

**REACHING OUT  
TO ONTARIO**

# **Right to Know Week and the IPC**

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**Information and Privacy Commissioner of Ontario**

Western University, London

September 27, 2016



Information and Privacy  
Commissioner of Ontario

Commissaire à l'information et à la  
protection de la vie privée de l'Ontario

[www.ipc.on.ca](http://www.ipc.on.ca)

# Our Office

- The Information and Privacy Commissioner (IPC) provides an independent review of government decisions and practices concerning access and privacy
- The Commissioner is appointed by and reports to the Legislative Assembly
- The Commissioner remains independent of the government of the day to ensure impartiality

# The Three Acts

- The IPC oversees compliance with:
  - *Freedom of Information and Protection of Privacy Act (**FIPPA**)*
  - *Municipal Freedom of Information and Protection of Privacy Act (**MFIPPA**)*
  - *Personal Health Information Protection Act (**PHIPA**)*

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# ACCESS TO INFORMATION

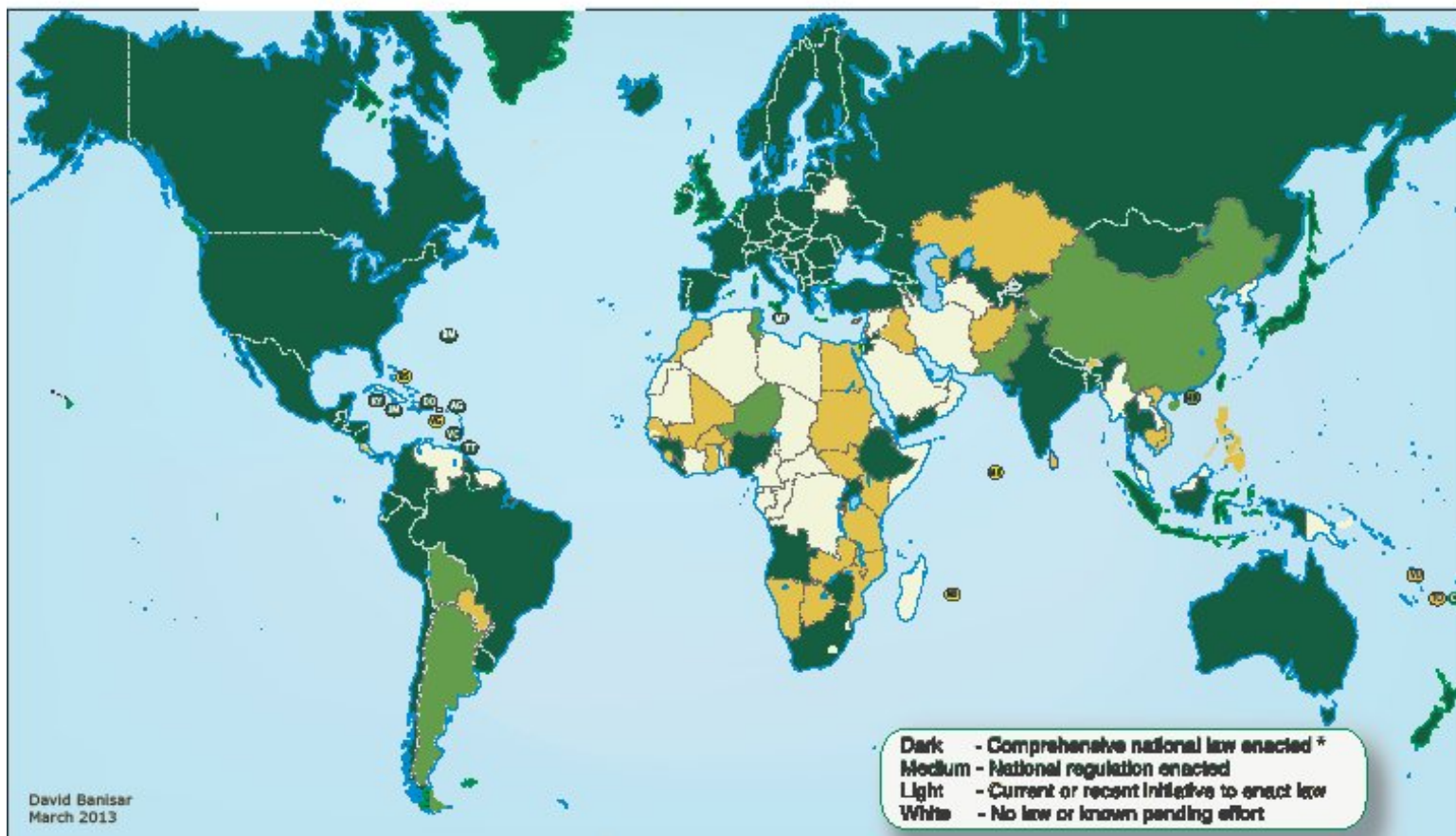


# 250 Years of Access to Information

- 2016 marks the 250th anniversary of the world's first freedom of information law
- In 1766, Sweden became the first country to recognize that citizens had a right to access unpublished information
- The *Freedom of The Press Act* abolished censorship of books and newspapers and required authorities to provide public access to all official records

# Countries with Access to Information Laws

## National Right to Information Laws, Regulations and Initiatives 2013



# Access to Information: *A Pillar of Democracy*

*“The overarching purpose of access to information legislation...is to facilitate democracy.”*

—Justice La Forest

*Dagg v. Canada (Minister of Finance), 1997*

# History of Freedom of Information (FOI) in Ontario

- The Commission on Freedom of Information and Individual Privacy was created in 1977
- Recommendations to the government made in 1980 were used as the foundation for Ontario's *FIPPA/MFIPPA*
- When *FIPPA* was introduced in 1987, Attorney General Ian Scott said:

“We do not now and never will accept the proposition that the business of the public is none of the public’s business.”



# FOI and Parliamentary Democracy

- The Attorney General also recognized that FOI laws involve political risks, but he was prepared to accept them:

I recognize and have no doubt that at some point in the future information could be made public under this new bill that could embarrass or harm the fortunes of the government of the day.

.....That potential risk, that potential cost, can and must be borne in the interest of freedom.

# Right of Access under *FIPPA/MFIPPA*

- Every person has a right of access to a record in the custody or control of an institution with limited exceptions
- Any record can be requested (the question “is this FOI-able” is a common one)
- Requesters can appeal an institution’s decision to the IPC, an independent oversight tribunal

# FOI in Ontario

- From 1988 to 2015, Ontario institutions have received 827,428 freedom of information requests:
  - 365,429 provincial
  - 461,999 municipal
- The IPC has issued 7,115 Orders on access to information appeals

# Open Government Furthers Access and Transparency

## Open Government: Key Concepts and Benefits

Highlights two critical goals of Open Government:

- 1. Enhance access to government-held information:** Information should be available to the public, and necessary exemptions from the right of access should be limited and specific (open by default)
- 2. Enhance public engagement:** Support and empower the public to make informed decisions, better engage with the government and have a more active voice in society



Open Government:  
Key Concepts and Benefits

September 2016



# Enhancing Access

Government-held information identified as high value should be publicly available, including information that is:

- Frequently sought through website searches, webpage usage, FOI or other requests
- Collected or produced in support of government priorities
- Used to create legislation, regulations, or related to asset management, procurement contracts and audited financial documents
- Useful for improving the delivery of policy, programs or services

# Enhancing Public Engagement

- A robust Open Government program that enables a true two-way dialogue with the public must:
  - Make information accessible and useful
  - Engage through multiple channels
  - Solicit and receive public input
  - Allow for review and analysis
  - Provide timely and consistent feedback

# Implementation Considerations

## Open Government: Key Implementation Considerations

- Comprehensive **evaluation and planning** can help achieve success
- Recognize that Open Government is an **ongoing program**, not a short-term project
- Conduct a **readiness assessment** – financial, technological and human resources



Open Government:  
Key Implementation  
Considerations

September 2016



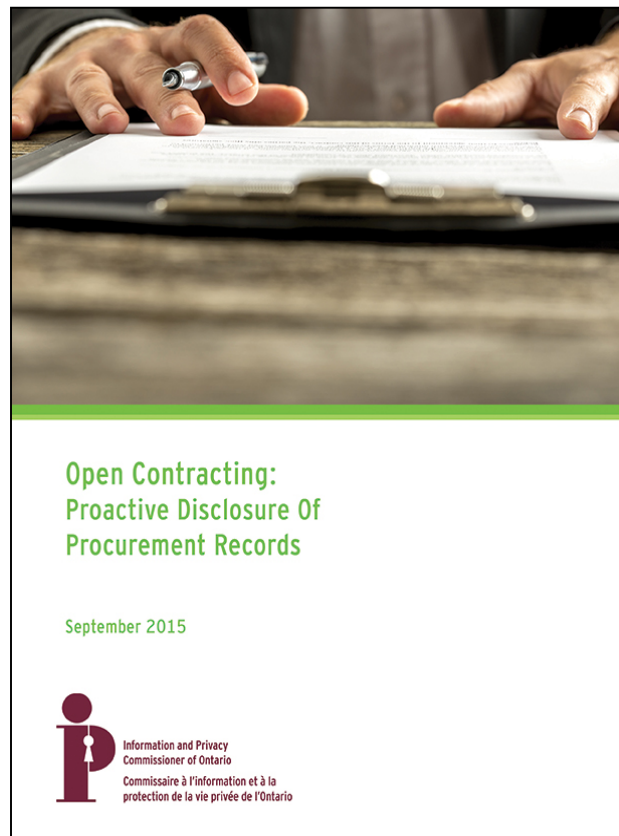
# Open Contracting and the IPC

- Since 1994, the IPC has been calling for greater transparency through routine and proactive disclosures:
  - In our 2005, 2006, 2013 Annual Reports, the IPC has advocated for greater transparency around procurement
  - Last November, the Ontario government completed the *Open Data Directive* which provided important direction for disclosure of procurement information



# Open Contracting – Benefits

- Open contracting has a number of benefits:
  - Improved public confidence and trust
  - Increased accountability on spending
  - Increased fairness and competition in contracting
  - Reduction in the number of access to information requests and appeals



# How to Implement Open Contracting

- An open by default approach to procurement records can be achieved by:
  - **Designing with transparency in mind:** Make proactive disclosure the default
  - **Engaging stakeholders:** Ensure they are informed and understand the process from the outset
  - **Creating searchable records:** The public must be able to search for records in intuitive and user-friendly ways
  - **Explaining limited exceptions:** Clearly define the reasons why information will not be published

# De-identification Supports Open Government

- “De-identification” - the removal of personal information from a record or data set
- Outlines a risk-based, step-by-step process to assist institutions in de-identifying data sets containing personal information



## De-identification Guidelines for Structured Data

June 2016



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# New Fact Sheet Series

- Published to clarify frequently asked questions about access to information, privacy and technology
- Series includes:
  - Councillor Records
  - Ransomware
  - You are Affected by a FOI Request: What You Should Know
  - Your Business is affected by a FOI Request: What You Should Know
  - What is Personal Information?



FOI Fact Sheet 1

## The *Municipal Freedom of Information and Protection of Privacy Act* and Councillors' records

April 2016

### INTRODUCTION

The Information and Privacy Commissioner of Ontario (IPC) sometimes decides appeals relating to requests for access to records created or held by municipal councillors. The *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* does not expressly refer to records of municipal councillors and, therefore, before a determination can be made on access to those records, the IPC must decide whether *MFIPPA* applies. In making this decision, the IPC examines the specific facts of each case in light of a number of principles.

The IPC has been calling for amendments to *MFIPPA* to clarify when it applies to these records, including in August 2015, when the IPC wrote to the Minister of Municipal Affairs and Housing setting out proposed amendments (this letter is available on the IPC's [website](#)).

In the absence of amendments, however, the IPC is issuing this fact sheet, which explains when and how councillors' records are subject to *MFIPPA*.

### WHEN ARE COUNCILLORS' RECORDS SUBJECT TO *MFIPPA*?

Councillors' records are subject to *MFIPPA* where:

1. a councillor is acting as an officer or employee of the municipality, or performs a duty assigned by council, such that they might be considered part of the institution, or
2. the records are in the custody or control of the municipality.

### WHEN IS A COUNCILLOR AN OFFICER OR EMPLOYEE OF A MUNICIPALITY?

A councillor is likely to have several roles, such as an individual constituent representative, a politician, or a head or member of a municipal committee or board, such as a transit corporation. Some of these roles may entail the councillor acting as an officer or employee, while others do not.



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# PRIVACY



# Privacy Obligations Under the Acts

*FIPPA/MFIPPA* set out rules for the collection, use, and disclosure of personal information

To **collect** personal information, it must be:

- Expressly authorized by statute
- Used for the purposes of law enforcement, or
- Necessary to the proper administration of a lawfully authorized activity

**Example:**

**Government institutions must have a legitimate reason and purpose for collecting personal information, such as requiring a birth certificate to issue a driver's license.**

You can only **use** personal information for:

- The purpose it was collected
- A consistent purpose or with consent (preferably in writing)

**Example:**

**We cannot use information from the birth registry to send out birthday cards.**

You can only **disclose** personal information:

- With consent
- For a consistent purpose
- To comply with legislation
- For law enforcement
- For health and safety reasons
- For compassionate reasons

**Example:**

**A video capturing evidence of a crime can be shared for law enforcement, even if it contains personal information.**

# Surveillance Technologies


- IPC supports use of surveillance technologies to enhance community safety and deter unlawful activity, providing they are implemented in a manner that protects privacy
- Privacy implications associated with surveillance technologies include:
  - Potential to collect large amounts of personal information about individual users, including who they communicate with and what they communicate about
  - Ability to track the locations of individuals over time and to facilitate profiling of law-abiding individuals going about their everyday activities



# Licence Plate Recognition

- Automated Licence Plate Recognition (ALPR) systems are used by police to match plates with a “hotlist” that may include stolen vehicles, expired plates and suspended drivers
- The IPC’s new guidance includes advice on implementation and best practices on using these systems in a privacy-protective manner

## Ottawa police introduce automatic licence plate scanners, as privacy concerns raised

 **AEDAN HELMER**  
More from Aedan Helmer

Published on: September 1, 2016 | Last Updated: September 1, 2016 5:55 PM EDT



SHARE

Technology that will allow Ottawa police to scan up to 5,000 licence plates per hour has already netted results in the city, while privacy advocates are voicing their concerns over how the data will be collected and safeguarded.



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# Best Practices for ALPR

- Best practices include:
  - Ensuring a comprehensive **governance framework** is in place
  - Implementing **policies and procedures** to ensure the appropriate handling of personal information
  - Providing **notice** to the public
  - **Limiting retention** - non-hit data should be deleted as soon as practicable



## Guidance on the Use of Automated Licence Plate Recognition Systems by Police Services

September 2016



# Body Worn Cameras

- Police use of Body Worn Cameras (BWCs) present different challenges from CCTV and dashboard camera systems
- As mobile devices, they have the potential to capture information in various settings, including private places like residences, hospitals and places of worship
- BWCs viewed as important transparency and accountability tools
- Balance between transparency, accountability, law enforcement needs and right to privacy is imperative
- “Guidance for the Use of Body-worn Cameras by Law Enforcement Authorities” was developed by privacy oversight offices across Canada, including the IPC

# Governance Framework For BWCs

- A comprehensive framework should be in place to address privacy and security issues including:
  - When recording will be permitted, required, prohibited (e.g. on/off protocols)
  - The retention, use, disclosure and destruction of recordings
  - Privacy and security safeguards for cameras, servers, and other systems (e.g. encryption, role-based access, audit processes)
  - Responding to access requests (e.g. redaction)
  - Specific requirements regarding notifying individuals of the collection of their personal information

# Video Surveillance

- Video surveillance captures sensory information about activities and events in a given area over time
- IPC first published guidelines on the use of video surveillance in public places in 2001 and then on the use of video surveillance in schools in 2003
- IPC's "Guidelines for the Use of Video Surveillance" provides a list of best practices



## Guidelines for the Use of Video Surveillance

October 2015



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# Best Practices for Video Surveillance

- Best practices include:
  - Public consultation and notice
  - Limiting retention periods
  - Establishing policies and procedures
- Institutions should be prepared to process access requests from the public including developing protocols for the redaction of personal information from the video images, where appropriate
- Retention period for unused images should be limited to the amount of time reasonably necessary to discover or report an incident

# Call for Reform

- In its 2015 Annual Report the IPC called on the government to update *FIPPA/MFIPPA* to ensure Ontarians' rights are better protected, including:
  - **Coverage:** Amend the Acts to establish set criteria for covering organizations receiving significant government funding
  - **Enact Privacy Complaint Order-Making Power:** Amend the acts to enable the IPC to better protect the privacy rights of Ontarians by issuing binding orders to institutions that violate them
  - **Mandatory Proactive Disclosure of Identified Categories of Records:** Amended the acts so that specific categories of information are identified for proactive disclosure

# Panel Sessions

## A. Protecting personal health information in an electronic environment (Community Room)

*Speakers:*

- Manuela Di Re, Director of Legal Services and General Counsel
- Debra Grant, Director of Health Policy

## B. Key developments in access to information and privacy (Council Chambers)

*Speakers:*

- David Goodis, Assistant Commissioner, Policy and Corporate Services
- Sherry Liang, Assistant Commissioner, Tribunal Services

# How to Contact Us

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