



VOLUME 12  
ISSUE 1  
SPRING 2003



# IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER



Commissioner Ann Cavoukian and the IPC's head of technology services, Greg Keeling, review key changes made to the IPC's Web site to better serve users.

## IPC Web site tackles user needs

With more than 20,000 visitors a month trying to access more than 5,000 documents, the IPC Web site got a much-needed tune-up earlier this year. The relaunch, which represents a new look and new platform, is the fourth major update since the site first went live in mid-1996.

“Like the Internet itself, the IPC Web site is constantly evolving and developing as the underlying technology changes,” notes Ontario Information and Privacy Commissioner Ann Cavoukian. The IPC Web site has grown substantially since its early days and now represents a substantial on-line resource library of IPC Orders and Privacy Complaint reports, publications of

all types and news releases. It also includes links to other access and privacy sites and a host of other information.”

Seven years have passed since the IPC launched its first Web site. At that time, Web technology was in its infancy and few organizations (and fewer individuals) had access to the Internet. Approximately two years after the initial launch, the IPC “modernized” the site with the latest technological trend of the time – frames. The “framed” site allowed for a consistent navigation window to be viewed on the left side of the screen while the content itself was viewed in the right-hand frame. After some time however, it was determined that the value of

### *In this Issue:*

*IPC Web site  
tackles user needs*

*IPC Connects with  
communities*

*Summaries*

*Upcoming presentations*

*Mediation  
success stories*

*The IPC at  
ROMA/OGRA  
conference*

*Recent IPC publications*

*Continued on page 3*



# IPC Connects with communities

When the IPC goes to Sarnia in mid-May, it will mark the 14th community visited since its *Reaching Out to Ontario* (ROTO) program was launched four years ago.

“The IPC has an important statutory responsibility to educate members of the public on their right to obtain government records and also the right to expect that governments will adequately protect their personal privacy,” says Assistant Commissioner Tom Mitchinson, who will lead the IPC team that is going to Sarnia.

“We find that, unless we get out into the community and talk to people, they’re often not even aware that FOI and privacy legislation exists. Through ROTO, we try to make citizens aware of the important rights the statutes create, and the corresponding obligations imposed on provincial and municipal governments,” adds Mitchinson.

The IPC visits four communities each year. A team of about five people splits up to try to meet with a full range of different “publics,” including business and community groups, staff at local legal aid clinics and educational consultants from area school boards. Team members also speak to university and college faculty and students, and attend a number of Grade 5 classes to deliver the IPC’s *Ask An Expert* program, which was specially designed as part of the social studies curriculum.

“Our visits are always well received, and we find that, once people know about the legislation and how to use it, there is a great deal of interest,” said Mitchinson. “And the kids love it too. It always amazes me how easily they grasp the concepts of government accountability

and privacy, and how well these values fit into the Grade 5 learning program”.

The local media play a crucial role in educating the public and ROTO initiatives include a number of media events. “We always meet with the editorial board of the largest local newspaper, and do a radio call-in show wherever one exists,” said Mitchinson. “Journalists help to promote our visit and at the same time learn more about the legislation itself and how it can be used.”

While in a community, IPC staff host a seminar for area municipal and provincial Freedom of Information and Privacy Co-ordinators. This is an opportunity to meet front-line staff that do the lion’s share of FOI and privacy work on a day-to-day basis, and provide encouragement and advice.

“One of our primary goals is to find ways to work collaboratively with various organizations and institutions to promote practices that best serve the citizens in their communities,” said Mitchinson.

## Ontario Communities Visited by ROTO

1999

- London & St. Thomas: Nov. 8-11

2000

- Kingston & Belleville: April 17-18
- Thunder Bay: June 19-20
- Hamilton-Wentworth & Burlington: Nov. 7-8

2001

- Ottawa: March 26-27
- Niagara Region: May 17
- Sudbury: Sept. 24-25
- Kitchener-Waterloo: Dec. 11

2002

- Barrie & Orillia: March 26
- Windsor: May 16-17
- Sault Ste. Marie: Sept. 10-11
- Mississauga & Brampton: Nov. 19

2003

- Guelph & Wellington County: March 25



Communities  
Continued from page 2

The *Sarnia and Lambton County Educational Initiative* on May 15-16 will include a new wrinkle. Instead of the evening public meeting that was a feature of the first 13 ROTO initiatives, the IPC is setting up a display at the Lambton Mall in Sarnia. IPC staff will be on hand from 2 to 9 p.m. Thursday, May 15 to meet with members of the public, provide them with information, and answer any questions they have about FOI and privacy.

The full program for the *Sarnia and Lambton County Educational Initiative* is still being finalized, but it will include, besides the display at the mall:

- a presentation by the Assistant Commissioner to a special breakfast meeting of the Sarnia Lambton Chamber of Commerce;

- presentations to educational consultants from the Lambton Kent District School Board and the St. Clair Catholic District School Board (about the IPC’s teachers’ guides for elementary and secondary school teachers);
- a seminar for Freedom of Information and Privacy Co-ordinators from the Sarnia/Lambton area;
- presentations to two Grade 5 classes;
- meetings with local media.

This is the second initiative this year under the *Reaching Out to Ontario* program. An IPC team was in Guelph and Wellington County in late March. The tentative schedule for the balance of 2003, calls for IPC teams to visit North Bay in September and Peterborough in October.

Web site  
Continued from page 1

frames was offset by the increased behind the scenes efforts required to maintain the framed environment.

After an interval of about two years, the IPC site changed again, this time to a simpler interface with an index-based main page and a navigation banner. Consistent with the overall Web site trends at the time, the focus was on content over design and graphics.

By this time, the IPC Web site had become the primary means to distribute news and publications (aside from e-mail) to an ever-growing audience interested in access and privacy issues.

Over its seven years, the IPC Web site grew in size and complexity. Today, there are over 5,250 documents on the Web site, including HTML, PDF and PowerPoint files (three standard file formats). Over 500 Web sites from around the world link to the IPC’s site and the site receives around 20,000 visitors each month.

With additional content being added to the site daily, maintaining the site was an increasing challenge. New Web tools have emerged over the last few years and the IPC decided to migrate its platform to a content-management system. This transition took place last year and the new site was rolled-out in January 2003.

Aside from various changes to the back-end side of site operations, the new site offers a fresh, contemporary look that is consistent throughout. A location bar automatically appears on each page to help users navigate throughout the site. Other design changes were implemented to help improve overall site usability.

“Looking at the traffic we see daily on our site, it is clear that people and organizations are becoming increasingly dependent on the ability to access and download key files and documents,” adds the Commissioner.

“The real advantage of the Web site is that it can be managed in real-time – allowing for the updating of information and the releasing of decisions almost immediately. The changes we have made to the site are critical if we are to continue to serve the needs of the public in exercising its right to access government information and ensure the protection of personal privacy.”

The IPC Web site will continue to adapt and change, in response to user feedback, additional content resources and improved technology. Performance issues will be addressed in the near future as part of a systems upgrade over the spring and summer, so keep coming back to [www.ipc.on.ca](http://www.ipc.on.ca).



# Summaries

## Order MO-1614 Appeal MA-020032-2 City of Toronto

The City of Toronto (the city) received a broadly worded multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to animal care services.

The city issued a decision letter that included, among other things, a fee estimate of \$90,000 based on 26 months of search time.

On appeal, the adjudicator first looked at whether the city had made a proper interim decision under the *Act*. The adjudicator found that the city's interim decision was inadequate because it did not: (i) provide sufficient detail to substantiate the magnitude of the fee estimate; (ii) identify possible exemptions that may apply; and (iii) indicate the extent to which access is likely to be granted.

The city provided extensive representations in support of its fee estimate, including evidence that searches would need to be done in numerous locations and that a large volume of both hard-copy and electronic records would have to be reviewed.

The adjudicator acknowledged that the search would be long and arduous, but was not persuaded that this justified the \$90,000 fee estimate. In addition, the adjudicator noted that the appellant still did not have enough information to make an informed decision about whether or not to pay the fee.

In addition, the adjudicator was not persuaded that the city's 26-month time extension was reasonable in the circumstances.

As the appellant had been waiting for an access decision for well over a year, and the city had two opportunities to provide him with an access decision, the adjudicator found that it would be inappropriate simply to require that the city provide the appellant with a proper interim access decision and fee estimate.

However, the adjudicator was mindful that any possible remedy needed to balance the rights and expectations of the appellant to a substantive decision under the *Act*, with the city's right to recover some of its costs for locating the many and varied records responsive to the appellant's request.

The adjudicator disallowed the city's fee estimate and time extension, and ordered the city to provide the appellant with: (i) a final access decision on records accessible through the city's Chameleon database; (ii) a final access decision for all other responsive records that relate to the former City of Toronto and to the current amalgamated city; and (iii) a proper revised interim decision letter and fee estimate for all other records response to all parts of the appellant's request that relate to the other former cities that now comprise the amalgamated city.

The adjudicator gave the city 30 days to provide the first final decision letter, and 60 days to provide the second final decision letter and the proper revised interim access decision.

## Order PO-2112 Appeal PA-020055-1 Ministry of Tourism and Recreation Ontario Place Corporation

A legal action had been initiated by a food service provider (the affected party) against the Ministry of Tourism and Recreation (the ministry) and Ontario Place Corporation. The ministry received a request for access to records relating to the settlement of that action.

After notifying the affected party, the ministry granted access to some records and denied access to others based on a number of exemptions, including the solicitor-client privilege exemption in section 19 of the *Act*. The appellant appealed the decision.

One of the key issues the adjudicator addressed was the argument made by both the affected party and the ministry that these records,



which reflected the settlement of the action, were for that reason exempt under section 19.

These parties equated settlement privilege with the litigation privilege aspect of the section 19 solicitor-client privilege exemption, and argued that the records should qualify for exemption under that section. In addressing this issue, the adjudicator drew a distinction between settlement privilege and litigation privilege, and reviewed the purposes behind these very different privileges.

The purpose of the litigation privilege is to afford a party in an action the ability to gather information and prepare his or her case without fear of having to disclose this information to the opposite party in the litigation.

Settlement privilege, on the other hand, is a rule of evidence that prevents the disclosure of information regarding offers and settlement discussions to the decision-maker hearing the dispute between the parties.

This privilege is intended to encourage parties to feel free to enter into “without prejudice” discussions without fear that the subject matter of these discussions would be used against them in that proceeding. It is a rule of evidence that prevents the use of the information in these records

in the particular proceeding; it does not determine the applicability of the section 19 exemption to records under the *Act*.

The adjudicator also identified the strong policy rationale for interpreting the phrase “solicitor-client privilege” as including the two common law concepts of “solicitor-client communications privilege” and “litigation privilege”.

In both these situations, disclosure to a party who is outside the solicitor-client relationship is deemed to cause harm of some sort – either to the ability of clients to consult privately and openly with their solicitors, or to the adversarial system of justice.

The policy rationale for this interpretation does not, however, apply to settlement privileged documents. That privilege is designed to prevent a party from putting certain communications into evidence in a proceeding before a court or tribunal. The admissibility of those documents would be decided by the court or tribunal dealing with that matter.

Accordingly, the adjudicator determined that records that are settlement privileged are not for that reason alone subject to litigation privilege. He went on to find that none of the records qualified for exemption under section 19.

---

## Upcoming presentations

**June 7.** Commissioner Ann Cavoukian will address the annual conference of The Canadian Health Record Association and The Ontario Health Record Association: *The Health Information Management Train: Get on Board, Get on the Right Track*, on the *Implications of PIPEDA/FOIP on the HER*, in a plenary session at the Colony Hotel in Toronto.

**June 9.** Commissioner Ann Cavoukian will give a presentation: *The privacy imperative: Earn customers' trust or lose them (and their friends) forever*, at the annual International Association of Business Communicators (IABC) 2003 International Conference in Toronto.

**June 12 & 13.** Commissioner Ann Cavoukian will speak at the *Access and Privacy 2003: Exploring New Solutions* conference, sponsored

by Adsum Consulting and the University of Alberta, at the Telus Centre in Edmonton.

**June 16.** Director of Legal Services, **Ken Anderson**, will speak on Privacy Law in the workplace at The Canadian Institute's conference: *Meeting Your Obligations for Privacy Compliance – How to Comply with Canada's Privacy Regime In Time For January 1, 2004*, at the Renaissance Toronto Hotel.

**July 8 & 10.** Commissioner Ann Cavoukian will speak on IT Security at INFONEX Inc.'s *IT Security Conference* in Ottawa.

**October 21, 22 and 23.** Director of Policy and Compliance, **Brian Beamish**, will present and take part in a panel at the Ontario Provincial Police Anti-Rackets Investigation Bureau's *Identity Theft Conference* at Casino Rama.



# Mediation success stories

## Interest based mediation

A client of the Family Responsibility Office (FRO) submitted a request to the Ministry of Community, Family and Children's Services (the ministry) for access to his entire file. In particular the requester wanted to know why FRO took enforcement action when, according to him, he was not in arrears.

The ministry granted partial access to the records. Parts of the records were withheld on the basis that they were either subject to the law enforcement exemption or that disclosure would be an unjustified invasion of other individuals' privacy.

The requester appealed the ministry's decision. At the outset of mediation the appellant expressed to the mediator his ongoing frustration with what he viewed as FRO's unclear answers to his questions whenever he had made enquiries about his file. As a result, the mediator thought that some dialogue between the appellant and FRO could be fruitful in addressing the appellant's issues and concerns.

In an effort to resolve the appeal and on the mediator's suggestion, the ministry arranged a meeting with the appellant and a representative from FRO. During the course of this meeting, the representative from FRO clarified the nature of the information that had been withheld from the records, and agreed to disclose some additional information to the appellant. The FRO representative also answered the appellant's questions relating to the processing of his file and was apologetic about any miscommunication that had occurred in the appellant's previous dealings with FRO.

Shortly after the meeting concluded, the appellant expressed to the mediator what a difference the meeting had made to him; his issues and concerns about the way in which FRO had processed his file had now been clarified and responded to, and that he no longer felt it necessary to obtain access to the remaining undis-

closed portions of the records. Based on this, the appellant advised the mediator that he was satisfied and considered the appeal resolved.

## Working together to narrow the request and reduce the fee

A French language school board received a request for purchase orders and vendor quotes over \$5,000 that were not part of the public tender process and were authorized by three named individuals at the board. The request covered a five-year period.

The board issued an interim decision and \$16,000 fee estimate, advising that it would take approximately six months to search for these records and that some of the records would be exempt under sections 10 and 11 of the *Act*.

The requester appealed the board's decision. In the course of mediation the board advised that not only did it not maintain a centralized binder of these records, but also it would be time-consuming to search through the records to identify which records were not part of the tender process and which purchase orders/requisitions had been authorized by the three named individuals.

Based on this explanation of the board's record-keeping practices the appellant narrowed his request to all purchase orders/requisitions for a two-year period.

In response to the narrowed request, the board provided the appellant with three format options for receiving the information, with the estimated fees ranging from \$53 to \$360. The appellant chose the \$53 option, being an electronic version of all purchase orders/requisitions over and under \$5,000. Since the only exemptions the institution had cited had been in relation to vendor quotes, which were no longer at issue, the appellant was granted full access to the records.



### **Addressing appellant's future needs**

A small municipality received a request from a construction company for records that related to the construction of covered boat slips by the owners of a particular property. Specifically, the request was for building permit applications, architectural and engineering drawings, inspection reports, correspondence and any other related records.

The municipality sought the consent of the property owner to release the records. The property owner objected to the release of the records, claiming, among other things, that the drawings were unique and that their proprietary interest would be compromised should the records be released. On this basis, the municipality denied access to the records, relying on section 10 of the *Act*.

The requester appealed. During the course of mediation the appellant explained that it had constructed some structures on the property but other structures on the same property, built by another company, had collapsed. The appellant wanted access to the records to protect itself from liability should there be future litigation.

Since access to the records was not required at this time, the mediator facilitated a resolution in which the municipality agreed to retain the records for a specific time period beyond their usual retention period. While access to these records continued to be denied under the *Act*, the records would remain available so that the appellant could subpoena them should they be required in a court proceeding.

### **Teleconference clarifies issues and builds relationship**

The Ministry of Public Security and Safety (the ministry) received a request from the requestor's representative for all police officers' notes, witness statements and the video-tape of a named witness relating to a fraud investigation of the

requestor by the Ontario Provincial Police (OPP). The representative provided the ministry with a signed consent from the named witness.

The ministry issued its decision that no videotape interview exists, but disclosed other records with severances pursuant to section 49(b) [unjustified invasion of another individual's personal privacy] of the *Act*.

The representative appealed the ministry's decision. In initial conversations with the representative, the mediator clarified that the severed records were not at issue. Rather, the issue at appeal was whether additional records should exist.

As a result of a number of separate conversations with the representative and with the ministry, the mediator determined that the representative was seeking some very specific records. A teleconference was set up between the parties and the mediator. The ministry's representative detailed the process she had followed to search for the requested records. The requestor's representative in turn explained exactly what records she was looking for (notes taken by two named OPP officers) and why she thought they might exist. According to the ministry, the OPP did not conduct the investigation, but referred the matter to a local police force. Nevertheless, the ministry agreed to conduct a second more specific search using the additional information provided by the requestor.

The ministry conducted the second search but no additional records were found. Based on the information exchanged during the teleconference and the additional specific search performed by the ministry, the requestor was satisfied and the appeal was settled on that basis.

As a postscript, the ministry representative remarked that through the mediation process, that in this case involved speaking directly with the representative, she had a better understanding of the representative's position and felt a relationship of trust had developed.



## The IPC at ROMA/OGRA conference

Privacy and access to government information were hot topics at this year's combined conferences of the Rural Ontario Municipal Association (ROMA) and the Ontario Good Roads Association (OGRA).

"The IPC booth was one of the most popular at the event," says IPC Information Officer Gail Puder. "People were very interested in learning more about hot topics like identity theft and access to municipal information. Overall, I handed out over 1,500 publications – about 30 per cent more materials than I did in 2002."

The IPC participated in this annual event for the second year running. The event was held at the Fairmont Royal York Hotel in Toronto on February 24<sup>th</sup> and 25<sup>th</sup>. Delegates at this year's conference

were far more aware of the IPC's role in access to government information and the protection of personal privacy notes Puder.

"Many more people took the time to ask questions and share their perspectives than they did in 2002," she adds. "A number of councillors and municipal staff that I met the previous year stopped by armed with new questions and concerns – including when ROTO would be in their community."

Besides showcasing the IPC's core publications and most recent papers, visitors could catch Commissioner Ann Cavoukian being interviewed on such hot topics as identity theft simply by picking up earphones and watching a video.

---

## Recent IPC publications

The IPC has issued the following publications and submissions since the last IPC Perspectives:

1. *Access and Privacy in Canada: Developments from September 2001 – August 2002.* Presented by Ken Anderson, Director of Legal Services, at the annual Council on Governmental Ethics Laws (COGEL) Conference. October 2002.
2. *Concerns and Recommendations Regarding Government Public Key Infrastructures for Citizens* examines the potential impact of PKI on the protection of personal privacy and makes recommendations for establishing such systems. December 2002.
3. *If you wanted to know...What are the privacy responsibilities of public libraries?* looks at some common questions library users and library staff may have about privacy rights and what libraries can do to protect privacy. December 2002.
4. *Guidelines of Facsimile Transmission Security.* This updated paper sets guidelines for govern-

ment organizations developing systems and procedures to maintain the confidentiality and integrity of information transmitted by fax. Revised January 2003.

5. *If you wanted to know...Identity theft and your credit report: What you can do to protect yourself* provides guidelines on what to do about your credit report if your identity/identification has been stolen. Revised February 2003.
6. *Posting Information on Web Sites: Best Practices for Schools and School Boards* is a joint project of The IPC, the Upper Grand District School Board and The Peterborough, Victoria, Northumberland and Clarington Catholic District School Board. March 2003.
7. *Frequently Asked Questions: Privacy Legislation for the Private Sector.* Updated March 2003.

These publications and more are available on the IPC's Web site at [www.ipc.on.ca](http://www.ipc.on.ca).

### IPC PERSPECTIVES

is published by the Office of the Information and Privacy Commissioner/Ontario.

If you have any comments regarding this newsletter, wish to advise of a change of address, or be added to the mailing list, contact:

Communications Department  
Information and Privacy Commissioner/Ontario  
80 Bloor Street West, Suite 1700  
Toronto, Ontario M5S 2V1  
Telephone: 416-326-3333 • 1-800-387-0073  
Facsimile: 416-325-9195  
TTY (Teletypewriter): 416-325-7539  
Web site: [www.ipc.on.ca](http://www.ipc.on.ca)

Cette publication, intitulée «Perspectives», est également disponible en français.



55% recycled  
paper,  
including 10%  
post-consumer  
fibre

ISSN 1188-2999