

Commissioner Cavoukian dismayed by the indiscriminate deletion of emails in Ontario cabinet ministers' offices

TORONTO, ON (June 5, 2013) – Ontario's Information and Privacy Commissioner, Dr. Ann Cavoukian, has released the findings of her investigation into a complaint by Member of Provincial Parliament Peter Tabuns, who alleged the Chief of Staff to the former Minister of Energy had improperly deleted all emails concerning the cancellation of the Mississauga and Oakville gas plants. Over the course of the investigation, the Commissioner learned that in early 2013, staff in the former Premier's office had approached the Secretary of Cabinet about how to permanently delete emails and other electronic documents. As a result, the scope of the investigation was expanded.

At the root of the problems uncovered over the course of our wide-reaching investigation was the practice of indiscriminate deletion of all emails sent and received by the former Chief of Staff to the Minister of Energy. This practice violates the *Archives and Recordkeeping Act (ARA)* and the records retention schedule developed for ministers' offices by the Archives of Ontario. This practice also undermines the transparency and accountability purposes of the *ARA* and the *Freedom of Information and Protection of Personal Privacy Act (FIPPA)*.

Although the Commissioner cannot state with certainty that there was inappropriate deletion of emails by the former Premier's staff as part of the transition to the new Premier in an effort to avoid transparency and accountability, she concluded that the email management practices of the former Premier's office were in violation of the obligations set out in the *ARA*.

The Commissioner has recommended that the government take concrete steps in three specific areas to ensure that records that may be subject to an access request under *FIPPA* and the *Municipal Freedom of Information and Protection of Personal Privacy Act (MFIPPA)* are retained:

- **Office of the Premier and Ministers' Offices** – Require that a directive be issued that a senior official in each minister's office and the Premier's office be designated as the person who is accountable for records retention policies and practices, and for ensuring that ministers' staff receive training on their records management obligations. The Premier should clearly communicate that these obligations must be taken very seriously, along with her expectation that all staff must comply.
- **Legislative Changes** – Amend both *FIPPA* and *MFIPPA* to address institutions' responsibilities to ensure that all key decisions are documented and records securely retained – making it a serious offence to wilfully and inappropriately destroy records.

.../2

- **Records Retention Policies** – Conduct a review of the Archives of Ontario records retention policies and practices that apply to the records management processes in ministers’ offices and the Premier’s office, ensuring that responsibility for retaining official or business records is clearly set out.

Quotes

“Without access to information held by government institutions, citizens cannot participate meaningfully in the democratic process and hold politicians and bureaucrats accountable to the people they serve. I am deeply concerned about the apparent lack of responsibility and accountability over records management within the offices of senior political leaders in Ontario.”

“I am very disturbed that the former Minister of Energy’s office produced absolutely **no** records in response to the Speaker’s Ruling on the gas plants issue, and that the former Premier’s office had so few records that were responsive to two freedom of information requests relating to these decisions.”

Ann Cavoukian, Ph.D.
Information and Privacy Commissioner
Ontario, Canada

The full report is available at: <http://bit.ly/18LYRiU>.

About the Information and Privacy Commissioner

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* and the *Municipal Freedom of Information and Protection of Privacy Act*, as well as the *Personal Health Information Protection Act*, which applies to both public and private sector health information custodians. A vital component of the Commissioner's mandate is to help educate the public about access and privacy issues.

Media Contact

Trell Huether
Media Relations Specialist
Office: 416-326-3939
Mobile: 416-873-9746
Toll-free: 800-387-0073
media@ipc.on.ca