

Opening the door: Access to government records

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Overview

- Introduction to the IPC/Ontario
- II. Relevant legislation
- III. Access and appeals
- IV. Privacy



Mandate and role

- The IPC provides an independent review of government decisions and practices.
- The Commissioner is appointed by and reports to the legislative assembly; she remains independent of the government of the day to ensure impartiality.



Mandate and role (Cont'd)

The IPC has five key roles:

- Ensure that government organizations comply with access and privacy laws;
- Resolve appeals;
- Investigate privacy complaints;
- Research and provide advice on proposed legislation and policy;
- Promote public education.



The Acts

- The Freedom of Information and Protection of Privacy Act (1988);
- The Municipal Freedom of Information and Protection of Privacy Act (1991); and

• The Personal Health Information Protection Act (2004).



What do the Acts cover?

- The two public sector Acts provide the public with a right of access to information held by the government in accordance with the following principles:
 - Information should be available to the public;
 - Exemptions to the right to access should be limited and specific.



What do the *Acts* cover? (Cont'd)

• The other key purposes of these two *Acts* are to protect the personal information held by government organizations and to provide individuals with a right of access to their own personal information.

(I will discuss the third Act, PHIPA, later in this presentation.)



What organizations are covered by the public-sector *Acts?*

- FIPPA (the provincial Act)
 - Provincial ministries;
 - Most provincial agencies, boards and commissions;
 - Community colleges;
 - Universities (as of June 10).
- MFIPPA (the municipal Act)
 - Boards of health;
 - Police boards;
 - School boards;
 - Transit commissions and most other local boards.



Requests and Appeals

 There were a record 33,557 requests filed in 2004;

 There were 827 appeals opened in 2004 (less than 3% of requests).



Access fees

- In addition to the \$5 request fee, there can be a number of other administrative fees:
 - Photocopying (20 cents/page);
 - Floppy disks (\$10/disk);
 - Manually searching for a record (\$7.50/15 minutes);
 - Preparing a record for disclosure (\$7.50/15 minutes);
 - Developing a computer program or other method of producing a record from machine readable record (\$15/15 minutes).



What information is exempt?

- Cabinet records;
- Draft bylaws, records of closed meetings;
- Defence;
- Advice or recommendations;
- Law enforcement;
- Relations with governments;
- Third party business information;
- Solicitor-client privilege;

- Economic and other interests of a gov't organization;
- Danger to safety or health;
- Personal information;
- Information soon to be published;
- Limitations on access to own personal information;
- Fish and wildlife species at risk.



Making your request

- Determine which government organization has the information you want;
- Send a written request to that organization's Freedom of Information Co-ordinator;
- Include the \$5 application fee.



Pistol or shotgun?

- Reporters who are looking for very specific information will usually end up waiting for a longer period, and paying more money, if they submit a rambling request that asks for far more than the reporter is actually looking for.
- You need to choose between the pistol approach

 seeking very specific information and the shotgun approach where you are trolling for revealing facts buried somewhere in a large number of records.



Pistol

• If you know exactly what you are looking for (ie: a report of X committee on Y date), then you should use the pistol approach. Don't make a vague, wide-sweeping request.



Shotgun: When looking for an edge

 Some reporters use FOI to try to get an edge on the competition. This is often where the shotgun approach comes in. A reporter looks at everything that is known about a particular story, then files a wide-sweeping FOI request trying to find records that would help him or her break new ground.



Not taking things for granted

 Another common use of the shotgun approach is using FOI to collect seemingly routine government records. Then you go through the records looking for a lead that may end up as a front page story.



Call first

 If you are not sure what you want, or you would like a general idea of what the scope would be if you file a very general request, consider calling the gov't organization's freedom of information co-ordinator first.





Consider size and time

 If you need extensive information, you may have to make a request that covers many topics, sources or years. But before putting in such a request, consider breaking it into several requests (organized by priority).





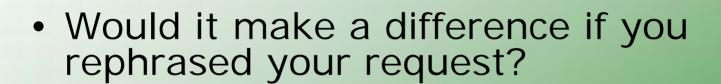
How should the government organization respond?

- Government organizations must respond within 30 days, unless:
 - A large number of records have been requested;
 - A search through a large number of records is necessary; or
 - Consultations with a person outside that organization are deemed necessary.



If they say no....

Call the freedom of information co-ordinator:



Does he or she have any suggestions?



APPEALS



Appeals

- If you are not satisfied with a government organization's response, you can appeal this decision to the IPC.
- The IPC first attempts to settle appeals informally. If all issues cannot be resolved within a reasonable period, the IPC conducts an inquiry and (after most inquiries) issues a binding order – which can include requiring a government organization to release all or part of the information sought.



Reasons to file an appeal

- You were denied access to some or all of the information sought;
- You disagree with the fee being charged;
- You did not receive a response within 30 days and/or disagree with the reason given for a time extension;
- Your request to have personal information corrected was denied.



How to lodge an appeal

- Within 30 days of receiving the decision you must:
 - Write a letter to the IPC explaining why you disagree with the decision;
 - Include a copy of your original request, and the response; and
 - Include the appeal fee (\$10 if the appeal relates to personal information; \$25 if it concerns general information);
- There is an appeal form on the IPC website (<u>www.ipc.on.ca</u>) that can we used. (This is not mandatory).



PRIVACY



What is personal information?

- Recorded information about an identifiable individual.
- Government organizations often need to ask for individuals:
 - Name;
 - Address;
 - Banking information;
 - -Sex;
 - Marital status, etc.
- Both public sector Acts require that the government protect the privacy of the individuals whose information it holds.



The IPC's involvement

- In 2004, the IPC opened 128 privacy investigation files.
- Privacy complaints follow a similar procedure to that of FOI appeals.
 Mediators investigate complaints and propose solutions.



Examples of IPC privacy investigations

- A film company purchased personal health records from a recycling company, then spread these on Toronto streets as a backdrop for a film shoot. (These could have been your personal health records.)
- The IPC investigated a complaint that an Ontario city was ignoring IPC guidelines re the use of public surveillance cameras.



Personal Health Information Protection Act, 2004

- This is Ontario's new health privacy legislation;
- It governs the manner in which personal health information may be collected, used and disclosed within the health care system;
- The IPC has been designated as the oversight body responsible for administering and enforcing PHIPA.



PHIPA's underlying principles

 PHIPA is guided by the 10 principles set out in the Canadian Standards Association's Model Code for the Protection of Personal Information:

Accountability; Identifying Purposes;

Consent; Limiting Collection;

Accuracy; Safeguards;

Openness; Access;

Challenging Compliance;

Limiting Use, Disclosure & Retention;



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