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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

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Information Management

FIFTY YEARS FROM NOW, IF SOMEONE WERE interested in knowing what your department, agency or ministry did, what records would they need to understand it? What is the key role of your organization in society? Why does it exist? Would the records and filing systems your department created enable a member of the public to find the answers to these questions?

These are the kinds of questions Ontario Public Service managers should ask when considering how they handle the information in their care. Records have a life cycle ... from creation, through intensive operational use, to occasional later use, to eventual destruction or archival retention.

The Archives works with ministries to make sure that their information is well managed throughout its life cycle. "It's vital to the continued operation of the government, and there is legislated right to public access. So information needs to be managed in a way that makes it accessible," says Ian Wilson, Archivist of Ontario.

"What the *Freedom of Information and Protection of Privacy Act* (the *Act*) did for us was reinforce the sense that information is important — an asset," he says. "It needs to be managed the same way we manage space, money and human resources."

For archivists, there is an essential link between public access under the *Act* and

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Ian Wilson, Archivist of Ontario, works with provincial government organizations to make sure their information is well managed.



Information Management

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information preservation "... we can only make use of information if it exists," says Wilson.

"If you really want to run a government that isn't accountable, you don't keep any records. But if a government is to be accountable to the people, then we need good records of the key events, decisions and policies," says Wilson.

The Archives plays an essential role in preserving government records over time. Under the *Archives Act* (1923, amended 1972) no record created by the Government of Ontario and its major boards, commissions or agencies can be disposed of or destroyed in any way without the authorization of the Archives.

The *Archives Act* gives the Archives custody of all official Ontario government records after they are no longer needed for administrative use.

This is a monumental task. The Archives of Ontario's current holdings consist of 200,000 cubic feet of textual records, 30,500 historical maps, 127,000 architectural drawings, 17,000 hours of audio, film and video recordings, 3,200,000 photographs, 50,000 published volumes and 50,000 reels of microfilmed records. The collection documents Ontario's history from the late 1700s to recent periods.

If the Archives' records were stacked up and arranged side-by-side they would cover a hockey rink to a depth of four metres.

The Archives' government record collection and rate of records transfer have both grown substantially in recent years. Archival textual holdings increased from 59,000 cubic feet in 1979 to 200,000 cubic feet in 1994, an increase of 239 per cent. Last year, they took in 20,000 cubic feet of files. This is only a small portion of the total records created by the government each year.

As a result of the *Act*, ministries, departments and agencies are transferring records to the Archives sooner. Few records are kept by a government organization longer than seven years. Within that time frame a decision must be made whether to transfer them to the Archives or have them destroyed.

"When records are in the Archives' custody and control, we are responsible corporately to make the access decision on the body of records

presented to us," says Wilson. "Since 1988, we have had 1,000 requests under the *Freedom of Information and Privacy Act* and reviewed about 330,000 pages."

"We have the largest body of records, subject to the *Act* in Ontario government, about 180,000 cubic feet. Certainly it is the most diverse body of records, and it is a body of records that we as an institution didn't create."

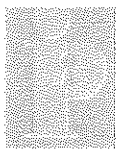
Wilson says this can lead to problems administering the *Freedom of Information and Protection of Privacy Act*. Problems other ministries and agencies don't have. They are administering freedom of information and protection of privacy for relatively recent records that they created. They know the programs, the filing system and the sensitivity of the records.

The Archives eventually receives a portion of records from all ministries for long term maintenance. Since the Ontario government does not have a standard filing system, there is great diversity in the way records are organized. Sometimes file lists for transferred records are either poorly done or missing completely. Inadequate file lists, combined with the sheer volume of records, create difficulties in responding to access requests.

The Archives is developing guidelines and working with government organizations to improve the way they manage their information. This will benefit the ministry or agency in their own operations and ability to respond to access requests and, later, help the Archives in dealing with transferred records.

Beginning last year, a series of Recorded Information Management Fact Sheets were produced and distributed by the Archives to program managers across the Ontario Public Service. The aim is to provide some practical, plain language advice on managing their information. In January, the Archives also issued guidelines to Ministers' Offices explaining their responsibilities under the *Archives Act* for disposition of Ministers' Office records.

"To maintain official records as a key asset of government, we need to take a proactive approach to managing them well, and to providing convenient public access," says Wilson ■



Summaries

Investigation I93-095P

An individual was concerned that the Workers' Compensation Board (the Board) had disclosed her entire claims file, which included her medical information, to her employer.

The individual stated that because some of the documents, which contained her medical information, had been incorrectly filed in her correspondence file, they were disclosed to her employer before she had the opportunity to object, as permitted by the *Workers' Compensation Act (WCA)*.

The file in question included three memos written by a Board claims adjudicator, a copy of the adjudicator's "Summary of Prior or Subsequent Claim," and a report from a walk-in clinic.

Under section 71(2) of the *WCA*, where there is an issue in dispute, the Board can give the employer access to records the Board considers relevant. However, section 71(5) provides that before doing so, if the records are medical reports or opinions, the Board must notify the worker and give her/him an opportunity to object.

With respect to the memos and the summary written by the adjudicator, the IPC agreed with the Board that these memos

could not be considered medical reports or opinions since these documents were not written by a medical practitioner.

The memos were about the complainant's request for a change of doctors, and the "Summary of Prior or Subsequent Claim" gave the background and status of her compensation claim.

However, it was the opinion of the IPC that the report from the medical practitioner at the walk-in clinic was a medical report. This view was supported by a decision of the Workers' Compensation Appeals Tribunal which had addressed the walk-in clinic report. The decision stated in part that "... the Board inadvertently sent the employer a medical report from a medical walk-in clinic."

The IPC found that the disclosure of the walk-in clinic report to the complainant's employer was not in compliance with section 42 of the *Freedom of Information and Protection of Privacy Act*.

The IPC recommended that in order to prevent any inadvertent disclosure of medical reports or opinions to employers in the future, the Board should remind all staff to ensure that incoming documents are carefully reviewed before filing.

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Q&A

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

Q: I am a Freedom of Information and Privacy Co-ordinator and I need some advice about whether or not to release information under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act (the Acts). Can the Information and Privacy Commissioner/Ontario (IPC) help?

A: The IPC is not in a position to give you advice on how to deal with requests under the *Acts* because we may be asked to review your decision in an appeal or compliance investigation. The Commissioner ensures individual's

rights are protected under the *Acts*, and provides an independent review of requests from people who have been denied access to government information, or who feel their personal information has not been protected by the government.

The Freedom of Information and Privacy office of Management Board Secretariat can help institutions, by providing training, legal, policy and operational advice.

The Freedom of Information and Privacy office of Management Board Secretariat can be reached at (416)327-2187.

Appeal Process Streamlined

The IPC considers timely access to information critical to the principles of the legislation.

THE SOONER THE BETTER IS THE VIEW OF THE people of Ontario when it comes to access to information under freedom of information legislation.

In response to the public's demand for high-quality and timely service, the IPC has been working toward streamlining the appeal process and subsequently decreasing the time it takes to process an appeal. Regular client surveys to monitor progress have been part of the process.

The IPC began these changes in 1992, when the agency announced that it would be making refinements to the appeal process, and that it would be implementing these changes in phases. At the time some appeals were taking a number of months to resolve.

Phase one was introduced in October 1992, and applied to all institutions covered by the *Acts*. The refinements introduced during this phase increased short-term efficiency and improved service within the IPC.

Phase two began in January 1993 and continued through to March 1995. During this period, the IPC invited 14 selected provincial and municipal institutions to participate in an Appeals Pilot Project, which was established to improve client service by further refining the appeal process.

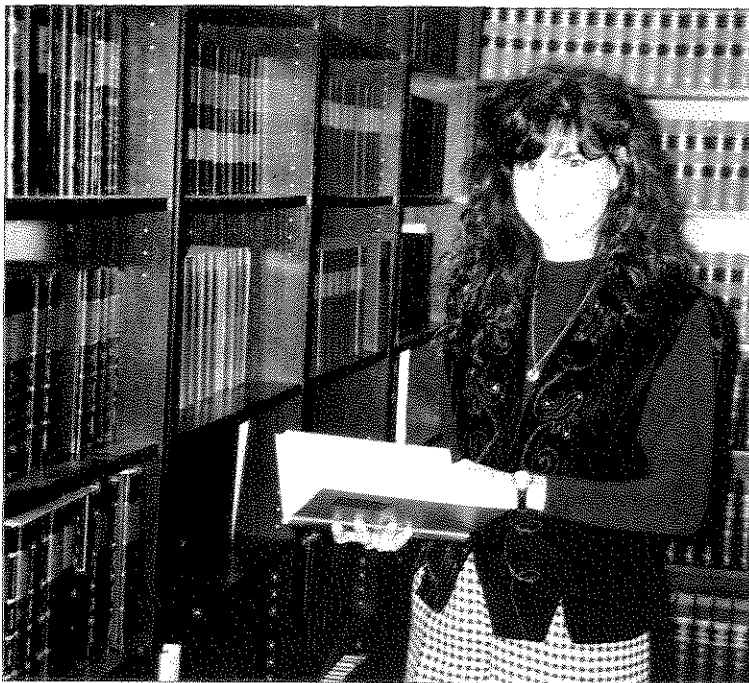
The institutions participating in the Appeals Pilot Project were asked to help meet an objective outlined in the IPC's Strategic Plan which requests that 95 per cent of all appeals be resolved within four months. Through the pilot project, it was found that a great majority of appeals could be successfully resolved within this time frame. Many appeals were processed well before this deadline.

This four-month objective was met through strict adherence to established time lines by all those participating in the Appeals Pilot Project, and the adoption of a computer tracking system by the IPC to closely monitor all appeals moving through the system.

Based on these results, a four-month time-based process will apply to all appeals received by the IPC commencing April 1995. The IPC is looking to gain the support of the institutions in adhering to these guidelines. As they have done in the past, the IPC will continue to advocate mediation as the least labour-intensive means of resolving appeals.

The IPC considers timely access to information critical to the principles of the legislation. It helps ensure government accountability, particularly since the value of information often diminishes over time.

In its Three-Year Review of the *Municipal Freedom of Information and Protection of Privacy Act*, the Standing Committee also expressed concern about delays in the processing of appeals. The report stated that the Committee would evaluate the IPC initiatives aimed at shortening the process before considering statutory time limits.



The IPC Library will be featured in the next issue.

Information Highway Principles

Access and Privacy Principles for the Information Highway

THE IPC HAS SUBMITTED A SERIES OF ACCESS AND privacy principles to the Canadian Radio-television and Telecommunications Commission (CRTC) and Industry Canada for use in their consultations on the development of the information highway in Canada.

The purpose of these principles is to ensure that access and privacy are considered early in the development of the information highway, rather than once the infrastructure of the information highway has been firmly established.

The IPC was concerned that if access and privacy principles were not addressed the public may not use the new technologies to their fullest. Consequently, they made the principles general enough so they could be used by both the public and private sectors.

These principles were written and presented to the Ontario Library Association's Coalition for Public Information in the summer of 1994. The coalition is concerned that both the voice of the public and industry be considered in the development of the information highway.

Since then, the coalition has included the access and privacy principles in a document called "Future-Knowledge: A Public Policy Framework for the Information Highway" which will, upon completion of the consultations with the public, be submitted to the Information Highway Advisory Council.

This year, the IPC also included the principles in a discussion paper presented to the Information Highway Advisory Council called "Access, Affordability and Universal Service on the Canadian Information Highway."

The following is a short summary of the access and privacy principles for the information highway:

Access Principles

1. Universal and equitable access should be the most important feature.

2. Access should be promoted through public education and training.

3. The implications for access to information should be considered before introducing or regulating any new technology or service.

4. The information highway should be recognized as an opportunity to enhance access to information of interest to the public.

5. Initially the information highway should not replace existing methods of accessing services and information.

Privacy Principles

1. Privacy should be respected and protected.

2. Before introducing any new technology or service on the information highway, the impact on privacy should be considered.

3. The collection, retention, use and disclosure of personal information should be governed by policies and procedures based on fair information practices, established in law.

4. Information technologies or services on the information highway that threaten to compromise privacy should be accompanied by appropriate measures to maintain privacy at no additional cost to the individual.

5. Public education and training should be provided about any security/privacy issues surrounding the use of the information highway.

6. Personal information should be protected through the implementation of appropriate security safeguards.

7. A means should be established to handle complaints and to provide redress for improper use of personal information.

For a copy of "Access and Privacy Principles for the Information Highway," please contact Lisa MacKenzie in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

Summaries

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Order M-452

A Town received a request for the records detailing cellular phone costs incurred by its Administrator for the years 1992 and 1993. The requester asked that the detailed listing of the chargeable calls included with each invoice be provided.

In response, the Town provided access to the portion of the invoice which showed the total amount billed for the month (the account summary), with the exception of the account summary issued in September 1992.

The Town indicated that it did not have custody or control of the list of chargeable calls or the account summary for September. The requester appealed this decision.

The sole issue in this appeal was whether the Town had custody or control of the records.

The Town submitted that it never had possession of the records, as it was agreed between the Town and the Administrator that he was not required to provide the Town with a detailed breakdown of the chargeable calls as part of the invoice approval process.

The Town argued that, while the records were held briefly by the Administrator, it was not as part of his official capacity and the records were, therefore, never in an employee's possession.

The account summaries disclosed to the appellant showed that the phone was leased in the Town's name and that the monthly invoices were sent to the municipal building to the attention of the Administrator. The Administrator was authorized to approve payment of the amount indicated in each account summary, and forwarded the account summary portion of the invoices to the Town's Treasury Department, which then remitted payment in full.

It was indicated by the Town to the appellant that the account summary issued in September 1992 had been discarded by the Administrator because an overpayment on the account had been made. As no money was owed, the account summary was not turned over to the Treasury Department and was discarded with the rest of the bill.

The Town asserted that it never had a right to possess the records prior to their disposal. The Town submitted that it considered the detailed listing of chargeable calls to be the personal information of the Administrator and, as such, the Town passed a resolution which stated that the Administrator was not required to submit this information to the Town.

By agreeing that the records of calls made and received were the personal information of the Administrator, the Town stated that, by inference, he could do with them what he wished. The Town submitted that the records did not relate to the Town's mandate or function, that it had never relied on the records, and that the records had never been integrated into the other records kept by the Town.

The IPC found that the responsible administration of public funds is central to the mandate and function of every public institution and the Town had an obligation to properly manage its record holdings in accordance with the intent of the *Act*. The only limits on the Town's custody or control of the requested records had been imposed by the Town itself. The IPC found that the Town did have the requisite degree of control over the records within the meaning of the *Act*.

The IPC ordered the Town to obtain copies of the records from the cellular phone company and to respond to the request without recourse to any fee ■

IPC

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

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