Remarks by Commissioner Ann Cavoukian

Right to Know Week – 2008
Toronto, Ontario
October 2, 2008

Good afternoon ladies and gentlemen. Thank you for coming today to hear this discussion on, what I consider to be, a very important topic.

The public's **right to know** what government organizations are doing – and why – is a fundamental principal of democracy. If citizens are to participate meaningfully in the democratic process – and hold politicians and bureaucrats accountable – they must first have timely access to the information held by government.

Ontario's two freedom of information laws are very important tools, but provincial and municipal government organizations need to follow the **spirit of the law**, rather than automatically claim an exemption to block disclosure simply because it is possible to do so. As our Premier, Dalton McGuinty, stressed in his seminal 2004 memorandum to Ministers and Deputy Ministers: "Our government should ensure that information requested of it should continue to be made public **unless there is a clear and compelling reason not to do so."**

Despite this leadership from the very top, the message has not yet gotten through to everyone. The area I am going to focus on today is when access to government-held information is blocked because privacy protection is cited.

Now, many of you know how important privacy rights are to me. Privacy laws are an essential part of the social fabric of our democracy. Privacy is a fundamental right that helps us to realize the other fundamental rights that we value so dearly, like liberty and freedom.

Privacy, however, should **never** be trivialized and used as an excuse to deny the release of information.

Our freedom of information laws do provide strong protection of personal information. Your neighbour, for example, can **not** obtain your personal information through a freedom of information request. But there are far too many times when privacy is cited as the reason to block access to information, when it clearly shouldn’t be.

And I am going to give you some recent examples.

The first is a municipal order – MO-2342 – that was issued to resolve an appeal against a decision by the City of Toronto.

Have you ever ridden in a Toronto taxi, or had to call a tow truck, or bought a hot dog from a cart, or put a child on a school bus, or sent an older one for driver training?

If so, then you should care about the type of information that the City of Toronto was asked for in an FOI request for records of all bylaw charges issued over a specific period by the mobile inspection unit of the city's municipal licensing and standards department.

The requester sought information that included, in each case, the identity of the inspector who laid the charge, the category, date, the name of the person or company charged, the type of charge and the disposition.

The city issued a decision letter to the requester that granted him access to all of the pertinent fields in the database, with one key exception. While it disclosed the names of companies that were charged, it denied the requester access to the names

of defendants who were **individuals,** citing the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

The order explains in detail the steps that our adjudicator, Colin Bhattacharjee, went through, but I will limit myself to his conclusion. He ruled that the names of the individual defendants at issue in this appeal were about these individuals in a business rather than a personal capacity. Consequently, the information did not qualify as "personal information" – which is defined in section 2(1) of the *Act* – and he ordered the information released to the requester.

This interpretation is consistent with the public accountability purpose of the *Act*, which is intended, in part, to provide the public with the means to scrutinize government-held records that document the actions or inactions of public officials. The charges laid against individual defendants who own or operate "non-stationary businesses," such as taxi cabs, tow trucks and hot dog carts, touch on issues of public health and safety. Disclosure of these individuals' names, in conjunction with the other information already disclosed, will enable citizens to scrutinize the effectiveness of the city's licensing and enforcement regime and put pressure on their elected officials if it is determined that corrective action is needed.

The emphasis in this order, and in a number of others we have issued, is that **business information is not personal information.** Ii cannot emphasize this enough. It's a long-standing IPC position that was codified in an amendment to Ontario's freedom of information laws that came into effect in 2006.

I will give you another example of where privacy has been cited incorrectly – and in multiple cases – as the reason for not disclosing pertinent information. This is an example that is particularly troubling to me – which is why I featured the theme of "*Don't Hide Behind Privacy Laws"* in my last Annual Report – [hold up copy of Annual Report].

Up until a few years ago, the Ontario Provincial Police and local police services were required to deny relatives access to information regarding the death of loved ones because disclosure was presumed to be an unjustified invasion of the deceased's personal privacy. Amendments to the legislation, after a very strong push from my office, were passed into law that permit the police to disclose the personal information of a deceased individual to family members in **compassionate circumstances.** But some police services continued to deny such disclosure to family members. My office has issued a number of orders requiring police forces to release the information.

We have been strongly urging police forces to recognize the intent of the Legislature by giving a broad and generous interpretation to these relatively new sections and there have been some positive signs, but this is a message that we will continue to emphasize.

These are just a few examples of where privacy has been incorrectly cited by government organizations as the reason for declining to release specific information. This is an area my office is focusing on and one we will continue to carefully scrutinize

There is one other issue I want to cite regarding my general theme of *Don't Hide Behind Privacy Laws*. As the Information and Privacy Commissioner of Ontario, it is my responsibility to educate members of the public, as well as persons and organizations subject to the privacy laws over which my office has jurisdiction, as to the proper interpretation of these laws. Accordingly, I have felt compelled to write to various media to set the record straight that **privacy laws do NOT prevent, and in fact PERMIT, the disclosure of personal health information in emergency situations** where it is necessary to eliminate or reduce a significant risk of serious bodily harm. I have been emphasizing this message since launching a public education campaign last fall and I will continue to do so.

As each panellist is limited to 15 minutes, to allow lots of time for a question period, I will close here.

I look forward to the comments of my fellow panellists – and to questions from the audience at the end of the remarks.

Thank you.