



VOLUME 8
ISSUE 2
FALL 1999



IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER

Multi-level efforts to promote Freedom of Information

ONTARIO INFORMATION AND PRIVACY COMMISSIONER Ann Cavoukian outlined to delegates at Management Board Secretariat's (MBS) 1999 access and privacy conference a number of the steps that her commission has been taking to promote freedom of information, both within government and to the general public.

The Commissioner cited meetings she has been having with top-level officials, changes in the way her annual report addresses how government organizations respond to access requests, an expanded Outreach program and a number of other steps, including a special publication, *Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators relating to Access to Information*.

The Commissioner told the more than 300 delegates at the conference, which is organized by the Corporate Freedom of Information and Privacy Office of MBS, about the new focus of her annual reports.

"When we released last year's annual report, I made it clear to anyone who asked that we were taking a new approach and, in some sense, entering a



Commissioner Ann Cavoukian

new era of public accountability for the operation of Ontario's FOI and privacy scheme. Our next annual report will build on this new direction, and we will be including response time statistics for all ministries, and selected agencies and municipal institutions. I'm not doing this in order to embarrass or single-out individual organizations. It is clear that the public wants to know how well its government is complying with the requirements of this important legisla-

In this Issue:

Promoting Freedom of Information

Recent IPC Publications

Building in Privacy for E-commerce

Inquiry process changes

Summaries

Q & A

CONTINUED ON PAGE 6

Recent IPC publications

SINCE THE LAST ISSUE OF PERSPECTIVES IN spring 1999, the IPC has issued a number of informative publications. They are readily available from the Web site <<http://www.ipc.on.ca>> or can be ordered from the Communications Department. These include:

- **Backgrounder for Senior Managers on the Role of Freedom of Information and Privacy Co-ordinators relating to Access to Information:** Each provincial and municipal government organization has a Co-ordinator. This Backgrounder looks at the critically important role that Co-ordinators play. (September 1999)
- **Consumer Biometric Applications: A Discussion Paper** is a detailed review of various biometrics, technologies that use them, how these technologies work, and general issues associated with them. With a view to application in the private sector, the paper also discusses the relevant privacy concerns. (September 1999)
- **Privacy and Biometrics** examines the privacy implications of using biometric technologies and includes a call to action to the data protection community to ensure that these technologies are used in a way that conforms to the expectations of a privacy-minded society. (September 1999)
- **Privacy as a Fundamental Human Right vs. an Economic Right: An Attempt at Conciliation** reviews the traditional approaches to the topic and examines the tension between legislation and self-regulation in addressing the issue. Also discussed are information intermediaries and the concept of a structured market for personal data. (September 1999)
- **Biometrics and Policing: Comments from a Privacy Perspective.** This is a chapter, contributed by Ontario Information and Privacy Commissioner Ann Cavoukian, to the book, *Polizei und Datenschutz - Neupositionierung im Zeichen der Informationsgesellschaft*, a compilation of essays by international privacy and data protection experts. The book was released in conjunction with the Data Protection Authority of Schleswig-Holstein's 1999 Summer Academy. This theme of the conference was Police and Data Protection. (August 1999)
- **E-mail Encryption Made Simple** discusses the issues regarding the use of e-mail encryption. (August 1999)
- **If you wanted to know ... Identity Theft and Your Credit Report: What You Should Do to Protect Yourself** provides guidelines on what to do about your credit report if your identity/identification has been stolen. (July 1999)
- **IPC Practice Number 30 — Submitting and sharing of representations in an inquiry** outlines changes made to the process. [See story, page 4.] (Revised April 1999)
- **Best Practices for Protecting Individual Privacy in Conducting Survey Research:**
 - **Full Version** or
 - **Condensed Version** or
 - **Summary of Best Practices** (all April 1999)

From left to right: Commissioner Ann Cavoukian; Mona Goldstein, Canadian Marketing Association; Bob Henderson, NCR Corporation; and moderator Everett Banning at the press conference following the NCR Executive Breakfast on "Consumer Privacy: Good For Business."



Build in privacy — Build up trust

THE MOST SUCCESSFUL E-COMMERCE BUSINESSES will be those that respect their customers' privacy, Ontario Information and Privacy Commissioner Ann Cavoukian told a recent executive breakfast in Toronto.

The session, *Consumer Privacy: Good for Business*, was organized by NCR and held at The News Theatre.

"The promise of electronic commerce hits you everywhere you turn," she told the breakfast. "I am going to talk to you today about privacy in the context of electronic commerce, in an effort to sift the hype from what's real."

Cavoukian told both the executive breakfast and a news conference that followed the session that consumers not only want goods and services, but increasingly, they want assurances that the personal information they provide to a business will be kept confidential, unless they have consented otherwise.

The Commissioner cited numerous survey results detailing the public's concern about privacy, including an October, 1998, Angus Reid poll that showed:

- 88% of Canadians were adamantly opposed to companies selling, trad-

ing or sharing lists of customer information — with other companies — without their consent;

"You see, ladies and gentlemen, it's a real catch-22," Cavoukian told the breakfast. "The very technology that makes e-commerce possible, the backbone underlying all of e-commerce, namely the Internet, is the same technology that has led to a renewed interest in privacy, precisely because of its glaring absence on the Net."

She stressed in her presentations to both the business executives and the media that the future of e-commerce depends on the development of consumer confidence and trust. "When your competitor is only a mouse-click away, trust will give you a strong competitive advantage."

"Any company that wants to retain its clients, any company that wants to grow, should have consumer privacy as one of its basic tenets. How can you expect to keep your clients, who are saying how concerned they are about how their personal information will be treated, if you do not publicly address their concerns?"

Inquiry process changed

THE IPC HAS CHANGED ITS PROCESS FOR appeals that advance to the Adjudication stage for the benefit of all participants. The result will be enhanced fairness, a better quality of representations, and less work overall for the parties involved. This move comes in response to the IPC's ongoing commitment to monitor and improve its systems and processes, and from monitoring common practices in the courts and those of other commissioners in Canada.

Seeking representations is part of the inquiry process at the Adjudication stage. As of July 1, 1999, the IPC modified this process in two basic ways.

Submitting representations

The first change was to seek representations from only one party at a time. The first party asked is usually the party resisting disclosure. Then, if necessary, the IPC will seek representations from the party supporting disclosure. And finally, if the IPC determines that it is necessary, it will seek additional representations from the first party.

By changing to a sequential method, the IPC is improving the efficiency of the process because the inquiry process may well stop after the first party gives the IPC its representations. This means that the other party won't need to put the time and effort into providing representations to the IPC.

And while the party resisting disclosure is usually asked to make its representations first, there are cases where this may be otherwise. For example, if someone is requesting disclosure of records which appear to be exempt, the

requester may be asked to make representations first, putting the onus on the requester to justify his or her case.

Sharing representations

The second change is that all representations made will be shared with all parties. The exception to this is if there are overriding confidentiality concerns. If a party wants the IPC to withhold representations from another party, it must explain the reasons for this request in writing, and to which party or parties this request applies.

The IPC may withhold information contained in a party's representations where it is established that:

- a) disclosure of the information would reveal the substance of a record claimed to be exempt;
- b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
- c) the information should not be disclosed to the other party or parties for another reason.

"Sharing representations enhances both the efficiency of the process, as well as its fairness," said Commissioner Ann Cavoukian. "Not only will there be a better quality of representations, which are more responsive to what's really at issue, but also, a more open system will lead to more settlements as a result of the parties better understanding each other."

Summaries

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

Order PO-1688 (Appeal PA-980244-1)

The Ministry of the Environment (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records concerning an application for a certificate of approval to discharge air emissions into the natural environment at a specified location.

The Ministry granted partial access to the records, citing section 17(1) of the *Act* as the basis for withholding the remaining records. The affected party, who had submitted the application for a certificate of approval, appealed the Ministry’s decision to grant access to one record consisting of a compilation of technical data.

The IPC found that the record consisted of technical information, and thus met part 1 of the three part test for exemption under section 17(1). The IPC also found that the record was supplied in confidence, and thus met part 2 of the three part test. However, the IPC did not accept the affected party’s submission that disclosure of the record could reasonably be expected to prejudice significantly the affected

party’s competitive position under section 17(1)(a). The IPC found that the affected party’s arguments were not supported by the contents of the record, and concluded that the affected party had failed to bridge the evidentiary gap between the disclosure of the record and potential harm. Therefore, the IPC held that the three part test for exemption under section 17(1) had not been met.

Although it was not necessary to do so, the IPC further found that, even if section 17(1) had applied, the “public interest override” in section 23 would have applied to require disclosure of the record. The IPC stated that the public interest in protecting business interests is clearly outweighed by the compelling public interest in disclosure of the record for the purposes of advancing the fairness and comprehensiveness of the environmental approval process, informing the public about the potential effects should the certificate of approval be granted, and ultimately enhancing environmental protection and public health and safety.

As a result, the IPC upheld the Ministry’s decision to disclose the record at issue.

Q&A

Q & A is a regular column featuring topical questions directed to the IPC.

Q: How do I protect myself against identity theft?

A: There are a number of precautions you should take to protect yourself against identity theft. The IPC has published two papers on this issue. *Identity Theft: Who’s Using Your Name?*, was

released in 1997. *Identity Theft and Your Credit Report: What You Should Do to Protect Yourself*, part of the IPC’s *If you wanted to know...* series, was released in July 1999. Both can be downloaded from the IPC’s Web site or ordered from the Communications Department.

Multi-level efforts to promote Freedom of Information

CONTINUED FROM PAGE 1

tion. The public has a right to know this information, and I feel it is my obligation, and indeed my statutory responsibility, to ensure that this matter is fully addressed.”

“... improving the effectiveness of FOI is very important to me. I have made it a priority to raise this issue whenever I can within senior levels of government.... My annual report is the principal vehicle for reporting on the status of government compliance with the *Acts*, and I want to make it clear to everyone here that my next annual report will be building on this theme.”

The Commissioner's 1998 annual report, released in June 1999, was the first step in this new direction. In her address to the conference, the Commissioner cited the strong demand the IPC faced for copies of that report. For the first time ever, the IPC had to have additional copies printed.

The Commissioner also stressed the IPC's willingness to work collaboratively with government to help ensure that access and privacy provisions of legislation or government programs are adequately and appropriately addressed.

“The overhaul of the *Social Assistance Reform Act* and the creation of the new Legal Aid Ontario Corporation are two good examples. We believe

that the public has benefited from this consultative approach, and we are committed to building on these successes. Perhaps the best example of our current work with government is the Integrated Justice Project. Many of you will know that this enormous government initiative will fundamentally restructure the entire justice system. It is very strongly technology-based, and presents significant access and privacy challenges.”

“I want to commend the Ministry of the Attorney General for recognizing these challenges and for addressing them upfront and early in the project's development. A working group on access and privacy has now been operational for approximately six months.... I'm confident that the combination of our early involvement and the Ministry's commitment to addressing access and privacy issues will allow for a new and improved justice system that can still respect the rights and obligations of the province's access and privacy scheme.”

Commissioner Cavoukian also presented a brief overview of major developments in the field of privacy.

A copy of the Commissioner's speech is available on the IPC's Web site, http://www.ipc.on.ca/web_site.eng/whatsnew/whatsnew.htm.

IPC **PERSPECTIVES**

is published by the **Office of the Information and Privacy Commissioner**.

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: <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