Collaborating to Reduce Serious Harm: A Privacy Protective Roadmap for Situation Tables

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Presentation Overview

- Background regarding the Information and Privacy Commissioner's (IPC) mandate, role, and recent activity
- The **Privacy Protective Roadmap** - issues and solutions in the context of a collaborative service delivery development: the Situation Table

Key Message: Respect for Privacy

- Increased focus on collaboration and information sharing to improve service delivery and reduce significant risks of serious harms
- A **roadmap** for innovation and success accounts for privacy requirements and best practices (e.g. data minimization)
- Respecting personal privacy of clients is essential to ensuring trust and providing effective service delivery

IPC Mandate and Role

- Office established by statute in 1988
- IPC appointed by and **reports to the Legislative Assembly of Ontario**
- Provides **independent and impartial** review of access and privacy decisions and practices
- Provides **guidance**; conducts inquiries, investigations and reviews; issues orders and makes recommendations

IPC Oversight

- The IPC ensures compliance with three privacy statutes

  FIPPA and *MFIPPA which provide:*

  - Right of access to information in the custody or control of institutions and appeal of access decisions to the IPC
  - Privacy rules for **government institutions'** collection, retention, use and disclosure of personal information (PI)
- *PHIPA* which provides:
  - Comprehensive privacy protections for personal health information (PHI) in the custody or control of "**health information custodians**" (HICs) (including rights of access, correction, and complaint)

Situation Table Work

- Participated in Law Reform Commission of Ontario workshop on integrated approaches to community safety (2013), Waterloo Region Crime Prevention Council dialogue on privacy and information sharing (2014) and *Economics of Policing Workshop* (Ottawa, 2015)
- Observed and commented on three Situation Tables: Cambridge, North Bay, & Rexdale FOCUS (2015)
- Continuing to respond to queries about Situation Table-related privacy issues and solutions, as well as to speak at forums and Situation Tables
- Worked closely with the Ministry of Community Safety and Correctional Services (Ministry) and the OPP on the development of new provincial guidance documents (2015-2016)

New Privacy Guidance

- The IPC provided detailed comments on:
  - The Ministry's August 2016 Guidance on *Information Sharing in Multi-Sectoral Risk Intervention Models:*
    - Provides a **roadmap** for information sharing at Situation Tables using a privacy protective version of the four-filter approach that has the support of the IPC
- Chapters VI & VII of a *Situation Table Guidance Manual*
  - An April 2016 manual produced by Dr. Hugh Russell with a grant from the Ministry and guidance from the OPP's Community Safety Services

A Roadmap for Success

The IPC's key contribution to this Guidance:

- A **roadmap** for compliance with privacy requirements
  - The roadmap is designed to allow agencies to collaborate to reduce significant risks of serious bodily harm
  - The IPC recommends the use of the roadmap as outlined in the August 2016 Guidance
  - If another route is chosen, you must still ensure that shared and services are delivered in a privacy compliant manner

Taking Another Route: Proceed with CAUTION

- Consider conducting a privacy impact assessment
- Each agency must have and is advised to map out the legal authorities for its own **information handling activities** (e.g. collection, retention, use, disclosure)
- **RISK:** Disclosure of name/address/DOB (e.g. to the entire table at Filter 3) links the individual to the information disclosed at Filter 2
- **RISK:** A disciplined discussion is necessary, but is likely to be insufficient if disclosure is made to those who have no reasonably foreseeable role to play in planning or carrying out the required intervention
- **RISK :** The wider the disclosure of PI/PHI (e.g. at Filter 3 or during the Report back), the greater the risk of a **privacy breach**

The Roadmap for Success ... Starts with Planning and Governance ...

- **Strong governance** is necessary to ensure that all participants understand their responsibilities and are able to participate in the Situation Table in a privacy protective manner
- Each participating agency is responsible for complying with privacy legislation and being **accountable for its actions and decisions**
- **Data-minimization is essential to compliance** (i.e. refrain from handling PI /PHI when other information will serve the purpose, do not collect, retain, use or disclose more PI/PHI than is necessary and do not disclose PI/PHI to more agencies than is necessary)
- To be accountable, institutions and HICs need to be **transparent about their participation** in a Situation Table, including by providing contact information of an individual who can provide further information or receive a complaint

… is Guided by *Need-to-Know* Rules …

- At every stage, limit the handling of PI / PHI to those who have the legal authority to collect, use and disclose that information, and who have a **legitimate need** to know the information
- To ensure appropriate **handling** of PI/PHI, participating agencies should sign an **information sharing agreement** (especially when agencies not covered by privacy legislation are involved)
- **Among other things, an information sharing agreement**:
  - confirms who may **handle** specific PI / PHI, under what circumstances and for what purpose(s)
  - outlines measures that must be implemented for the protection of PI / PHI
- Situation Table chairs should facilitate a privacy compliant discussion while helping to identify risk factors, Filter 4 agencies, etc.

… and Provides for Oversight

- Situation tables require **policies, procedures and practices** to ensure continued adherence to privacy legislation
- These mechanisms will help agencies ensure that all information is collected, retained, used and disclosed in a compliant and appropriate manner. They should address:
  - methods to ensure that information is **accurate and up-to-date**
  - the right to access and correct one's own record of PI / PHI
  - **record keeping requirements**, including those relating to the secure retention and disposal of PI/PHI
  - periodic **auditing** of information handling practices
  - regular review of which agencies should participate
  - **training** requirements
  - **transparency** requirements

Share with Consent, Provide Notice

- Whenever possible, PI /PHI should be collected, used and disclosed with the **individual's express consent** *[but remember, institutions must also comply with s. 28(2) of MFIPPA]*
- Consent must be: from the individual to whom the information relates, knowledgeable, related to the particular information, and never obtained through deception or coercion
- A disclosing agency should **document the consent** (e.g. the date of the consent, the information to be disclosed, the organizations to whom the information will be disclosed, for what specific purpose(s), and subject to what restrictions or exceptions)
- As a general rule, individuals should **receive written notice shortly after** their PI/PHI is disclosed and contact information for each agency to whom their PI/PHI was disclosed or a contact number or website that allows the individual to readily access such contact information
- Written notice may be provided, for example, during the first in-person intervention using a card, letter or pamphlet

… Moving from Filter 1 to Filter 2

- While agencies must use PI/PHI in selecting cases at Filter 1, it is **essential** that **only de-identified information be shared at Filter 2** (i.e. during the group's assessment of risk and the need for a multi-agency intervention)
- Information is **de-identified** if it does not identify an individual, and it is not reasonably foreseeable in the circumstances that the information could be used, either alone or with other information, to identify an individual
- The removal of direct identifiers may not be sufficient to prevent re-identification. "**Quasi-identifiers**" can be used for re-identification (e.g. gender, marital status, location, date, diagnosis, profession, ethnic origin, visible minority status, and/or income)
- Quasi-identifiers can be used either by themselves or in combination with other available information to uniquely identify individuals

… Tips for Keeping It De-identified

- Determine what classes of de-identified information are **required** to effectively assess risk and focus the discussion on those factors
- **Avoid** the discussion of any quasi-identifiers that are not relevant
- Even when it comes to relevant factors, avoid discussing an individual's circumstances in **precise terms** (e.g. if age or location are relevant, refer to age in broad ranges like "minor", "adult" or "senior", and a neighborhood or street rather than a person's address)
- If an intervening agency needs to record information about an individual case (e.g. in a de-identified report), use a **unique pseudo-anonymous number**, rather than the individual's initials or contact information

Filter 3: Identify the Scope

- If Filter 2 thresholds are met and consent is unavailable or insufficient, identify the agencies reasonably believed to be **necessary** to the planning and implementation of the intervention
- Ensure those agencies have the authority to collect the PI/PHI
- Only these agencies and those agencies the individual has expressly consented to may move forward to the Filter 4 part of the meeting
- Securely **destroy** any notes captured by any other agencies at Filters 2 and 3 (possible exception: the nominating/disclosing agency)

NOTE: The threshold for moving to Filter 4 and disclosing PI/PHI is based on:

- Provisions in FIPPA/MFIPPA which permit an institution to disclose PI "in compelling circumstances affecting the health or safety of an individual" (note duty to provide subsequent notice)
- A provision in PHIPA which permits a HIC to disclose PHI "if the custodian believes on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons"

Filter 4: A Separate Meeting

- Limit the Filter 4 part of the meeting to:
  - those agencies reasonably believed to be **necessary** to the planning and implementation of the intervention
- Limit the Filter 4 discussion to:
  - the information reasonably believed to be **necessary** to plan and implement the intervention
- A further agency may be added to the Filter 4 part of the meeting if it becomes clear that its involvement is **necessary**

NOTE: If at any stage, it becomes evident that the risks are already being mitigated (e.g. the individual is already connected to sufficient services), no further information sharing should occur at the Situation Table. However, the individual should still receive notice of the disclosure of his or her information (e.g. from the disclosing agency). Such notice should focus on the fact that disclosure was made to specified members of the Situation Table, the context and where to obtain further information

Consent Should Drive Information Sharing

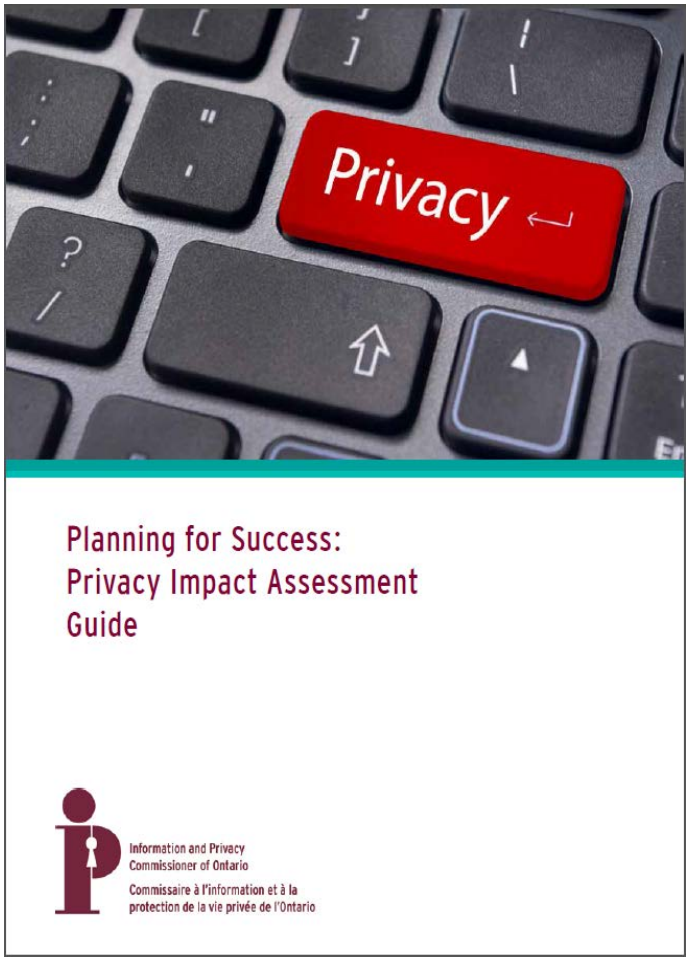
- At the first reasonable opportunity (e.g. during the intervention):
  - Seek (or confirm) **the individual's consent** for any further service-related information sharing (including for the purpose of the report back stage)
  - Provide **written notice** of the names and contact information of the agencies to whom the individual's PI/PHI has been disclosed
- If the individual declines the offer of service, any further information sharing should **cease**
- During the report back stage, **limit the sharing of information** to de-identified information and an indication that the file can be closed or that the intervening agencies need to discuss further action, unless the individual has provided express consent to a specific form of report back involving his or her PI/PHI

Concluding Observations

- Important work is being done to create new service delivery models designed to respond to significant risks of serious harms faced by vulnerable individuals
- Situation Tables and other innovative models can operate in a privacy protective manner with sufficient planning and governance
- Use of the privacy protective **roadmap** will help foster a strong sense of responsibility amongst all participants to maintain confidentiality and comply with privacy legislation
- The IPC is available to provide general guidance to communities with respect to operating innovative service delivery models in a privacy compliant manner

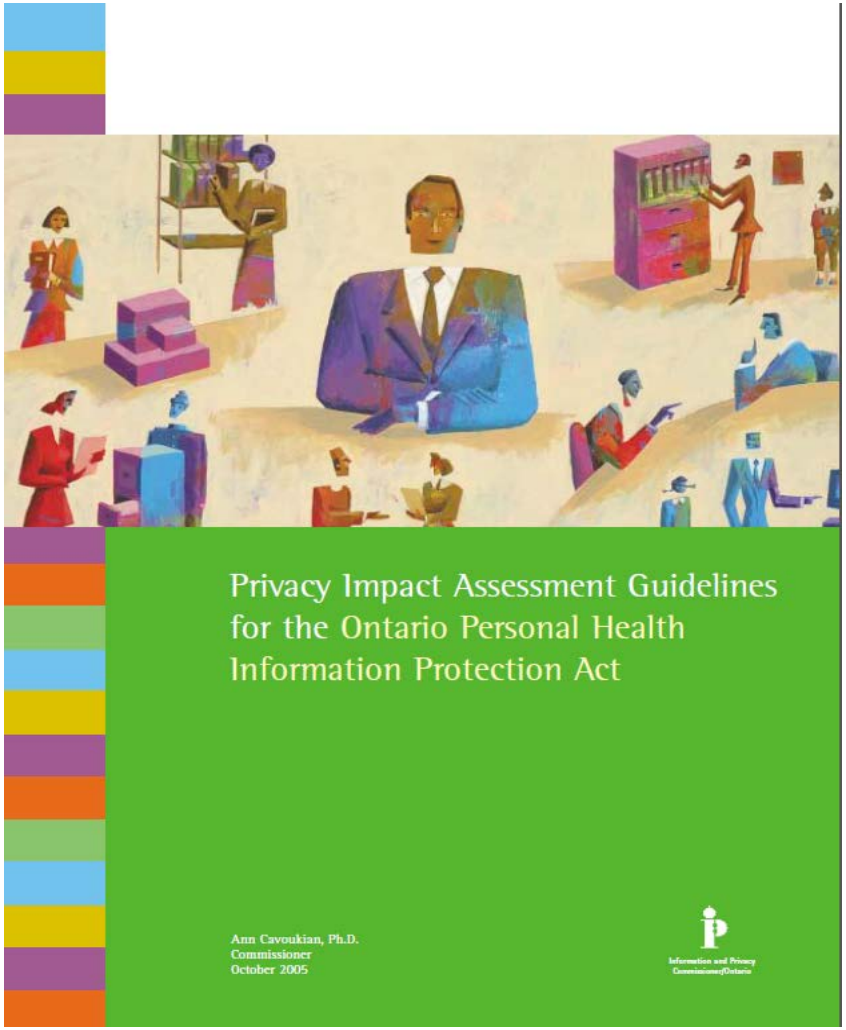
Privacy Impact Assessment Guide

- PIAs are tools to identify privacy impacts and **risk mitigation** strategies
- Widely recognized as a privacy best practice
- IPC developed a simplified **4 step methodology** and tools for M/FIPPA institutions
- Participating institutions should conduct a PIA on their own or in **collaboration** with other participants



PIA Guidelines (*PHIPA*)

- Participating health information custodians should conduct a PIA to facilitate compliance with *PHIPA*
- These Privacy Impact Assessment Guidelines also include a self assessment tool



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