Collaborating to Prevent Harm: Privacy Issues and Solutions

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Commissaire à l'information et à la protection de la vie privée de l'Ontario

Overview

- Background: Information and Privacy Commissioner Brian Beamish's (IPC) mandate, role, and recent activity

- Privacy issues and solutions in the context of a significant collaborative service delivery development: the situation table

IPC mandate and role ...

- Office established by statute in 1988; IPC appointed by and reports to the Legislative Assembly of Ontario.
- Provides **independent** and **impartial** review of access and privacy decisions and practices.
- Provides **guidance**; conducts inquiries, investigations and reviews; issues orders and makes recommendations.

… IPC mandate and role

The IPC ensures compliance with three privacy statutes:

FIPPA and ***MFIPPA which provide:***

- Right of access to information and appeal to the IPC;
- Privacy rules for **government institutions**' collection, retention, use and disclosure of personal information (PI)

PHIPA which provides:

- Comprehensive privacy protections for personal health information (PHI) in the custody or control of "**health information custodians**" (HICs) (including rights of access, correction, and complaint)

Championing the change & privacy …

- Increased focus on collaboration and information sharing to improve service delivery and reduce harm.
- Respecting privacy is essential to ensuring trust and providing effective service delivery.
- A roadmap for success accounts for privacy requirements and best practices.

… Ontario IPC involvement

- Staff participated in **Law Reform Commission of Ontario workshop** on integrated approaches to community safety (Nov. 2013), and **Waterloo Region Crime Prevention Council** dialogue on privacy and information sharing (June 2014)
- Commissioner participated in ***Economics of Policing Workshop*** (Ottawa, January 2015).
- IPC staff **observed and commented** on three situation tables in spring/summer, 2015: Cambridge, North Bay, & Rexdale FOCUS.
- IPC has **responded to queries** from various institutions interested in situation tables, as well as spoken at forums.
- **IPC continues to dialogue** with the Ministry of Community Safety and Correctional Services (MCSCS).

The Saskatchewan IPC HUB report

Nov. 2014, Saskatchewan IPC found necessary components of a privacy program were missing in Prince Albert, recommended changes to improve the program and comply with privacy legislation:

1. Destroy databases, spreadsheets linking case # and client names.
2. **Consent as the default** for use and disclosure of PI, collection, use and disclosure of PHI.
3. Use of a **standard referral form**.
4. Modify four filter approach (e.g. enforce **need-to-know access** past Filter 2, **delay** sharing PI until confirmation of "**acutely elevated risk**").
5. Comprehensive privacy **training** for participants.
6. Provide the public with **notice** and information re: complaint procedures.

Key privacy issues in Ontario

- Do participating agencies have adequate **legal authority** to collect, use and disclose PI / PHI at the situation table?
- Are you collecting, using and disclosing PI / PHI **with the individual's knowledge** (e.g. notice of indirect collection of PI)? Have you sought their **consent?**
- Are you disclosing PI /PHI when other information (e.g. de-identified information) will serve the purpose, or disclosing **more than necessary including** to **more agencies than necessary?**
- Do you have sufficient **governance, training, and oversight?**
- Are you employing adequate **de-identification** techniques?

Privacy solutions – legal authority

- Each participating agency must have legal authority for its information handling activities - **collection, use and disclosure of** PI / PHI (e.g. consent).
- Scope of authority determined vis a vis each agency's own mandate, duties, and powers and the applicable privacy statute.
- *In terms of non-consensual disclosure, FIPPA* and *MFIPPA* permit disclosure of PI, for example, "in **compelling circumstances** affecting the health or safety of an individual."
- Similarly, *PHIPA* permits the disclosure of PHI, for example, "if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of **eliminating or reducing** a significant risk of serious bodily harm to a person or group of persons."
- *Receiving agencies must also have the authority to collect and use the PI or PHI.*

Privacy solutions – notice and consent

- Whenever possible, PI /PHI should be collected, used and disclosed with the **individual's consent** *[but remember, institutions must also comply with s. 28(2) of MFIPPA]*
- Consent must be: from the individual to whom the information relates, knowledgeable, related to the particular information, and never obtained through deception or coercion.
- If consent is impractical, look to the **harm prevention disclosure** provisions in the privacy acts for authority to disclose PI or PHI (s. 32(h) of *MFIPPA*, s. 42(1)(h) of *FIPPA*, s. 40(1) of *PHIPA*).
- Individuals must still **receive notice** that their PI has been disclosed.

Privacy solutions – the recommended harm prevention disclosure framework

When disclosure of PI / PHI without consent is necessary, the following framework is *recommended* for determining if the disclosure is compliant with Ontario privacy acts:

1. It is reasonable for the disclosing agency to believe that the subject individual is at **significant risk** of serious bodily harm or poses a significant risk of serious bodily harm to others;
2. The disclosing agency is **unable to reduce or eliminate the risk** without disclosing PI or PHI;
3. It is reasonable for the disclosing agency to believe that disclosing the PI or PHI to one or more specific agencies **will reduce or eliminate** the risk posed to, or by, the individual;
4. The disclosure of PI or PHI is limited to that which is **reasonably necessary** to develop and implement an **effective strategy** to reduce or eliminate the risk; and
5. Each recipient agency has the authority to collect the PI or PHI and has a **role to play** in the development and implementation of an effective strategy to reduce or eliminate the risk.

Privacy solutions – governance

- **Strong governance** is necessary to ensure that all participants understand their responsibilities and are able to participate in the situation table in a privacy protective manner.

- All institutions and HICs (not just situation table chairs) must be responsible for complying with privacy legislation and **accountable for their actions**.

- Part of that accountability must be to the public. Institutions and HICs should be **transparent about their participation** in a situation table.

Privacy solutions – avoiding excessive disclosure

- Handling of PI / PHI must be limited to those who have the legal authority to collect, use and disclose that information, and who have a **legitimate need** to know the information.
- To ensure appropriate disclosures, participating agencies should consider signing **information sharing agreements ,** particularly with agencies not covered by privacy legislation.
- **An information sharing agreement should**:
  - confirm who may access specific PI / PHI and under what circumstances and for what purpose;
  - ensure that adequate measures for the protection of PI / PHI are followed.

Privacy solutions – oversight

- Situation tables require consistent **oversight mechanisms** to ensure continued adherence to privacy legislation.

- Information management protocols will assist members in ensuring that all information is collected, used and disclosed appropriately. Protocols should be established for:
  - Effective **record keeping practices**
  - Methods to ensure **accuracy and currentness** of information
  - Ability to ensure access and correction of **one's own** record of PI / PHI
  - **Secure** retention and disposal
  - Regular **auditing** of information sharing practices and appropriateness of continued participation.

Privacy solution – de-identification

- De-identification of information is **essential (e.g. at Filter 2)**, but removal of direct identifiers may not be sufficient to prevent re-identification.
- Information is **de-identified** if it does not identify an individual, and it is not reasonably foreseeable in the circumstances that the information could be used, either alone or with other information, to identify an individual.
- "**Quasi-identifiers**" can be used for **re-identification** (e.g. gender, marital status, location information, date, diagnosis information, profession, ethnic origin, visible minority status, and/or income.).
- These quasi-identifiers can be used either by themselves or in combination with other available information to uniquely identify individuals.

General observations

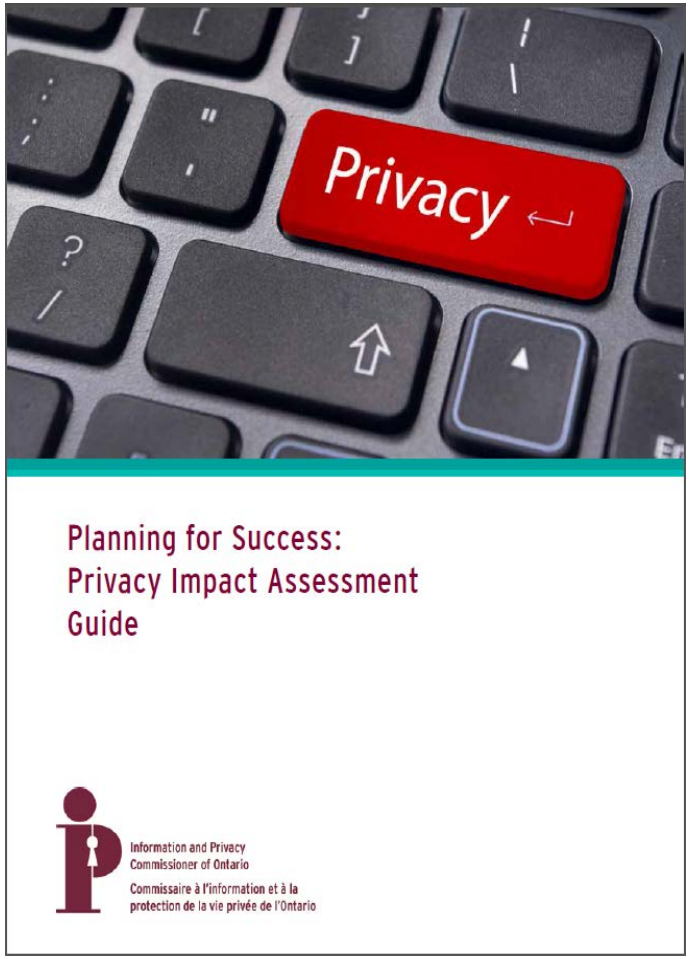
- Excellent work is being done in Ontario to create new service delivery models that respond to urgent needs of vulnerable populations.
- Situation tables and other innovative models can operate in a privacy protective manner with **sufficient planning and governance**.
- IPC continues to provide comments to the MCSCS to **facilitate compliance with privacy acts, including on the four filter approach**.
- B**est practices** for situation tables include:
  - De-identification
  - Strong sense of responsibility of all participants to maintain confidentiality and comply with the privacy acts
  - Looking to consent 1st for the collection, use and disclosure of PI and PHI
  - Collection, use and disclosure limited to a need-to-know basis

Next Steps

- MCSCS has committed to **developing tools and guidance** for communities interested in establishing situation tables.
- The IPC has committed to supporting MCSCS as it works to develop these tools by providing it with **privacy guidance**.
- Communities working to develop and improve on other innovation service delivery models can approach the IPC for privacy guidance at any time.

Privacy Impact Assessment Guide

- PIAs are tools to identify **privacy impacts** and **risk mitigation strategies**.
- Widely recognized as a **privacy best practice**.
- IPC developed a simplified **4 step methodology** and tools for M/FIPPA institutions.
- Participating institutions should conduct a PIA on their own or in **collaboration** with other participants.



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PIA Guidelines (PHIPA)

- **Participating health information custodians** should conduct a PIA to facilitate compliance with PHIPA.
- These Privacy Impact Assessment Guidelines also include a self assessment tool.