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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO



ANN CAVOUKIAN, Ph.D., COMMISSIONER



Commissioner Ann Cavoukian, with Assistant Commissioner Tom Mitchinson (right) and Policy and Compliance Director Brian Beamish, made a presentation on privacy issues at a recent meeting of Citizens for Local Democracy at Toronto's City Hall. (See story on page 2.)

IPC Reaching Out to Ontario

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ONTARIO INFORMATION AND PRIVACY COMMISSIONER Ann Cavoukian has launched a new outreach program, *Reaching Out to Ontario*, as part of the IPC's efforts to help educate the public about Ontario's access and privacy laws and to help keep the public abreast of access and privacy issues.

Under this program, a team from the IPC visits three different regions of Ontario each year for a series of public meetings, media interviews and special presentations to business, university or other groups. A key component of these trips are meetings with area Freedom of Information and Privacy co-ordinators.

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Privacy: Overview of key issues

ONTARIO INFORMATION AND PRIVACY COMMISSIONER Ann Cavoukian provided an overview of many of the privacy issues facing Canadians today in a recent presentation, *Erosion of Privacy Rights?*, to the Citizens for Local Democracy group.

In her presentation at this open meeting at Toronto's City Hall, the Commissioner looked at issues that included:

- the potential impact on privacy of the transfer of government services/ programs to the private sector;
- the increased use of technology and the potential for an erosion of privacy rights if privacy protections are not built in;
- the potential impact on individuals of the mishandling of personal information;
- why e-commerce can only reach its full potential if privacy and security issues are resolved;
- the Canadian privacy legislative framework.

The Commissioner outlined what government organizations are covered

under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*, and what the privacy provisions of the Acts mean.

She also cited a number of the reasons why individuals would file a privacy complaint with the IPC, including improper collection, use or disclosure of personal information by a government organization.

The Commissioner explained that the IPC investigates privacy complaints, reports on these investigations and makes recommendations to government institutions.

After discussing the status of Bill C-6, the federal privacy legislation drafted to cover the private sector, the Commissioner stressed that she has encouraged the Government of Ontario to enact complementary legislation.

Also attending the presentation were Tom Mitchinson, Assistant Commissioner, and Brian Beamish, the IPC's Director of Policy and Compliance, who participated with the Commissioner in a question and answer session following the Commissioner's presentation.

Q&A

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

Q: What constitutes a record under freedom of information and protection of privacy legislation?

A: Government organizations hold their information in "records," which are defined by the legislation as: "any record of information however recorded, whether in printed form, on film, by electronic means or otherwise...." The

legislation goes on to specify that this includes correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof.



IPC Reaching Out to Ontario

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The first of these educational initiatives was to southwestern Ontario late last year, when presentations were made in London, St. Thomas and Chatham. This year, an IPC team led by Commissioner Cavoukian is visiting the Kingston-Belleville area in April, while a team led by the Assistant Commissioner, Tom Mitchinson, will visit the Thunder Bay area in June. In November, a team led by the Commissioner will deliver a number of presentations in the Hamilton-Niagara area.

The core sessions for each of these initiatives include public meetings in community libraries.

“The public sessions are a priority,” said Commissioner Cavoukian. “Throughout each year, we use a variety of avenues — from major speaking engagements to IPC publications to media interviews, and our Web site — to try to help keep the public aware of freedom of information and privacy issues. We consider these public information sessions to be a very important part of our outreach program.”

The information-exchange meetings for co-ordinators are another priority, said the Commissioner. “These sessions provide the opportunity for a direct exchange of information.”

As schedules for each of the three educational initiatives for 2000 are finalized, they will be posted to the IPC’s Web site (www.ipc.on.ca). Some of the sessions are open to everyone; attendance at others may be limited because of space. Contact information — when other groups, such as a Chamber of Commerce, are the host for a specially arranged meeting — will be listed on the schedules when they are posted.

Co-ordinators in the region being visited will receive an invitation to a co-ordinators meeting — and a reservation form. If your region is not in-

cluded in this year’s schedule, but you would be able to attend one of these special sessions, call Bob Spence, the IPC’s Communications Co-ordinator, at 416-326-3939, or 1-800-387-0073, for more information.



The Information and Privacy Commissioner/ Ontario

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Southwestern Ontario Educational Initiative

November 8 • 9 • 10 • 11 1999

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Your Access and Privacy Rights



Summaries

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

Order PO-1734 (Appeal PA-990416-1)

The appellant submitted an access request to the Ministry of Health and Long Term Care on October 1, 1999. The Ministry did not open the request until November 2, 1999. At that time, it advised the appellant that he would receive a decision within 30 days.

On appeal, the IPC addressed the timing of an institution’s response to a request as the sole issue.

The IPC found that the Ministry would have received the request some time during the week of October 8, 1999, and on that basis determined that the Ministry did not issue a decision to the appellant within the 30-day time limit as required by sections 26 and 29 of the *Freedom of Information and Protection of Privacy Act*.

In commenting on the Ministry’s delay in opening the request letter, the IPC said that “the actions of the Ministry are indefensible and cannot be adopted as a strategy for dealing with workload pressures ... the 30-day period under section 26 begins upon receipt of an access request, not at some date in the future when the Ministry feels that workload capacity can accommodate the demands associated with responding to the request.”

The IPC concluded that “the Ministry’s actions in dealing with the appellant’s request were clearly in conflict with the express provisions of the *Act*. By taking this approach, the Ministry is undermining one of the fundamental principles of the *Act*, which is to provide timely access to information held by the government.”

In a novel order provision, the Ministry was ordered to “immediately desist from any practice of delaying the opening of correspondence appearing to contain requests for access under the *Act* and to henceforth comply with the statutory provisions contained in sections 26, 27 and 29 of the *Act* in responding to requests.”

Order MO-1241 (Appeal MA-990078-1)

This order dealt with a request for a Peel Regional Police Services Board investigation file.

The request was made by an individual who had asked the Police to investigate an alleged theft of money from her deceased father. The individual provided the Police and the Commissioner’s office with evidence which established that she was her father’s personal representative, and that the request for information related to the administration of her father’s estate. The IPC found that she was entitled to request the information on her father’s behalf, despite the fact that at the time of her father’s death there was no money left in his bank account.

The IPC found that disclosure of a police officer’s notes which documented witness interviews would constitute an unjustified invasion of privacy of the witnesses, and upheld the application of section 49(b).

The IPC found that certain information was not exempt under section 49(b) in two other records, a report submitted by a police officer to an assistant Crown attorney and a memorandum from the assistant Crown



What would be of help to you?

WHAT WOULD YOU LIKE TO SEE ON THE IPC's Web site?

The design and content of the site are continually reviewed and a number of design changes are being implemented this year. Several new pages have been added in recent months and various other changes are being considered.

The IPC's Web site provides information for a wide audience — from Freedom of Information and Privacy Co-ordinators and other government

employees to teachers, students, access and privacy advocates, the news media, researchers, business, legal and human resources professionals, and people from many other walks of life.

A short questionnaire will be soon to be added to our Web site, asking visitors what resources they find most helpful and what else they would like to see on the site (<http://www.ipc.on.ca>).

We would appreciate receiving your input and suggestions.

Recent IPC publications

AMONG RECENT IPC PUBLICATIONS ARE:

- *What Students Need to Know About Freedom of Information and Protection of Privacy*, a guide for Grade 5 teachers that was prepared by the IPC with the assistance of classroom teachers and curriculum specialists. The guide includes teachers' notes, an introduction that provides students with an overview of the subject matter, classroom activities and resources for lesson planning. This material

complements the Grade 5 Social Studies unit on Government in Canada.

- *How to protect your child's privacy online*, part of the IPC's *If you wanted to know...* series, encourages parents to teach their children to be "Net smart" and provides a number of practical tips for parents on how to help accomplish this.

All IPC publications are available on the IPC's Web site, <http://www.ipc.on.ca>.

Upcoming presentations

AMONG UPCOMING SPEECHES AND PRESENTATIONS by IPC staff are:

- a presentation by Commissioner Ann Cavoukian to the Tourism Innovation 2000 Conference, sponsored by the Conference Board of Canada,

April 11, at the International Plaza Hotel and Conference Centre.

- a presentation by the Commissioner to the Women's Executive Network, June 7, at the Toronto Lawn Tennis Club.



Summaries

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attorney to the police officer. It was the position of the Police that these records were covered by solicitor-client privilege.

In Order M-52, the IPC had found that section 12 did not apply to pages of a Crown Brief prepared for the Crown attorney by municipal police. Based on the recent Supreme Court of Canada judgment, *R. v. Campbell* [1999]1. S.C.R. 565, the Police submitted that the conclusion in Order M-52 does not reflect the law of solicitor-client privilege in Canada.

R. v. Campbell addressed a claim of solicitor-client privilege by the RCMP for advice received from a Department of Justice lawyer respecting the lawfulness of a particular investigative technique. The Court found that:

The solicitor-client privilege is based on the functional needs of the administration of justice. The legal system, complicated as it is, calls for professional expertise. Access to justice is compromised where legal advice is unavailable. It is of great importance, therefore, that the RCMP be able to

obtain professional legal advice in connection with criminal investigations without the chilling effect of potential disclosure of their confidences in subsequent proceedings.

In applying this principle to the circumstances in that case, the Court concluded that the RCMP consultation with the Department of Justice lawyer, "...falls squarely within this functional definition..." The Court disagreed with the proposition which had been adopted by Commissioner Wright in Order M-52 that because a police officer is not an agent of the Attorney General, no solicitor-client relationship could exist between a Crown counsel and a police officer. Accordingly, the IPC found that Order M-52 was no longer a proper statement of the law of Canada, and its precedent was not followed.

In this case, the IPC found that the Police had sought legal advice from a professional legal adviser, the assistant Crown attorney, and, as such, the communications relating to that purpose are subject to the common law solicitor-client privilege, and section 12 applied.

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