IPC
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ANN CAVOUKIAN, Ph.D., COMMISSIONER

Commissioner Ann Cavoukian was a keynote speaker at The Human *Face of Privacy Technology* conference at the University of Toronto. The IPC and the Centre for Applied Cryptographic Research, University of Waterloo, co-sponsored the conference. See story on page 3.

Guidelines for using video surveillance cameras

Institutions governed by the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* that are considering implementing a video surveillance program must balance the benefits of video surveillance to the public against an individual's right to be free of unwarranted intrusion into his or her life.

"Pervasive, routine and random surveillance of ordinary, lawful public activities interferes with an individual's privacy," said Ontario Information and Privacy Commissioner Ann Cavoukian.

Guidelines for Using Video Surveillance Cameras in Public Places, a special publication recently released by the Commissioner, was created to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and, if so, how privacy protective measures can be built into the system.

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In this Issue:

Recent IPC publications

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

1. *Second Presentation to the Standing Committee on General Government: Bill 159: Personal Health Information Privacy Act, 2000.* March 2001.

2. *A submission in response to the federal Access to Information Review Task Force's consultation paper.* May 2001.

3. *2000 Annual Report.* June 2001.

4. *Best Practices for Online Privacy Protection.* June 2001.

5. *Guidelines for Protecting the Privacy and Confidentiality of Personal Information When Working Outside the Office.* July 2001.

6. The *Privacy Diagnostic Tool (PDT)* is a self-assessment program used to help businesses gauge their privacy readiness by comparing their information processes with international privacy principles. It was developed by the IPC with the assistance of Guardent and PricewaterhouseCoopers. August 2001.

7. *An Internet Privacy Primer: Assume Nothing* is a collaborative paper by the Information and Privacy Commissioner/ Ontario and Microsoft Canada. August 2001.

8. *What Students Need to Know about Freedom of Information and Protection of Privacy*: The IPC has created resource material for Grade 11/12 teachers on freedom of information and protection of privacy. September 2001.

9. *Guidelines for Using Video Surveillance Cameras in Public Places* is a tool to assist institutions in deciding whether the collection of personal information by means of a video surveillance system is lawful and justifiable as a policy choice, and, if so, how privacy protective measures can be built into the system. October 2001.

10. *If you wanted to know... How to access personal information held by the Provincial Government.* Explains where to find and how to use the Directory of Records and Directory of Institutions. November 2001.

All of these publications and more are available on the IPC's Web site at www.ipc.on.ca.

Upcoming presentations

The Commissioner and IPC staff members make presentations to more than 100 groups each year. Among the major presentations coming up in the near future are:

December 11. Commissioner Ann Cavoukian will make a presentation to the Ontario Bar Association on what should be included in an Ontario Privacy Act.

December 11. Assistant Commissioner Tom Mitchinson will lead a six-person IPC team to Kitchener-Waterloo for a series of presentations that include a luncheon speech by Mr. Mitchinson to the Kitchener-Waterloo Chamber of Commerce, a seminar for freedom of information co-ordinators from southwestern Ontario, and a public information meeting that evening at the main Kitchener library.

January 17. Commissioner Cavoukian will be addressing the 23rd World Congress on the Management of e-Commerce, at McMaster University in Hamilton.

March 20–21. Ken Anderson, the IPC's Director of Legal and Corporate Services, is making a special presentation at a Toronto conference for professionals in the medical and legal fields. He will review and update the new privacy imperatives for protecting health information in Ontario.

Mock cyber-crime trial explores serious privacy, jurisdictional issues

One day earlier this year, working from his computer in Boston, David Wilbur Moon hacked into an Ontario nuclear facility's server, defaced part of the Web site and copied confidential security information — which he later sold to Time magazine. The Ontario Provincial Police proceeded with an elaborate sting operation to lure Moon to Ontario, under the pretence of an invitation to speak at a conference.

This was the premise of a mock cyber-crime trial, *Privacy: The First Cyber-Crime Victim*, at the *Human Face of Privacy Technology* conference held at a University of Toronto facility in early November. This was the 2nd annual privacy and technology workshop sponsored by Ontario's Information and Privacy Commission and the Centre for Applied Cryptographic Research of the University of Waterloo. Mike Gurski, senior policy and technology adviser, IPC, was chairman of the conference.

More than 170 delegates attended the two-day conference, with the cyber-crime trial being one of the highlights. Justice Joseph Kenkel of the Ontario Court of Justice acted as the judge. Jennifer Granick, director of the Centre for Internet and Society, Stanford University, argued for the defendant (David Banisar, of the Kennedy School of Government, Harvard University). Scott Hutchinson, of the Ministry of the Attorney General, acted for the prosecution, and Detective Kelly Anderson, of the electronic crime team of the OPP, was called as an expert witness.

As one delegate noted, "you could hear a pin drop" in the filled-to-capacity conference room during the three-hour trial. The defence attorney brought forward a series of motions dealing with the seizure of evidence, the use of an informant, and the undercover sting operations of the OPP, as well as questioning the jurisdiction of the Ontario court to try a U.S. citizen.

Delegates had an opportunity to "approach the bench" with arguments and questions at key points in the trial.

The defendant was tried on three charges: fraudulent access of data; possession of property obtained by crime; and possession of proceeds of property obtained by crime.

The verdict: guilty on all three counts, according to the 170-person jury.

Dramatics aside, the mock cyber-crime trial illustrated the many legal and privacy issues involved in cyber-crime, including jurisdictional issues.

To access abstracts and presentations from the conference, visit: www.cacr.math.uwaterloo.ca/conferences.

Video Surveillance Guidelines

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Among the points made in the *Guidelines*:

- Institutions must be able to demonstrate that any proposed or existing collection of personal information by a video surveillance system is authorized under the *Acts*.
- A series of considerations are listed that institutions should address prior to proceeding with a video surveillance system.
- Once the decision to install cameras has been made, proper notice that an area is subject to surveillance is necessary.
- Also outlined are points that should be considered when:
  - developing a video surveillance system policy;
  - designing any such system; and
  - installing equipment.

Another section of the paper cites audits. "Institutions should ensure that the use and security of video surveillance equipment is subject to regular audits. The audit should also address the institution's compliance with the operational policies and procedures."

Guidelines for Using Video Surveillance Cameras in Public Places is available on the IPC's Web site: http://www.ipc.on.ca/english/pubpres/papers/summary.htm

Summaries

"Summaries" is a regular column highlighting significant orders and privacy investigations.

Order PO-1881-I
Appeal PA-000286-1
Ministry of Health and Long-term Care

The Ministry of Health and Long-term Care received a correction request under section 47 of the *Freedom of Information and Protection of Privacy Act* from the appellant, a patient against whose OHIP file a doctor had fraudulently billed certain services. Some of these services had never been provided by the doctor, and the doctor had subsequently been convicted of fraud. The appellant asked the Ministry to correct his personal OHIP record by removing the incorrect information from the file.

The Ministry denied the request, maintaining that placing a statement of disagreement in the file, as authorized by section 47(2)(b) of the *Act*, was the appropriate remedy in the circumstances. The Ministry also said that the OHIP billing claims were not inaccurate, since they correctly reflected actual billed claims and payments, and that the record of these billings had to be retained for audit and other accounting purposes.

The appellant appealed the decision, and argued that specific account records that contain the incorrect information are available to a broad range of health providers, Ministry officials, other authorized agencies and third parties. He also argued that the existence of incorrect information about highly sensitive medical and psychiatric treatments in his file may directly affect him, and that, because of the nature of the incorrect information, attempts to deny its validity, including attaching statements of disagreement to the record, are not acceptable options.

In her order, the Commissioner accepted that the records were accurate from the perspective identified by the Ministry, but went on to find that there were other relevant purposes that required consideration. Because these records are used by Ministry staff and provided to insurance companies and others (with consent) as a health history record, these significant secondary uses presented serious privacy problems. When considered from these secondary contexts, the records were both inexact and incomplete, and qualified for correction under section 47(2).

The Commissioner agreed that attaching a "statement of disagreement" was inadequate, but also accepted that the records should not be destroyed. The remedy she imposed was for the inaccurate entries to be removed from the main database and placed into a newly created database that would only contain fraudulent and otherwise incorrectly billed records.

The order applied this remedy to the appellant's situation, and also extended it to other patients billed by this doctor for services not rendered. The order includes a postscript, in which the Ministry is encouraged to apply the theory outlined in the order more broadly to cover other doctors convicted of fraud, as well as other billings the Ministry determines are incorrect. The postscript also discusses the serious privacy implications of secondary uses of this nature.

Order MO-1472-F
Appeal MA-000274-1
Halton District School Board

The appellant, a parent of a student enrolled in a special education program operated by the Halton District School Board, requested access to a list of self-contained special needs classes for elementary schools, including the name of the school, the class designation and the exceptionalities in each class for specific school years.

The board denied access to information relating to exceptionalities by school, class and numbers of students with specific exceptionalities per class, based on the exemption found at section 14(1)(f), with reference to the presumptions in sections 14(3)(a) and 14(3)(d) of the *Municipal Freedom of Information and Protection of Privacy Act*, as disclosure of this information would reveal the identities of the students in these classes.

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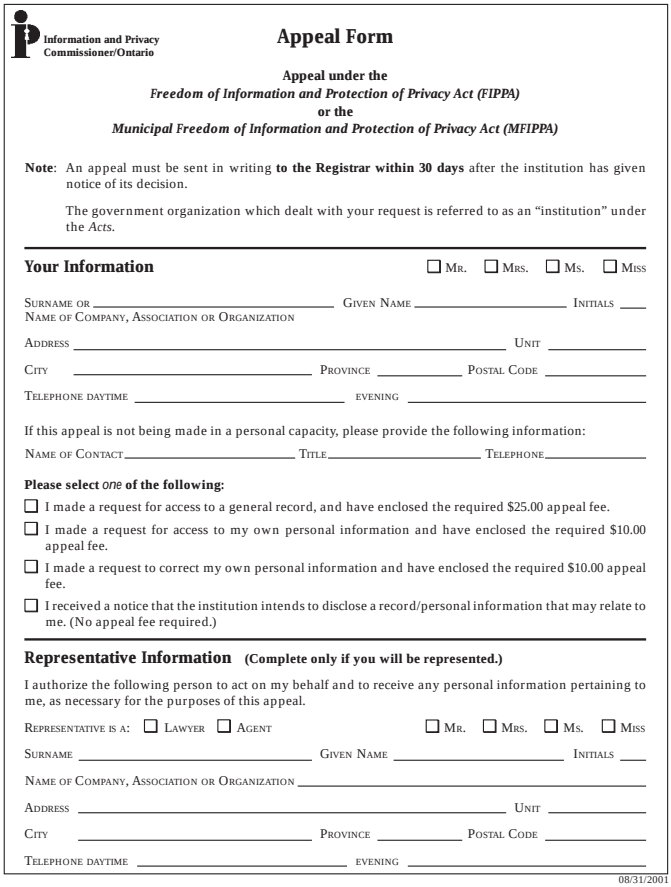
New forms for filing an appeal or privacy complaint

The IPC's Tribunal Services Department has introduced two new special forms — the *appeal form* and the *privacy complaint form* — to help streamline the process of filing an appeal or a privacy complaint.

Completing the forms helps ensure that all necessary information is provided at the point of filing, and delays are avoided. Although there is a generic *request form*, for making an access request, there were no specific forms for filing an appeal or making a privacy complaint. Both of these new forms can be found on the IPC's Web site at http://www.ipc.on.ca/english/forms/forms.htm, along with clear instructions on how to complete these forms. Printed copies can also be obtained by request from the IPC office.



Information and Privacy Commissioner/Ontario

Appeal Form

Appeal under the
Freedom of Information and Protection of Privacy Act (FIPPA)
or the
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Note: An appeal must be sent in writing **to the Registrar within 30 days** after the institution has given notice of its decision.

The government organization which dealt with your request is referred to as an "institution" under the *Acts*.

Your Information ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname or Name of Company, Association or Organization _____ Given Name _____ Initials ____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

If this appeal is not being made in a personal capacity, please provide the following information:

Name of Contact _____ Title _____ Telephone _____

Please select *one* of the following:

☐ I made a request for access to a general record, and have enclosed the required $25.00 appeal fee.

☐ I made a request for access to my own personal information and have enclosed the required $10.00 appeal fee.

☐ I made a request to correct my own personal information and have enclosed the required $10.00 appeal fee.

☐ I received a notice that the institution intends to disclose a record/personal information that may relate to me. (No appeal fee required.)

Representative Information **(Complete only if you will be represented.)**

I authorize the following person to act on my behalf and to receive any personal information pertaining to me, as necessary for the purposes of this appeal.

Representative is a: ☐ Lawyer ☐ Agent ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss

Surname _____ Given Name _____ Initials ____

Name of Company, Association or Organization _____

Address _____ Unit _____

City _____ Province _____ Postal Code _____

Telephone daytime _____ evening _____

08/31/2001

The new forms, each three pages long, are user-friendly and easy to complete. Colour is strategically used in the layout to simplify the filling-in process, and the graphics include small boxes that, when clicked on, will automatically produce a checkmark. Available both in English and French, they can be filled out online and then printed, or printed and then filled out with a pen. If more information needs to be included, extra pages can be attached. Either way, the completed forms can be sent to the IPC offices — along with the required documentation and, in the case of an appeal, the required fee. Because of privacy and security concerns, the completed form cannot be submitted online.

Using the new forms is optional — an appellant or complainant may choose to simply write a letter, which was the only option before the forms were created — but appellants and complainants are being encouraged by the IPC to use the new forms. They are thorough and comprehensive, and guide the appellant/complainant through each step.

Formerly, for example, an appellant might send a letter seeking an appeal but forget to include the institution's decision letter, or leave out other pertinent information, leading to a delay while the IPC sought the missing information.

"It is hoped the new forms will prove a more efficient, thorough and timely method of filing appeals and privacy complaints, and lead to a greater level of satisfaction for all users," said Robert Binstock, IPC registrar, who helped design the new forms.

Mediation success stories

"Mediation success stories" is a regular column highlighting several of the recent appeals that have been resolved through mediation.

Fee estimate: direct contact

The Ministry of Labour received a request from a member of the media for access to all reports, correspondence and records generated or received involving asbestos exposure in Hamilton-area hospitals.

In response, the Ministry issued an interim decision/fee estimate. In its decision letter, the Ministry explained that there was a minimum of 13,000 pages of responsive records. The Ministry offered two ways it might process the request and outlined the fee estimate for each option: Ministry staff could search for records referring to asbestos issues, with the fee estimated at $1,950; or, should the appellant want to conduct her own research, Ministry staff would copy all occupational health and safety records for her (subject to any exemptions that may apply), with the fee estimated at $2,600.

The appellant appealed on the basis that she was disputing the calculation of the fee.

During mediation, the Freedom of Information and Privacy Office of the Ministry offered to speak directly with the appellant to explain the fee calculation, as well as to explore ways to reduce the fee estimate. The appellant agreed with the Ministry's proposal. In the course of their discussions, the Ministry outlined to the appellant how it arrived at the calculation of fees for both of its estimates. The Ministry then provided the appellant with three additional options about how the request could be narrowed (one being to narrow the time frame), discussing the advantages and disadvantages of each option. The appellant accepted the Ministry's explanation regarding its calculations and also narrowed her request to a five-year time period. In turn, the Ministry provided two revised fee estimates of $465 and $620, based on the appellant's narrowed request.

In the end, the appellant was satisfied with the revised fee estimate and the appeal was resolved. In large part, this was due to the willingness of the Ministry's co-ordinator to speak directly with the appellant; to explain in detail the calculation of the fees, and to assist the appellant in narrowing the request -- while still ensuring the appellant obtained relevant records, but at a reduced fee.

Fee estimate: teleconference

The Ministry of Northern Development and Mines received a four-part request from a member of the media for access to all records relating to the Canadian Ecology Centre, including grants from the Northern Ontario Heritage Fund, evaluation reports, the most recent audit and funding application.

The Ministry advised the requester that there were 11,600 pages of responsive records and issued a fee estimate of $6,295. The estimated fee was subsequently revised to $4,415 for an estimated 6,700 pages. (There was no fee estimate for another approximate 1,000 pages, because exemptions applied, said the Ministry.) The requester appealed the revised fee estimate/ interim decision.

During mediation, the mediator contacted the Ministry's Freedom of Information co-ordinator to obtain details on the fee calculation. The co-ordinator suggested a teleconference with the mediator and the staff who had searched for the responsive records.

One regional office had estimated 30 hours of search and preparation time for reviewing records to determine whether third party exemptions might apply, and for time to extract duplicate copies. In discussions with the appellant, the mediator suggested that the fee could be reduced if he would agree to accept duplicate records and pay 20 cents per page for photocopies, instead of paying for search costs at $30 per hour. The appellant agreed.

The other regional office had estimated 72.5 hours preparation time for reviewing records to determine whether third-party exemptions might

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IPC releases Privacy Diagnostic Tool

Ontario businesses have been given a privacy tool that they can use to take their own "privacy pulse."

Developed by the IPC with the assistance of security and privacy experts at Guardent and PricewaterhouseCoopers, the *Privacy Diagnostic Tool (PDT)* compares an organization's business information processes against international privacy principles.

The *PDT* is not based on any one piece of legislation, nor is it geared towards any one industry. It is grounded in internationally recognized fair information practices. The *PDT* takes business leaders through sets of questions that will help them determine whether their business practices are protective of privacy or actually a threat to their customers' privacy.

The *PDT* outlines each of the 10 basic principles of fair information practices, explains their objectives and notes some of the risks organizations may face if they fail to adhere to the principles. Each principle has a series of questions, to which users answer "yes" or "no," based on their current business practices. The questions are divided into two categories and alert users to both the required steps and the best practices associated with each principle.

Once the questions are completed, the *PDT* produces a report outlining what steps need to be taken, based on the responses to the questions.

The IPC has received hundreds of requests from various provinces and from the United States for copies of the tool.

The guide is available online at http://www.ipc.on.ca/english/resources/resources.htm.

Summaries

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The adjudicator found that special education identifications were not created to relate to a unique individual. Instead, each student who exhibits the characteristics of one or more of the pre-established categories is identified within the category. While the combination of categories of exceptionality used to identify one student is unique to that individual, a large number of students may all be placed in the same category and given the same special identification symbol.

After reviewing previous orders that have considered the definition of personal information, the adjudicator found that a special education identification is "a psychological label given to a student and is analogous to an identifying number, symbol or other particular assigned to an individual" within the meaning of section 2(1)(c) of the *Act*. She noted, however, that there must be a link between the individual student and the identification in order to bring this information within the definition.

The records contain information of a statistical nature. None of them contains the names of individuals or other information that would be recognized as "identifying." In considering whether the students are nevertheless identifiable, the adjudicator found that the level of knowledge an observer has of the classes, students and schools may be relevant in determining whether disclosure of the records would "reveal" personal information.

The adjudicator noted that one of the records identified each student within a particular class as having one or more special education identifications, that the class numbers are small and that some students would be readily identifiable through their exceptionality. She concluded that even someone with limited knowledge of a specific class would be able to identify particular students and found that "the ability to do that, even if for only a small number of students, brings this information within the definition of personal information...."

The adjudicator went on to find that this record qualified for exemption under section 14(1), as disclosure would be presumed to be an unjustified invasion of the students' personal privacy in that it would disclose information pertaining to the students' diagnosis, condition or evaluation (section 14(3)(a)). The adjudicator upheld the board's decision on this record and ordered the board to release the other two records.

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apply. The mediator explained that, based on IPC orders, the Ministry cannot charge for reviewing records, but can charge for severing the exempt information at a cost of approximately two minutes per page. She also pointed out that the Ministry cannot charge for an employee's time to make photocopies. As a result, the Ministry issued a revised fee estimate of $2,600, based on a substantially reduced search and preparation time of 28 hours.

The appellant was satisfied with the revised fee estimate and the appeal was resolved. The willingness of Ministry staff, knowledgeable about the search, to participate in a teleconference with the mediator to discuss, in detail, the calculation of the estimated fee was an important step in resolving this appeal to the parties' satisfaction.

Sought aptitude test

The Toronto Police Service received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for the appellant's scores in three tests: the General Aptitude Test Battery, the Written Communication Test and the Physical Readiness Evaluation for Police Constable Test. The appellant participated in these tests as part of the police constable recruitment process.

The police service applied the provisions found in sections 52(3)1, 52(3)2 and 52(3)3 of the *Act* (that, under Bill 7 amendments, the *Act* does not apply to these employment-related records) to deny access to the requested information.

During the course of the appeal, the appellant informed the mediator that the appeal would be resolved if he received the results of his aptitude test. The mediator contacted the police's service's employment section and asked whether, considering that the test results are the appellant's own information, the test score could be disclosed outside of the *Act*. The employment section disclosed the test results to the appellant. The appeal was resolved accordingly.

Personnel records

The City of Toronto received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of the appellant's personnel records. The city applied the provisions found in sections 52(3)1 and 52(3)3 of the *Act* to deny access to the records.

During mediation, the appellant narrowed the scope of the request to: a) his attendance records and b) his ranking in a number of job competitions. The city had originally applied section 52(3) of the *Act* on the basis that the appellant had filed a grievance against the city. The appellant informed the mediator that he is no longer in the employ of the city and that he has discontinued his grievance.

At the request of the mediator, the city contacted the union that had represented the appellant for the purpose of his grievance. The union confirmed that the grievance had been withdrawn. The city revised its access decision. The city withdrew its application of section 52(3) of the *Act* and granted the appellant full access to his attendance records and his ranking in one competition. The city also informed the appellant that records reflecting his ranking in the remaining competitions do not exist. The appellant was satisfied with the city's revised decision and the appeal was resolved.

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