

News Release

May 21, 2008

# Major advances made in Access and Privacy, says Commissioner Ann Cavoukian

Court rulings, key decisions by her office and other developments all helped to make 2007 a year of significant progress in advancing both freedom of information and protection of privacy, Ontario Information and Privacy Commissioner Ann Cavoukian said today, as she released her 2007 Annual Report.

“I have never felt as positive about the future of privacy in Ontario as I do right now,” said the Commissioner. “And there have been some very important advances related to access to government-held information.”

## PRIVACY PROTECTION

Among the positive developments she cites related to privacy protection:

- A key court ruling and subsequent ground-breaking order the Commissioner issued that addressed the same core issue – that the collection of extensive personal information from individuals whose only wish was to sell one or more second-hand items to a used-goods store should **not** end up in police files.
  - In July, the Ontario Court of Appeal struck down a City of Oshawa bylaw that had required used-goods retailers to collect extensive personal information from people who wanted to sell second-hand items to used-goods stores. This personal information was then to be transmitted to, and stored centrally in, a police database – without any restrictions on its use or any judicial oversight.
  - Two months later, following an investigation into a privacy complaint received by her office, the Commissioner invoked – for the first time in the 20-year history of her office – the power to order an institution to cease the collection of personal information and to destroy collections of information collected previously. She ordered the City of Ottawa and the Ottawa Police to stop collecting extensive personal information from individuals selling used goods to second-hand stores and to destroy personal information already collected (with limited exceptions).
- A ruling by Justice Edward Belobaba of the Ontario Superior Court of Justice that sections of the *Adoption Information Disclosure Act* breached the *Canadian Charter of Rights and Freedoms*. “As the Court noted,” said the Commissioner, “the Charter, ‘... is intended primarily to protect individuals and minorities against the excesses of the majority,’ and, accordingly, in this case, the Charter protected the minority who wished to preserve their privacy. I want to emphasize the significance of one of the statements in that Court decision:

‘People expect, and are entitled to expect, that the government will not share their confidential or personal information without their consent. The protection of privacy is undeniably a fundamental value in Canadian society.’”

“It is of critical importance,” said the Commissioner, “that we never forget the Court’s words, ‘... *privacy is undeniably a fundamental value in Canadian society,*’ because privacy forms the very underpinning of liberty – the very foundation upon which our freedoms are built.”

- Positive steps were also taken in the development of “transformative technologies” – a new term for privacy-enhancing technologies applied to technologies of surveillance. For example, the Ontario Lottery and Gaming Corporation is evaluating facial biometrics for its “self-exclusion” program, under which some gamblers seek the OLG’s assistance in barring them from gambling in casinos operated by the OLG. Under a contract with the OLG, a University of Toronto team has been researching novel Biometric Encryption (BE) solutions. The system attempts to identify the subjects in the self-exclusion program while protecting the privacy of stored personal information. This information can be accessed only if a correct biometric, i.e. the facial image of a self-excluded person, is presented. In other words, the personal information is in effect “encrypted” with the person’s biometric – extremely privacy protective.

## **ACCESS IMPLICATIONS**

Among the positive developments in 2007 related to freedom of information were several pivotal court rulings. These included:

- A very significant ruling by Ontario’s Divisional Court which upheld two decisions made by the Commissioner’s office on the application of the solicitor-client exemption to legal fees. “This ruling was a strong endorsement of our approach to the disclosure of legal fee information and underscores our consistent message that governments should actively disclose information about the expenditure of public funds,” said the Commissioner.
- Another key ruling, which applied the *Canadian Charter of Rights and Freedoms*, expanded the circumstances under which the public interest may override certain exemptions to accessing information under the *Freedom of Information and Protection of Privacy Act (FIPPA)*. The Ontario Court of Appeal, in effect, amended *FIPPA* in a way that the IPC had been advocating since 1994, but did not have the authority to change. Section 23 of *FIPPA* states that where a “compelling public interest” in disclosure “clearly outweighs” the purpose of certain exemptions from the right of access, those exemptions do not apply. As a result of this decision, the IPC (subject to an appeal the Supreme Court of Canada will hear this fall) now has the ability to decide independently whether records subject to the law enforcement and solicitor-client privilege exemptions should be disclosed in the public interest.

## **RECOMMENDATIONS**

Among the recommendations the Commissioner makes in her Annual Report:

- She is urging Ontario to make a privacy-protective electronic health record a priority.

- She is calling on the Premier and John Wilkinson, the Minister of Research and Innovation, to advance the development of transformative technologies (privacy-enhancing technologies applied to technologies of surveillance), not only in the area of research, but particularly in the commercialization of such research to facilitate its entry into the marketplace.
- She is urging all police services in Ontario to abide by the law and give a broad and generous interpretation to recent amendments to the provincial and municipal freedom of information and protection of privacy *Acts* that now allow police to disclose – in compassionate circumstances – the personal information of someone who has died to his or her family members.
- Rather than require individual provinces to build their own extensive databases of citizenship information from scratch, she is urging the federal government to make citizenship information available to provinces that want to provide an enhanced drivers' licence (EDL) that citizens could use as an alternative to a passport, for the purpose of crossing the U.S. border.

### **FOI REQUESTS SET ANOTHER RECORD**

Among the statistical information released by the Commissioner:

- The number of freedom of information requests filed with provincial or municipal government organizations across Ontario in 2007 – **38,584** – set an all-time high, surpassing the previous record of 36,739, set in 2006. Much of this increase is due to a jump in the number of requests filed with municipalities and police services.
- The number of privacy complaint files opened under the two public sector privacy *Acts* – **213** – was the highest in 11 years. (There were 170 privacy complaints in 2006.)
- And, the number of complaint files opened under the *Personal Health Information Protection Act* – **338** – set a record. (The old record was 269 in 2006.) Of the 338 complaint files, 227 were privacy complaints and 111 were access or correction complaints.

Commissioner Cavoukian's 2007 annual report is available on the IPC's website, [www.ipc.on.ca](http://www.ipc.on.ca).

The Information and Privacy Commissioner is appointed by and reports to the Ontario Legislative Assembly, and is independent of the government of the day. The Commissioner's mandate includes overseeing the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*, and helping to educate the public about access and privacy issues.

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