

Strengthening Public Sector Transparency and Privacy

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AMCTO

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protection de la vie privée de l'Ontario

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**.



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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**)*



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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



IPC Statistics

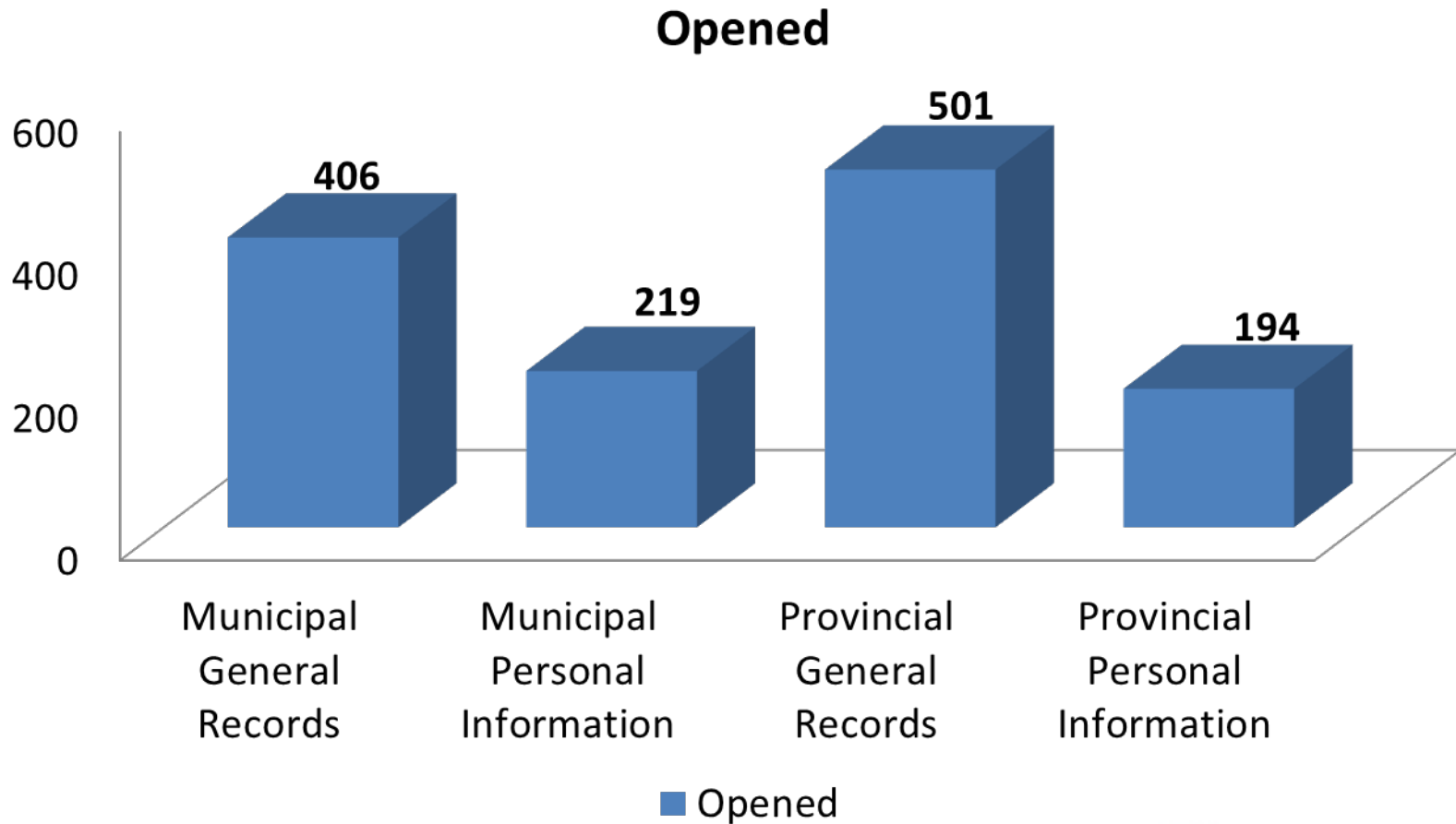
Overview

- 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



IPC Statistics

2014 FIPPA/MFIPPA Appeals

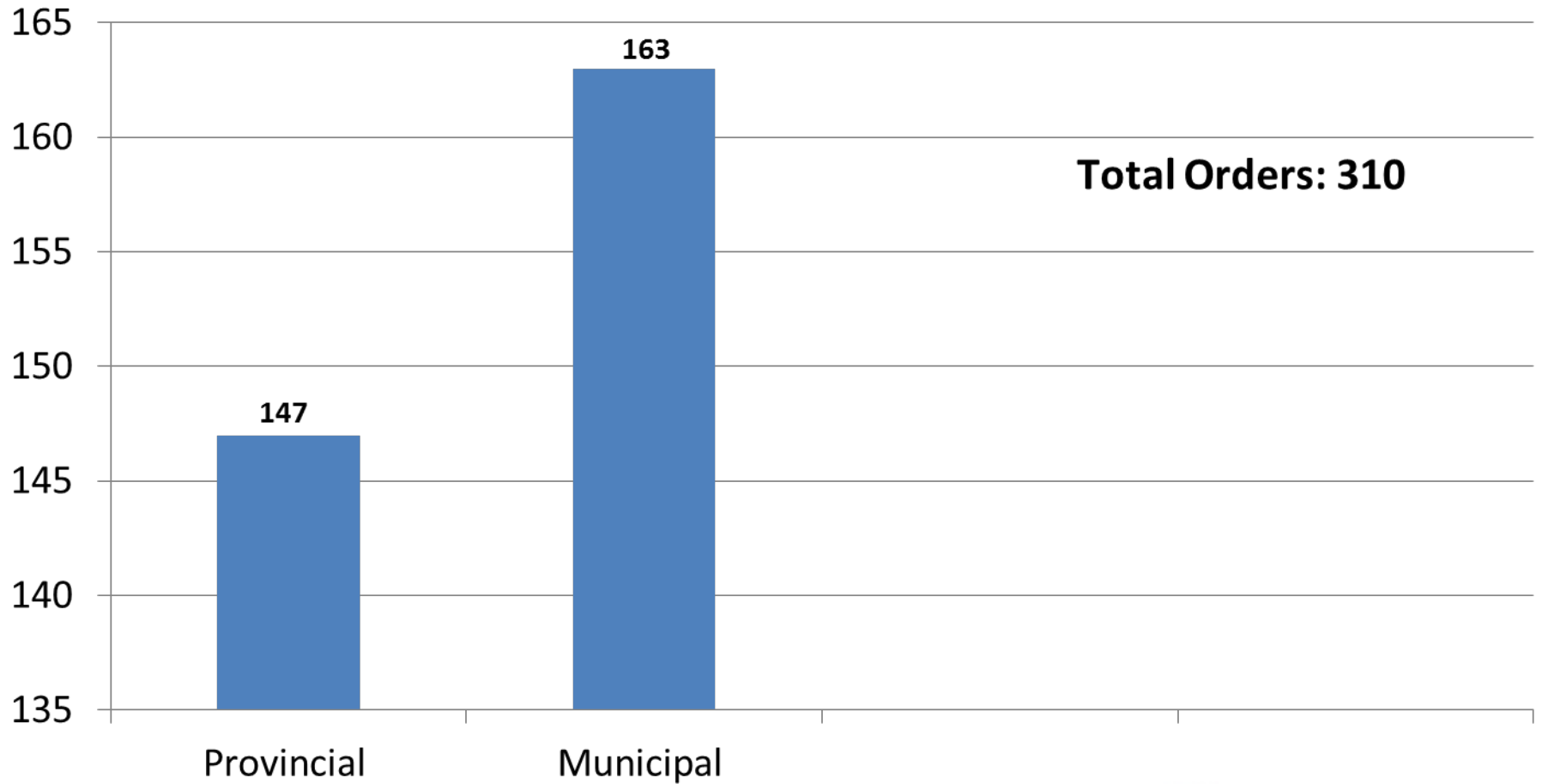


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IPC Statistics

2014 Orders Issued

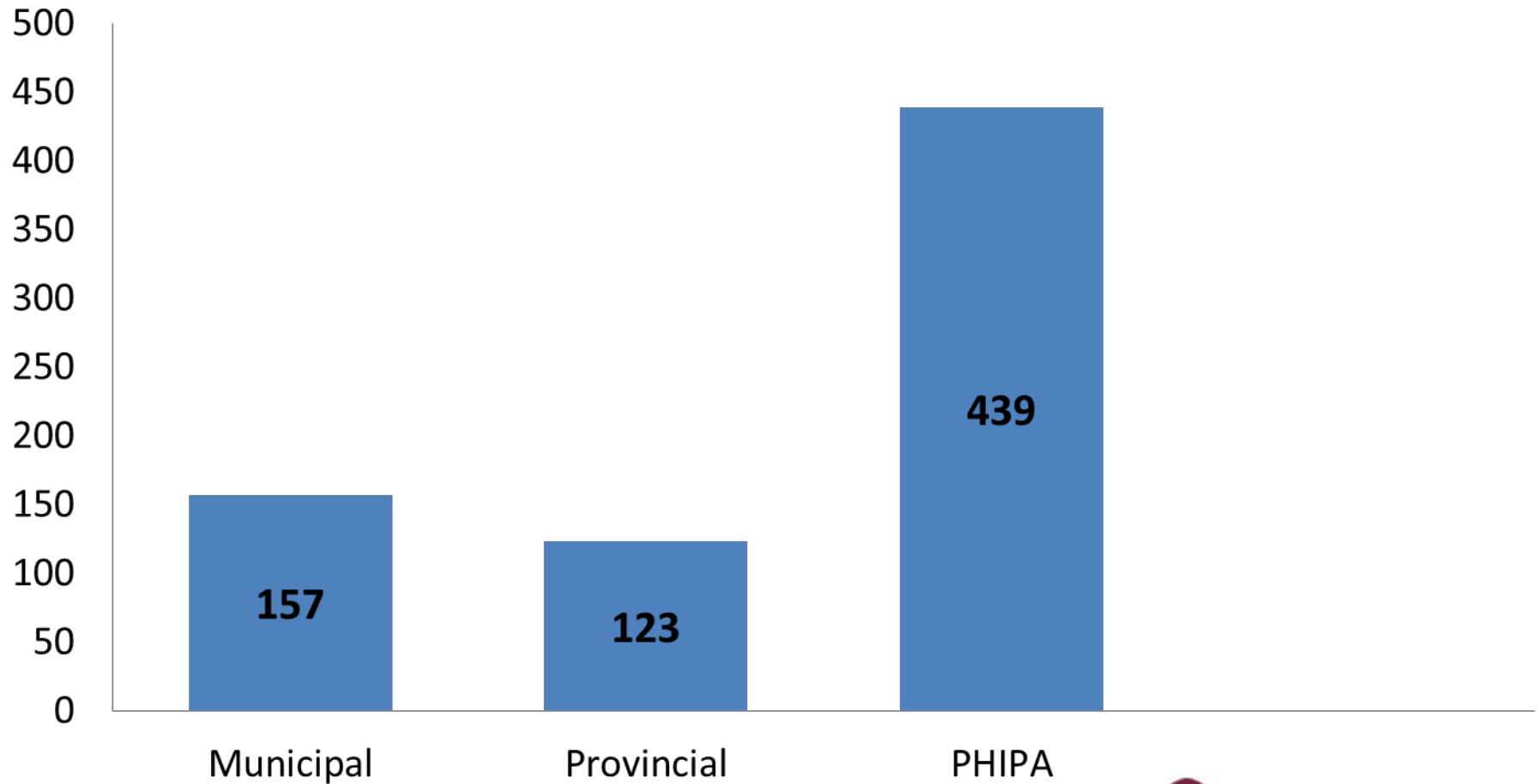


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IPC Statistics

Privacy Complaints 2014



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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.



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.”



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



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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



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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



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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.



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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.



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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.



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.



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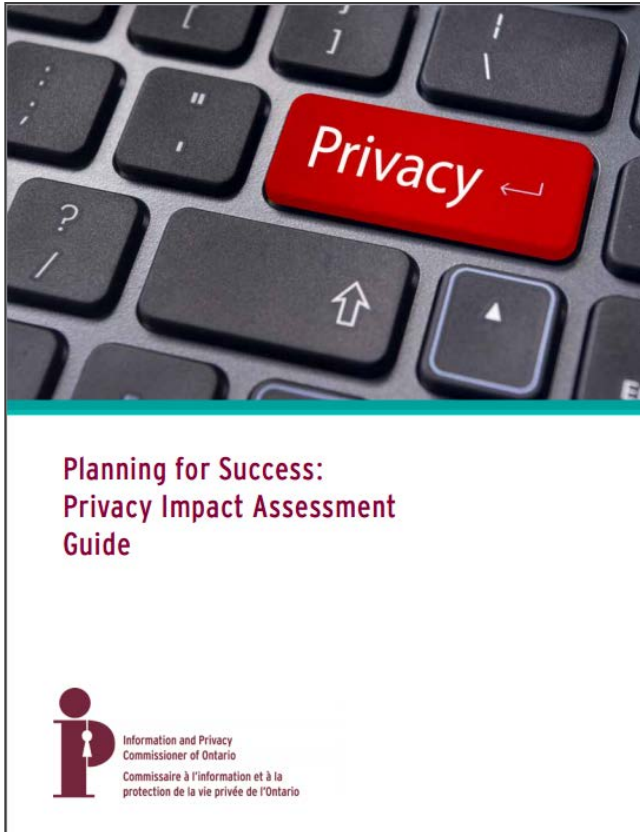
IPC Resources for Municipalities



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Privacy Impact Assessment Guide



- 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.

PIA Methodology and Tools

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

Downloadable Worksheet containing all Appendices: <https://goo.gl/aRS8l4>



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Survey Guidelines



Best Practices for Protecting
Individual Privacy in
Conducting Survey Research



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- 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**.



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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**.



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.



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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.



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Key Municipal Orders



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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.



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.



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.



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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.



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