending changes** to *MFIPPA* to ensure that the business of municipalities is fully open.



Information and Privacy  
Commissioner of Ontario

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

# Video Surveillance Guidelines



Guidelines for the  
Use of Video Surveillance

October 2015



- The IPC first published guidelines on the use of video surveillance in public places in 2001 and then on the use of video surveillance in schools in 2003.
- This guide consolidates previous advice and presents some new issues and factors to consider, including **retention periods** and **notices of collection**.
- It also provides **key messages** and **examples** for clarity.

# Video Surveillance Guidelines

- Best practices include conducting a **privacy impact assessment**, consulting the public and establishing policies and procedures.
- Institutions must be prepared to process requests for information from the public including developing protocols for the **redaction of personal information** from the video footage where appropriate.
- Updated guidance on **retention period for unused footage** to a “reasonableness” standard:
  - “...limited to the **amount of time reasonably necessary** to discover or report an incident that occurred in the space under surveillance.”



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

# Open Government Municipal Leadership

## City of Toronto

- In 2007 Toronto became first Canadian municipality to post online details of Councillors' expenses
- In 2009 Toronto launched its Open Data catalogue, and currently has almost 200 data sets
- In 2010 the City worked with Edmonton, Vancouver and Ottawa (G4) to develop Open Data Framework
- Toronto continues to collaborate with other levels of government and municipalities and stakeholders to develop common practices and processes



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

# Open Government Municipal Leadership

## City of Guelph

- In November 2012, Council approved an Open Government framework, which outlined vision, principles, directions and action areas
- In February 2014, Guelph released first datasets, currently have close to 30 posted datasets
- In February 2015, Deloitte and the Institute of Public Administration of Canada recognized Guelph as one of the top three cities in the municipal sector – Open Government was one of the main initiatives cited for the award



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

# Open Government

# Open Data

Proactive disclosure of government data is essential for **transparency and accountability**, but some privacy issues must be addressed when datasets that contain PI are released as Open Data

- 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



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

# Open Government

# Open Contracting



## Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



- The proactive disclosure of procurement records will improve the **transparency of government spending** and reduce resources required to respond to access to information requests.

- This paper provides guidance on how to make procurement records publically available, while protecting sensitive **third party information and personal information**.



# Open Government

# Open Contracting

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



Information and Privacy  
Commissioner of Ontario

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

# Contentious Issues Management

## Ministry of Finance

- IPC investigated allegations of political interference in **two FOI requests** related to actions taken by a Legislative Assistant in the office of the Minister of Finance.
- **Findings:** The contentious issues management processes, absent politically-driven influences, are not inconsistent with the government's responsibilities under the Act.
- **No evidence** of inappropriate political interference in either request was found.
- Ministry's contentious issues management process allowed inaction by political staff to lead to **unacceptable delays** in processing one request because of other priorities.
- IPC offered training, and a comprehensive review of Ministry procedures was undertaken.



Information and Privacy  
Commissioner of Ontario

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

# Contentious Issues Management

## TDSB Order MO-3230

- IPC investigated accusations of **document tampering** and interference in the FOI process.
- Investigator found no evidence of wrongdoing, but a **failure in the procedure** to seek clarification when a request is unclear.
- Lessons for institutions:
  - Well-documented **procedures** for access requests need to be in place and followed.
  - Always seek **clarity** especially when there are multiple versions of the same request.
  - Ensure when **notice** is provided to a third-party that it is clear what information is being sought and the records at issue.



Information and Privacy  
Commissioner of Ontario

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

# Cloud Computing

“The rise of cloud computing is rapid, inexorable and causing a huge upheaval in the tech world..... The gains for customers have been dramatic but are not without risks.” *The Economist*, October 17, 2015

- Many institutions are considering moving into cloud computing, but may not fully understand **the implications** of utilizing this technology.
- The IPC will be releasing guidance which will provide an **introduction** to cloud computing and an overview of the privacy implications associated with implementation.

# IPC Resources for Municipalities



Information and Privacy  
Commissioner of Ontario

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

# Privacy Impact Assessment Guide



Planning for Success:  
Privacy Impact Assessment  
Guide



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

- PIAs are tools to **identify privacy impacts** and **risk mitigation strategies**
- PIAs are widely recognized as a **best practice**
- This guide provides institutions with **step-by-step** advice on how to conduct a Privacy Impact Assessment (PIA) from beginning to end.



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

# PIA Methodology and Tools

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

Downloadable Worksheet containing all Appendices: <https://goo.gl/aRS8I4>



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

# Survey Guidelines



Best Practices for Protecting  
Individual Privacy in  
Conducting Survey Research



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

# Survey Guidelines

- 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**.



Information and Privacy  
Commissioner of Ontario

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

# Publishing on the Internet

## Privacy Complaint Report MC13-67

- A complaint was received about a municipality's online publication of **personal information** collected as part of a minor variance application.
- The investigator found that the publication of this information was **not in contravention** of the *MFIPPA* because the published information was required to be made publicly available under the *Planning Act*.
- The investigator, however, recommended that the City consider implementing privacy protective measures that obscure this type of information from search engines and automated agents.

# Publishing on the Internet

## IPC Guidance



Transparency, Privacy and the Internet:  
Municipal Balancing Acts



- This guide provides municipalities with **privacy protective policy, procedural** and **technical** options when publishing personal information online.
- The focus is primarily on personal information that is required by legislation to be published, but **may be applied** in any situation where municipalities make information available online.

# Publishing on the Internet

## IPC Guidance

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.

# Key Municipal Orders



Information and Privacy  
Commissioner of Ontario

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

# M0-3183 – Procurement

- Request for access to the names and bid prices from **all proponents** that responded to a particular RFP.
- City granted access to the names of the proponents, but denied access to the corresponding total **bid prices**.
- Under MFIPPA, the city and affected parties must establish evidence that there is a **reasonable expectation of harm** with release of information.
- IPC found **no evidence** harm would come from release of this information (such as commercial or technical methodology) and ordered it to be disclosed.



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

# MO-3130 – Closed Meetings

- The “**closed meeting**” exemption allows an institution to withhold records if they would reveal the substance of deliberations during a closed meeting.
- St. Thomas Police Services Board claimed that **disclosure of employment contracts** with high level police officials would reveal substance of in camera deliberations.
- 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.



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

# MO-3146 – Custody or Control

- School boards created “**consortium**” to manage school busing.
- Consortium **financed** by participating school boards.
- Board refused access to procurement records claiming that records were **not** within their “custody or control.”
- IPC found that either **consortium is part of the board** or that board has control of responsive records.
- The order directed the school board to issue an access decision.



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

# MO-3216 – Fees for Publicly Available Information

- Institutions are **permitted to bypass** formal request process if they have a system of making the information routinely available.
- Ottawa Police Service denied an individual access to **general occurrence reports about the requester** because they had a regularized system of access for these reports.
- Their “regularized system” included a fee of **\$51 per report**.
- The Adjudicator decided that section 15(a) did not apply because the records were not published or currently available to the public – they were only available to the requester.
- The police were ordered to disclose the records after severing other PI and the adjudicator encouraged them to grant access without charging any fees.



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