Openness and Transparency – Key to Freedom and Liberty

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Ryerson School of Journalism January 29, 2014



Presentation Outline

- 1. IPC Ontario Mandate and Role
- 2. Institutional Secrecy and Accountability in Ontario
- 3. Government Must Be Accountable
- 4. NSA/CSEC Surveillance
- 5. Access by Design
- 6. Open Data
- 7. Concluding Thoughts



IPC Mandate and Role

- 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; she remains independent of the government of the day, to ensure total impartiality.



The IPC Oversees Compliance with the Three Acts

FIPPA and MFIPPA

- Provides right of access to information and appeals to the IPC;
- Privacy complaints may be filed with IPC investigations may result in recommendations or Orders;

PHIPA

- Provides comprehensive privacy protections for personal health information;
- Primarily a privacy statute also provides patients with a right of access to their health information, and a right to appeal access decisions to the IPC.



Three Stages of the Appeal Process

- Intake
- Mediation
- Adjudication



Mediation

- Mediator will investigate and try to settle the case;
- Mediator may suggest a conference call, depending on the type of appeal/circumstances;
- Concludes with mediator's report;
- Over 75% of appeals are resolved at this this stage through informal resolution.



Advantages of Mediation

- Parties feel they have been heard and respected;
- Builds trust, and understanding between the parties;
- Issues are clarified, options generated and agreements negotiated;
- Process focuses on needs not positions;
- Tendency towards new solutions;
- Results in a "win-win" settlement that might not be possible through adjudication.



Institutional Secrecy and Accountability in Ontario



Governments Must Be Accountable

- Citizens have a right of access to government held information with limited exceptions;
- Remember the government is there at the pleasure of the governed;
- Openness and transparency form the bedrock of free and democratic societies:
 - Governments must be held accountable for democracy to work;
 - Government records must be accessible to the public.

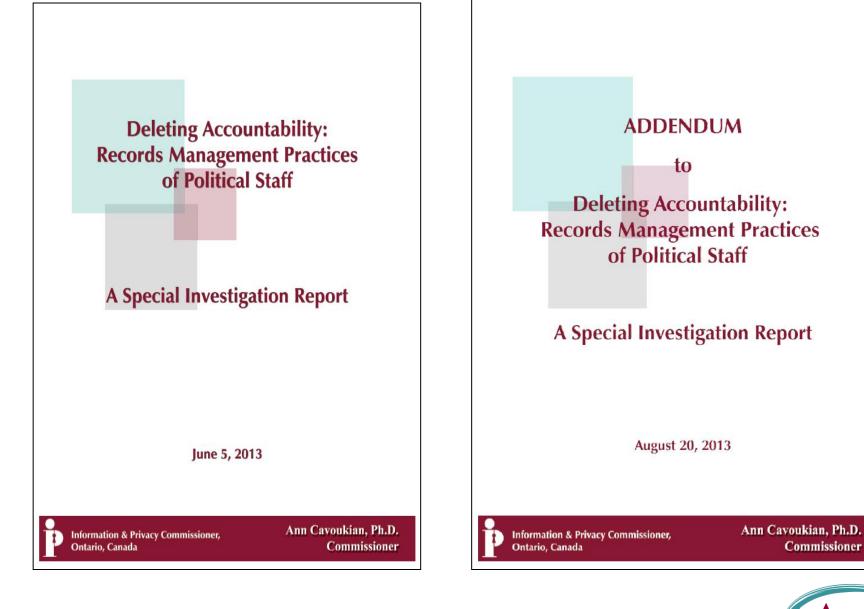


"It's the Public's Business"

"We do not, and never will, accept the proposition that the business of the public is none of the public's business."

The Honourable Ian Scott, July, 1985.







Why it Happened

"I have seen many government organizations with strong policies and training materials in place to convey the policies to staff. However, all too often these same organizations have failed to adequately implement these policies."

"This failure to comply with the records retention requirements coupled with a culture of avoiding the creation of written and electronic records, assists in explaining the apparent paucity of documents relating to the gas plant closures produced by the offices of the former Minister of Energy and the former Premier."

> - Commissioner Cavoukian, <u>Deleting Accountability: Record Management Practices of Political Staff</u> <u>- A Special Investigation Report</u>, June 5, 2013.



Called for Amendments to FIPPA/MFIPPA

- 1. Create a legislative **duty to document** communications and businessrelated activities within *FIPPA* and *MFIPPA*, including a duty to accurately document key decisions;
- 2. Require that every institution subject to *FIPPA* and *MFIPPA* define, document and put into place reasonable measures to securely retain records that or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*;
- **3. Prohibit the wilful destruction of records** that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*;
- 4. Make it an offence under *FIPPA* and *MFIPPA* for any person to wilfully destroy records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*.



Statement by the Minister of Government Services on the Commissioner's Special Report

"The actions we are announcing address Dr. Cavoukian's non-legislative recommendations, including:"

- 1. Developing a mandatory training program for all political staff to ensure that staff are fully aware of and trained in their records management obligations;
- 2. Creating a working group of Premier's Office staff, Cabinet Office staff and Ministry of Government Services staff to clarify and strengthen the government's records retention policies and practices so that they can successfully be put into practice;

— Hon. John Milloy Minister of Government Services, September 4, 2013



Statement by the Minister of Government Services on the Commissioner's Special Report (Cont'd)

- 3. Appointing ministers' chiefs of staff and the Premier's chief of staff as the persons accountable for the implementation and compliance with records management policies in each of their respective offices and appointing a senior advisor in the Premier's Office to provide advice and guidance to all offices on these issues; and
- 4. Improving archiving requirements by conducting a review of the archiving schedules.

— Hon. John Milloy <u>Minister of Government Services</u>, September 4, 2013



Statement from Premier Wynne

"Our government remains committed to strengthening and improving our records management practices and we are committed to being open, transparent and accountable. I look forward to continuing to work with the Information and Privacy Commissioner and the Integrity Commissioner to enhance transparency and public accountability as we move forward."

> — Premier Wynne, <u>Statement on the Commissioner's Special Report</u>, September 4, 2013.



NSA/CSEC Surveillance



Commissioner's Op-Ed



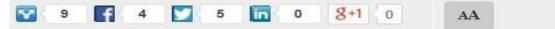


ANN CAVOURIAN The silence over privacy puts our freedoms at risk

ANN CAVOUKIAN

Contributed to The Globe and Mail Published Monday, Jan. 27 2014, 7:21 AM EST Last updated Monday, Jan. 27 2014, 7:25 AM EST

4 comments



Technology allows our every move to be tracked, collected and catalogued by our governments. U.S. President Barack Obama's announcement of reforms to the National Security Agency (NSA) demonstrates that free and open societies need a candid discourse on the surveillance powers of intelligence agencies. Yet, while our U.S. neighbours are debating the future of phone and Internet surveillance programs, our government is maintaining a wall of silence around the activities of the Communications Security Establishment Canada (CSEC). This silence is putting our freedoms at risk.



Canada Complicit with the USA in Spying

- The CBC, reported that the Communications Security Establishment Canada, (CSEC) has conducted espionage around the world at the behest of the U.S. National Security Agency (NSA);
- The CSEC conducted joint spying operations with the NSA in 20 countries, including intercepting communications in geographic areas which the Americans do not have access to;
- A spokesperson for CSEC, said the agency works with its allies to protect Canada from threats, working closely with the NSA and counterpart organizations in the U.S., U.K., Australia and New Zealand, which together comprise a five-member spy organization called "Five Eyes."

- Joel Eastwood,

Canada, U.S. spied jointly on partners,

Toronto Star, December 10, 2013.



Commissioner's Joint Op-Ed

THE GLOBE AND MAIL*



Real privacy means oversight

ANN CAVOUKIAN, RON DEIBERT, ANDREW CLEMENT AND NATHALIE DES ROSIERS Contributed to The Globe and Mail Published Monday, Sep. 46 2013, 6:00 AM EDT

A steady stream of revelations from U.S. National Security Agency whistle-blowing continues to trickle out, and Canada's most secretive intelligence agency made a cameo appearance last week.

Among the documents describing the top-secret "Bullrun" project was a reference to Communications Security Establishment Canada. The documents show that in the NSA's covert quest to weaken Internet encryption standards, its long-standing Canadian partner played the part of a willing accomplice.

This rare disclosure offers a glimpse at CSEC's intimate partnership with one of the world's most powerful intelligence agencies - and serves as a reminder that Canadians shouldn't be complacent, or look down at Americans for allowing the NSA so much unsupervised power. CSEC is part of the socalled "Five Eyes" signals intelligence alliance, stretching back to the Second World War, so it's hard to believe the latest revelation is the only one of its kind. What else has CSEC been doing that Canadians should be worried about?

In democratic societies, governments must be accessible and transparent to their citizens. And individuals must be free to make informed choices about what personal details to reveal about their lives. Governments are permitted to access personal information only when authorized by law. When it comes to the state's power to conduct surveillance, critical privacy protections must include independent oversight.



Edward Snowden: Whistleblower, Not Traitor

"We owe a debt of gratitude to Edward Snowden because what he has revealed to the public, which has thus far remained unknown, is an enormous amount of activity that may in fact violate the Constitution of the United States. People like him do not see themselves as being disloyal, but rather upholding freedom. He is paying a huge cost in informing the public of very valuable information."

— Commissioner Cavoukian, <u>Singularity 1 on 1</u>, July, 2013.





Recommendations for the NSA's Bulk Telephony Metadata Program

Recommendation	The President's Review Group on Intelligence and Communications Technologies	The Privacy and Civil Liberties Oversight Board		
End the program	Agreed; However, if it is determined that the collection is necessary, a third party should hold the data, not the government	Agreed (per a majority of the board)		
Service providers should be authorized to disclose statistical information regarding FISA Court orders	Agreed	Agreed		
Create a new independent advocate to appear before the FISA Court	A "Public Interest Advocate" should be established to represent privacy and civil liberties interests before the court on the initiative of the advocate	Create a pool of "Special Advocates" to appear in "important cases" at the court's discretion		
More FISA Court decisions should be declassified	Agreed	Agreed		



New York Times Op-Ed Calls for Clemency for Edward Snowden

"It is time for the United States to offer Mr. Snowden a plea bargain or some form of clemency that would allow him to return home, face at least substantially reduced punishment in light of his role as a whistleblower, and have the hope of a life advocating for greater privacy and far stronger oversight of the runaway intelligence community."

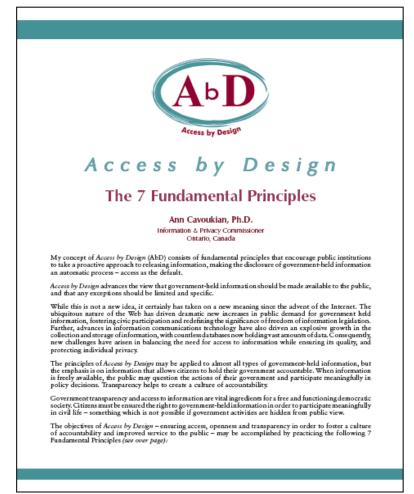
> <u>Edward Snowden, Whistle-Blower</u>, Editorial, New York Times, January 2, 2013.





Access by Design The 7 Fundamental Principles

- 1. Proactive, Not Reactive
- 2. Access Embedded into Design
- 3. Openness and Transparency = Accountability
- 4. Fosters Collaboration
- 5. Enhance *Efficient Government*
- 6. Make Access Truly Accessible
- 7. Increase Quality of Information









The Age of Big Data ... Open Data and Big Privacy

Big Data – Yes Open Data – Yes Personal Data - No



The Journal News Gun Map: Open Data vs. Personal Data

- In 2012, *The Journal News* published a map showing the home addresses and names of handgun owners in two New York counties;
- The map was constructed with data acquired through Freedom of Information requests;
- In retaliation, an independent online blogger published the home addresses and names of the newspaper staff.

— David Eaves, <u>The Journal News Gun Map: Open vs. Personal Data</u>, Eaves.ca, January 7, 2013.



Open Data vs. Personal Data (Cont'd)

- These incidents have led to a debate about Open Data vs. Personal Data;
- "It is critical that this debate not get sloppy. This is not about open data. It is about personable identifiable data – and what governments should and should not do with it. A great deal of open data has nothing to do with individuals. However, if we allow the two to become synonymous... expect a backlash against Open Data."

— David Eaves, <u>The Journal News Gun Map: Open vs. Personal Data</u>, Eaves.ca, January 7, 2013.



Open Data

Unless there is good reason to the contrary, data that is <u>not PII</u> should be:

- Free and open transparent;
- Easily visible and discoverable;
- Based on open standards and thus machine-readable and user-friendly;
- Licenced to permit free re-use and transformation by others, enabling far greater participation.



Components of Open Government

- Public sector information as a key resource:
 - Optimal public value working with much broader group of participants – participatory government;
- Proactive disclosure "Open Data" regime:

- Greater transparency and legitimacy;

• Use technology to increase citizen engagement and collaboration in making public policy, and provide service back to individuals – *enabling greater citizen participation*.



Resolution of Information and Privacy Commissioners

"Calls for greater openness and transparency are exerting pressure on governments to transform their traditional, reactive information dissemination methods into a mode that facilitates proactive disclosure."

— *September 1, 2010*

Open Government

Resolution of Canada's Access to Information and Privacy Commissioners

September 1, 2010 - Whitehorse, Yukon

CONTEXT

Calls for greater openness and transparency are exerting increasing pressure on governments to transform their traditional, reactive information dissemination methods into a mode that facilitates proactive disclosure. Furthermore, governments around the world are recognizing the value of sharing information with the public in accessible, open formats. They understand that collaborating with citizens, businesses and non-government organizations to enrich their information resources improves communication channels, promotes citizen engagement, instils trust in government, fosters economic opportunities and ultimately results in more open and responsive democratic government.

Technology now affords public institutions the opportunity to directly engage citizens, to proactively disclose information and to support the renewal of the social contract between government and citizens.

Open government is linked to access to information legislation. However, it extends the concepts inherent in these laws to promote an entirely new way of viewing the role of government and the participation of citizens in it. While access to information provides a right of access to government information, the laws are fundamentally reactive because access is granted only after a request is made.

Access to information and privacy commissioners are advocates for open government and promote the paradigm shift from reactive to proactive disclosure, and ultimately to open government.



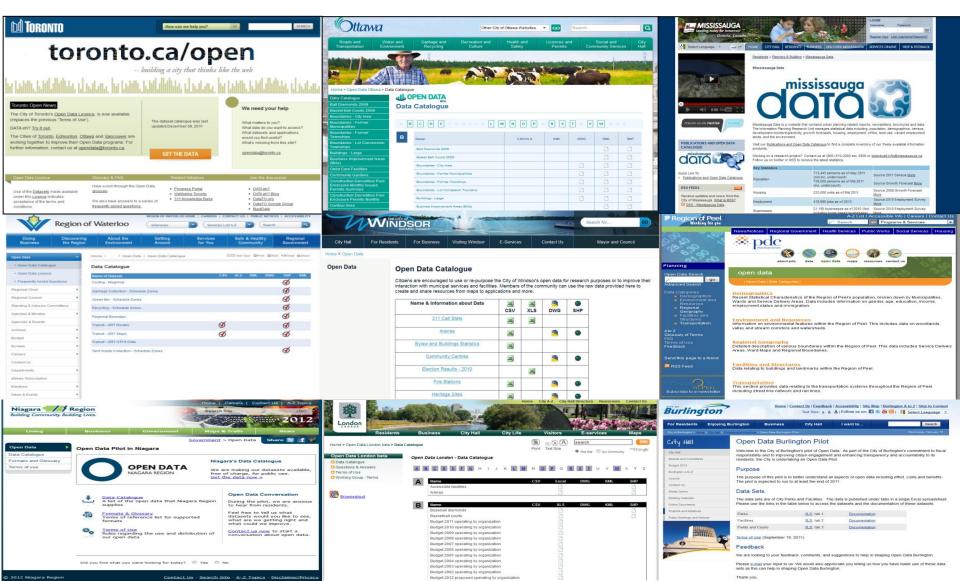
Open Data in Canada

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Open Data in Ontario

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Three simple steps We think we can jump-start success with three simple steps: 1. Fine-tune our open data program (we're working on it) 2. Get advice: tell us how you use data and what data is m 3. Make it simpler for you to use data in the first place.). Road Cr Service nost useful to you. Planned Drinking	Roadwork Water "Where does my water om?" Map data	Drinking Water Surveillance Program (DWSP) data Northeastern Ontario Rhyolite Databas	Date published: December 2012 Publisher: Service File types: CSV, TXT	Ontario uire more than one day to
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Download ZIP		to 2010-01-01 uency: Yearly	Vhat We Do > xplore Government > contacts >	Order data Share your data (Ontario Geospatial Data Exchange) Access key provincial data sets Make your own map Follow this link to learn more about LIO and watch our video!	Click <u>here</u> to find out more. Click here to sign up for our <u>newsletter</u>

Open Data Ontario Municipalities



Concluding Thoughts

- Governments must remain open and accountable lead with Access by Design and embed access to government records as a core functionality;
- Citizens have a right to know what their governments are doing – they need to access public data in order to participate meaningfully in society and hold their governments accountable;
- Make openness and disclosure of government information (not personally identifiable data) the default!



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