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# IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER



A special guest at a recent *Information Technology Association of Canada* meeting, Commissioner Ann Cavoukian (second from left) heard arguments by members of the University of Toronto debate club on whether privacy is a human right. The Commissioner then delivered a presentation on the privacy issues related to smart cards. Pictured (from left to right) with the Commissioner are students Michael Meeuwis, Stephanie Wilde, Rory McKeown, and Jenna Slotin.

## Library Outreach program expanded

PHASE TWO OF THE INFORMATION AND PRIVACY Commission's *Library Outreach* program is being rolled out this spring. The program was started last year by Commissioner Ann Cavoukian to complement a number of other new initiatives launched to help raise public awareness of access and privacy issues.

A letter from the Commissioner and copies of the IPC's core brochures were distributed to each of the more than 900 libraries in Ontario last year, with the assistance of three library organizations.

In conjunction with another IPC program, four public information meetings – co-sponsored by the IPC and individual libraries – were held in different regions of Ontario.

"In various jurisdictions," said Commissioner Cavoukian, "freedom of information commissioners and library heads have worked jointly to promote public access to government records. I am delighted with the response we have received from the Southern Ontario Library Services, the Ontario Library Services – North, and the

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# Recent IPC publications

THE IPC HAS ISSUED THE FOLLOWING PUBLICATIONS since the last edition of *Perspectives*:

1. *Submission to the Ministry of Health and Long-Term Care in Response to Ontario's Proposed Personal Health Information Privacy Legislation for the Health Sector (Health Sector Privacy Rules)*. October 2000.
2. *Routine Disclosure/Active Dissemination – A Best Practice in the City of Mississauga*. November 2000.
3. *Municipal Freedom of Information and Protection of Privacy Act – How it Works at the Town of Milton*. November 2000.
4. *Submission and Speaking Notes for presentation to the Standing Committee on General Government reviewing Bill 159, the Personal Health Information Privacy Act, 2000*. February 2001.
5. *Suggested wording for changes to Bill 159, the Personal Health Information Privacy Act, 2000*. February 2001.
6. *F.A.Q.: Access and Privacy in the School System*. February 2001.
7. *Police Officers' Notebooks and the Municipal Freedom of Information and Protection of Privacy Act: A Guide for Police Officers*. February 2001.

All of these publications and more are available on the IPC's Web site at [www.ipc.on.ca](http://www.ipc.on.ca).

## Library Outreach program expanded

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Toronto Library. They helped us distribute more than 25,000 brochures to libraries to help raise the public's awareness of its rights to access information and to have personal information protected."

In phase two, the IPC will be providing speakers for a number of the regional library staff conferences across Ontario.

These 30-minute presentations will include a brief review of the provincial and municipal Freedom of Information and Protection of Privacy legislation, and a discussion of some of the common questions that the IPC and libraries receive about individuals' rights to access government-held information and their right to privacy protection.

The IPC speaker will also explain to library staff what resources are available on the IPC's Web site.

Under the *Library Outreach* program, each library has been advised of how it can obtain more copies of the three core brochures – *Access to Information under Ontario's Information and Privacy Acts*, *The Appeal Process and Ontario's Information and Privacy Commissioner*, and *Your Privacy and Ontario's Information and Privacy Commissioner*. These and other publications can be ordered through the IPC's Communications Department (416-326-3333 or 1-800-387-0073) or downloaded from the IPC's Web site ([www.ipc.on.ca](http://www.ipc.on.ca)).

Library board Freedom of Information and Privacy Co-ordinators or other library staff who would like more information about the IPC's *Library Outreach* program can contact Bob Spence, IPC Communications Co-ordinator, at 416-326-3939.



# New privacy complaint process

THE COLLECTION OF PERSONAL INFORMATION FROM residents of Ontario by provincial and municipal government organizations — and the use, disclosure and disposal of that information — is governed by rules established under Ontario’s *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the Acts).

Anyone who believes that a provincial or municipal government organization has failed to comply with one of the Acts – and that his or her privacy has been compromised as a result – may complain to the Information and Privacy Commissioner.

The IPC recently created a new privacy complaint process. Here is a brief outline:

## More flexibility

Applying the same process to all privacy complaints received does not provide the flexibility to accommodate the unique needs of each individual complaint. Consequently, the IPC has designed a system that enables less complex complaints to be handled in a summary fashion and allots more complex cases enough time and resources to facilitate a satisfactory settlement. All privacy complaints are analyzed at the *intake stage* to determine the best route to proceed.

## General intake functions

For the vast majority of files, an intake analyst will complete various intake functions, including contacting the complainant to clarify the privacy issues and to explain the IPC procedures for processing privacy complaints. The intake analyst will also contact the government organization that the complainant has cited to obtain its position about the complaint and to discuss the possibility of settlement.

## Screening

The Commissioner has delegated authority to the registrar and intake analysts to “screen out” complaints where the IPC has no jurisdiction or where it is determined that this type of file should not proceed through the privacy complaint process. Privacy complaints may therefore be dismissed at the intake stage.

## Intake resolution stream

The registrar will stream a privacy complaint to the *intake resolution stream* if it appears that a quick informal resolution can be achieved without having to go through a formal investigation.

## Investigation stream

The registrar will stream all other privacy complaint files to the *investigation stream*. A mediator will be assigned to clarify the complaint, contact the parties, gather information, and attempt a settlement. If the file is not settled, the mediator will send the parties a *draft privacy complaint report*, which includes a summary of the complaint; a discussion of the information obtained during the investigation, conclusions, and findings (if any). The parties are given an opportunity to comment on any factual errors and/or omissions in the *draft privacy complaint report*. The mediator will then send the parties a *final privacy complaint report* under his/her signature, with the endorsement of the Commissioner or Assistant Commissioner, and will later follow-up with the organization to ensure that any recommendations have been implemented.

## Advantages of new process

The main advantages are:

- Complaints that the IPC believes should not proceed through the privacy complaint process will be screened out.



# Mediation success stories

THE IPC IS COMMITTED TO MEDIATION AS THE preferred method of dispute resolution. To help demonstrate its commitment, and to encourage parties to think creatively about resolving appeals informally, a new regular feature, **Mediation Success Stories**, is being added to *IPC Perspectives*.

Mediation is the process by which the IPC investigates the circumstances of an appeal and attempts to effect either a full settlement of all issues between the parties in the appeal, or the simplification of the appeal through any or all of the following:

- settlement of some issues;
- reduction of the number of records in dispute;
- clarification of the issues;
- education of the parties, leading to a better understanding of the issues and the *Acts*.

While space limitations only permit us to summarize a few of the mediation success stories, congratulations go out to all institutions and appellants who worked together with an IPC mediator to successfully resolve appeals.

## Underwater logging

The Ministry of Natural Resources received a request for access to information relating to the operations of a particular underwater logging company. The Ministry notified the company as an affected party and sought its views regarding disclosure of the records. In the absence of a reply from the company, the Ministry's decision was to partially release records with severances under sections 17 (third party information) and 21 (personal privacy) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The company objected to the Ministry's decision to grant access to the records and filed a third party appeal.

In discussions with the mediator, it became clear that the requester was specifically interested in finding out whether the company intended to harvest sunken logs in a particular bay. The requester advised the mediator that he believed

there are potentially toxic chemicals at the bottom of the bay, and was concerned that log harvesting may cause disruptions to the ecosystem.

The company advised the mediator that it had no intention of harvesting logs in the bay at this time. The company also indicated it was surprised to learn that there may be toxic chemicals in the bay, and suggested it would be grateful if the requester could share any information pertaining to this. The requester agreed to provide the company with any research that becomes available.

In the end, the requester was satisfied with the communication that was initiated with the company, and withdrew his request for access to the records.

## Application termination

The Ministry of the Solicitor General received a request from the appellant for access to information relating to the termination of her recruitment application by the Ontario Provincial Police (OPP). The Ministry issued a decision claiming that the records were employment related and were therefore outside the jurisdiction of the *Act*, pursuant to section 65(6).

During mediation, the appellant explained that her real interest was in being provided with a reason for the termination of her application. Probing further, the mediator learned that the appellant would forego getting access to the records if she could have a meaningful conversation with a senior employee at the OPP, who would discuss the OPP's application process in general and the appellant's application in particular.

In discussions with the mediator, the Ministry suggested that the appellant speak with a particular manager in the recruitment section of the OPP, and a teleconference was arranged.

During the teleconference, the manager spoke directly to the appellant about the OPP application process and provided reasons for the termination of her application. The appellant had an opportunity to ask questions of the manager, learning



that she could re-apply for a position with the OPP. She received feedback on the areas of her application that needed work and the steps she could take to improve her chances of acceptance. The appellant thanked the manager for her comments. In turn, the manager offered to make herself available by telephone to the appellant to provide guidance and to answer further questions.

In the end, the interests of both parties were met. The appellant received the information she was seeking while the ministry was able to provide the information without compromising its position that the records were not within the jurisdiction of the *Act*.

### Purchase records

The Kawartha Pine Ridge District School Board received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *municipal Act*) for all records relating to purchases or leases of computer equipment and software for a specific department at a named school.

The board granted partial access to the records, and claimed the exemptions found in sections 10(1)(a) and (c) of the *municipal Act* (third party information) to deny access to the remainder.

During mediation, the appellant agreed that the appeal would be resolved if the board provided him with written confirmation that a meeting would be arranged between him and a board representative to discuss relevant leasing

arrangements and that available leasing documentation would be made available to him, subject to any restrictions under the *municipal Act*. The board provided such assurance. The appeal was resolved accordingly. A meeting was subsequently held between the appellant and the board. The appellant was fully satisfied with the results.

### Contract sought

The City of Toronto received a request under the *municipal Act* for a copy of a contract, with all schedules and appendices, between the City and a named company (the third party). The contract related to a specific treatment plant.

The City granted partial access to the records and claimed the exemptions found in sections 10 (third party information) and 14 (invasion of privacy) of the *municipal Act* to deny access to the remainder.

During mediation, the third party consented to the disclosure of additional information. The appellant then narrowed the scope of the request to four items. This removed the records to which section 14 had been applied.

The third party consented to a further disclosure of information. The City subsequently disclosed a public document which contained information useful to the appellant. The appellant then informed the Mediator that the appellant is no longer pursuing the appeal. The appeal was resolved because of the co-operation of all parties.

### New privacy complaint process

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- Complaints will be streamed by the registrar according to their particular or unique needs.
- Some complaints will be resolved informally in the *intake resolution stream* rather than going through the more formal *investigation stream*.
- Reports on **unresolved** *investigation stream* complaints will be publicly available to assist institutions in dealing with similar issues.

### What has changed?

The Commissioner has delegated authority to the registrar and intake analysts to screen out

certain privacy complaints. A new standard reporting format has been implemented for all privacy complaints.

Among other changes, an IPC mediator will contact the institution to obtain information on how any recommendations made will impact the institution, before sending the *draft privacy complaint report* to the parties.

The *final privacy complaint reports* for **unresolved** files will include the name of the institution and be made available to the public on the IPC Web site, unless the privacy of the complainant might be compromised by doing so.



# Summaries

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

## **ORDER MO-1366 Appeal MA-990197 City of Toronto**

The City of Toronto (the City) received a request from a member of the media for access to the list of the names of individual contributors to municipal candidates in the previous municipal election. Although these names, and the amounts each individual contributed, were available in a hard-copy form for the public to view under the provisions of the *Municipal Elections Act*, the requester stated that he wanted an electronic version of the records.

The City denied access to the electronic records, stating that the electronic version of these records, unlike the publicly available hard copies, were prepared by the City Clerk solely for the purpose of administering a contribution rebate program. Furthermore, the City stated that the records were publicly available and therefore exempt under section 15(a) of the *Municipal Freedom of Information and Protection of Privacy Act*, and that the disclosure of the records would contravene section 14 (personal privacy) of the *Act* because the records contained the personal information of identifiable individuals.

The requester (now the appellant) appealed the City’s decision, arguing that the records were not publicly available in an electronic format. He then identified that, as the personal information was already public, its disclosure could not be an unjustified invasion of privacy under section 14(1)(f). As well, the appellant stated that the *Act* authorized the disclosure of this personal information, because the information was collected to create a record available to the public under section 14(1)(c) and because under section 14(1)(d), its disclosure was authorized under the *Municipal Elections Act*. Finally, the appellant argued that the disclosure of this information was in the public interest, and that section 16 applied.

The IPC followed past precedents on the issue of access to electronic versions of records. The

records are not exempt under section 15(a) because the records were not publicly available in electronic format, and the electronic database contained slightly more information than was in the public record. The IPC also found that sections (14)(1)(c), (d) and (f) did not apply. These findings were based on the fact that the electronic version of the records contained slightly different information than the public records, and was prepared primarily for administration purposes. As well, the IPC identified concerns surrounding the possible manipulation and modification of records provided in an electronic version, as opposed to hard copies of similar information. Finally, the public interest override was found not to apply, as the public interest was satisfied by the disclosure of the hard-copies of the information available to the public.

The City’s decision to deny access was accordingly upheld.

Assistant Commissioner Tom Mitchinson included a postscript calling for public debate concerning the issue of access to records in electronic format. He identified that public records containing personal information are a “justified” invasion of privacy, but an invasion nonetheless. He stressed that the re-characterization of “unjustified” to “justified” is a difficult and fundamental one, and one that cannot be made in the absence of debate and clarity on the issue.

The appellant has applied to the Divisional Court for a judicial review of this order.

## **ORDER MO-1360-I Appeal MA-000129-1 Township of Southgate**

The appellant, on behalf of a group known as the Southgate Resident and Ratepayers’ Association (the Association), requested access to employee information from the Township of Southgate (the Township) pursuant to the *Municipal Freedom of Information and Protection of Privacy*



# Upcoming speaking engagements

THE COMMISSIONER, MEMBERS OF THE EXECUTIVE and other staff members of the IPC make pres-

entations to a wide number of groups. Among those coming up over the next two months are:

**April 19.** Brian Beamish, Director of Policy and Compliance, will participate on a panel that will explore *Promoting Confidence and Trust in Government Online to Canadian Citizens*, at the Security & Privacy for Government Online conference.

**April 23.** John Swaigen, a member of the IPC’s legal team, will address the legal aid clinics of eastern Ontario on access and privacy at their spring session in Picton.

**April 24.** Commissioner Ann Cavoukian will be addressing the Public Affairs Association of Canada on privacy issues.

**April 30.** Mike Gurski, a member of the IPC’s policy team, will speak about privacy issues in marketing at the Channels 2001 conference, hosted by the Institute for International Research.

**May 3.** The Commissioner will present on the electronic health care environment to a group of health care professionals called the “Canadian Users Group.”

**May 17.** An IPC team, led by Assistant Commissioner Tom Mitchinson, will be making a number of presentations in the Niagara Region as part of the IPC’s *Reaching out to Ontario* program.

**May 26.** The Canadian Institute for Health Information’s *E-Health 2001* annual conference will feature a presentation by Commissioner Cavoukian on PHIPA and related topics.

**June 4.** Commissioner Cavoukian will talk about the Ontario experience with privacy and citizen expectations at an Ontario Federal Council meeting.

**June 10.** The Commissioner will speak to the Centre for Health Information in Newfoundland on the importance of health information privacy.

**June 14.** Commissioner Cavoukian will speak on the privacy of electronic health records at the 13<sup>th</sup> Annual Information Technology Security Symposium.

**June 18.** At the conference, *Meeting New Standards for Managing Privacy of Health Information*, the Commissioner will talk about government initiatives for managing health information privacy.

**June 25.** In New York City, Ken Anderson, Director of Corporate Services and General Counsel, will speak about privacy law at the Practising Law Institute’s annual conference.



Commissioner Ann Cavoukian addressing a public meeting.



# Q & A

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

Summaries  
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**Q:** Both the printed *Directory of Institutions* and the *Directory of Records* are out of date. Can I get updated copies of these from the IPC?

**A:** Both of these directories are maintained by Management Board Secretariat's Corporate Free-

dom of Information and Privacy Office. Rather than continue to print directories once a year, that office opted to provide more frequently updated directories on its online site. To obtain the most up-to-date versions, visit the MBS Web site: [www.gov.on.ca/MBS/english/fip/](http://www.gov.on.ca/MBS/english/fip/).

Act (the Act). The Township denied access to the information pursuant to section 14 (personal privacy) of the Act. The Association appealed the Township's decision and the adjudicator sent a Notice of Inquiry to the Township and six affected persons.

Counsel for one affected person wrote to the adjudicator stating that the "Southgate Resident and Ratepayer Association" was not registered, nor was there a corporation listed under that name. In response, the adjudicator sent a letter to all the parties seeking representations on whether the Association had capacity to make a request and file an appeal under the Act. The adjudicator indicated that this issue would depend on whether the word "person" in sections 4(1) and 39(1) of the Act could be interpreted to include the Association.

The Township submitted that the term "person," as defined by the *Interpretation Act*, does not include unincorporated associations and as such the Association is not a person within the meaning of section 4(1) of the Act. The Association argued that the right of access to information under the Act is not comparable to the right to sue or be sued, and thus the common law restrictions on capacity were not applicable.

The adjudicator reviewed two Ontario court decisions which addressed the issue of capacity

in the context of a civil action and judicial review proceeding and concluded that the common law rule of capacity, applicable to court processes, was not determinative of the statutory right to commence a proceeding before a government agency and to appeal to a tribunal. The adjudicator found that in these cases, the issue of standing must be determined within the statutory context and by looking at the enabling statute of the relevant agency or tribunal.

In this case, the adjudicator concluded that the word "person" in sections 4(1) and 39(1) of the Act should be given a broad and liberal meaning to include unincorporated associations. The adjudicator examined the purposes of the Act and held that a narrow interpretation of the word "person" was not consistent with information being available to the general public pursuant to section 1(a)(i). The adjudicator stated: "The Legislature intended that government information which is not exempt should be disseminated to the public at large, and restrictions on the capacity of an individual or organization to make a request based on technical grounds, such as whether an organization is incorporated, would undermine this intention."

As a result, the adjudicator found that the Association has the capacity to make a request and to appeal any decision under the Act to the same extent as a natural person or a corporation.

## IPC PERSPECTIVES

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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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