



Access and Privacy Update

Judith Goldstein, Counsel
Information and Privacy Commissioner/Ontario

**Toronto Public Library
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“Hot Issues!”

- Radio Frequency Identification (RFID) Technology
- Access to information about deceased relatives
- Patriot Act
- Privacy in the Workplace
- PIPEDA vs. PHIPA



What is Radio Frequency Identification (RFID)?

- An automatic identification method, relying on storing and remotely retrieving data using devices called RFID tags or transponders;
- An RFID tag is a small object that can be attached to or put in a product, animal or person;
- The tag contains silicon chips and antennas to enable it to receive and respond to radio-frequency queries from an RFID transceiver.



RFIDs (Cont'd)

Concerns arise from many qualities of RFID Technology, such as:

- RFID tags are easy to conceal,
- RFID readers are easy to conceal;
- They may contain data that are globally unique;
- They are promiscuous;
- Tags may be read remotely and collated with place and time



Information about Deceased Relatives

- Often this info falls under MFIPPA s.14(3), which lists the types of info whose disclosure is *presumed* to be an unjustified invasion of privacy;
- *John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R.(3d) 767* says such a presumption cannot be rebutted!
- MFIPPA s.54(a) - the personal representative of an estate can only get access to personal info, if it “relates to the administration of the estate”.



Information about Deceased Relatives (Cont'd)

- Personal information does not include information about someone who has been dead for more than thirty years,
- The quicker solution? ...Bill 190, 2005, the Good Government Act
- If Bill 190 passes, “close relatives” will be entitled to access about deceased individuals, if access is desirable for compassionate reasons.



Patriot Act

- *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, 2001 (USA Patriot Act);*
- FBI can apply for an order of the Foreign Intelligence Surveillance Act (FISA) Court for production of items to protect against terrorism;
- The company subject to a s.215 order cannot reveal that the FBI has sought or got information from it.



Patriot Act (Cont'd)

- Articulable cause threshold for a FISA Order would not be considered sufficient in Canada
- The scope of FISA orders was expanded
- Orders issued and executed secretly
- Failure to comply constitutes contempt
- Order supersedes any contractual or legal obligations aimed at preventing disclosure



Patriot Act (Cont'd)

- PIPEDA cannot prevent US authorities from lawfully accessing PI of Canadians held by organizations in Canada or US or force Canadian companies to stop outsourcing to foreign-based service providers
- PIPEDA can only demand transparency from organizations about their PI handling practices and that they protect PI in the hands of foreign service providers to the extent possible by contractual means



Patriot Act

Current status in the US

- *Patriot Act* has sunset provisions and it is currently under review
- US Congress extended it until March 10, 2006, while negotiators working on it;
- US Senate bill intended to raise threshold for a FISA order
- Senate Bill would allow an organization served by an order to consult an attorney and challenge it



Patriot Act- Current Government Initiatives

- Review of PIPEDA 2006
- Privacy Commissioner audit of Canada-US data flows
- Dialogue between Can. Dept. of Public Security and emergency Preparedness and US Dept. of Homeland Security
- Ontario is reviewing its outsourcing activities



Privacy in the Workplace

- Employee privacy provisions removed from FIPPA and MFIPPA in 1995
- PIPEDA protects the privacy of employees of FWUBs only
- Only Alberta, British Columbia and Quebec have substantially similar legislation to PIPEDA that protects to private sector employee information



PIPEDA vs. PHIPA

- Since Nov. 1, 2004, the Personal Health Information Protection Act has been in force in Ontario;
- It governs “personal health information” (PHI) in the custody or control of “health information custodians”;
- It governs the use and disclosure of PHI:
 - By non-HICs, if it was received from a HIC
- On Nov. 28, 2005 PHIPA was declared “substantially similar” to PIPEDA.



How to Contact Us

Information & Privacy Commissioner/Ontario
2 Bloor Street East, Suite 1400
Toronto, Ontario M4W 1A8

Phone: (416) 326-3333
1-800-387-0073

Web: www.ipc.on.ca

E-mail: info@ipc.on.ca



Questions?