



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de de l'Ontario

VIA REGULAR AND ELECTRONIC MAIL

December 19, 2016

The Honourable Dave Levac
Speaker of the Legislative Assembly of Ontario
Legislative Bldg Rm 180
Queen's Park
Toronto, ON M7A 1A2

Dear Mr. Speaker,

In June 2016 I had the honour to present the 2015 Annual Report of the Information and Privacy Commissioner of Ontario, including a full array of statistics, to the Legislative Assembly. Included in this report, as has been customary over the years, are tables showing compliance by provincial and municipal institutions with the time requirements of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (compliance statistics). The tables set out, for each institution, the number and percent of FOI requests completed within the 30-day time limit mandated by these statutes, those completed within a permissible extended time, and those that went over time. Institutions report these statistics yearly to the IPC, through a dedicated web portal, and the IPC relies on the statistics reported to us in compiling the tables in the annual report.

After the release of our 2015 annual report, I was contacted by Deputy Minister Paul Evans, of the Ministry of the Environment and Climate Change, who alerted me to concerns with the accuracy of the compliance statistics submitted by the ministry to my office.

Deputy Evans indicated that in June of 2016, senior management became aware of a practice in the ministry's Corporate and FOI Services Office to change dates recorded in the request tracking system. This practice had the effect of misstating the ministry's compliance statistics reported to the IPC.

As part of this discussion, Deputy Evans assured me that upon learning of this practice, he requested that the Ontario Internal Audit Division of the Treasury Board Secretariat audit the practices and procedures of the ministry's FOI office. He also directed the auditors to determine, if possible, what the ministry's actual compliance statistics should have been.

At that time, I directed my staff to place a note on the 2015 annual report, available at www.ipc.on.ca, that the compliance statistics for the Ministry of the Environment and Climate Change were under review.

On December 9, 2016, Deputy Evans provided me with the full Freedom of Information Audit report prepared by the Internal Audit Division, a summary of the revised FOI compliance statistics for 2010 to 2015 and a letter describing the details and findings of the audit. The audit



2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: (416) 326-3333
1 (800) 387-0073
Fax/Télé: (416) 325-9195
TTY: (416) 325-7539
Web: www.ipc.on.ca

examined the processes and procedures in place to manage the processing of FOI requests by the ministry, and ultimately identified issues and concerns on a number of fronts. I will focus here on the concerns raised specifically with the recording of compliance statistics.

Based on detailed testing and observations, the auditors have concluded that the dates in the ministry's request tracking system have been systematically adjusted by staff in the FOI office in order to show completion of requests within the 30-day requirement. In other words, dates were changed to improve the ministry's compliance statistics. The testing also confirmed that there was information added to the system that, without justification, extended the timeline to respond. The auditors determined that between 2010 and 2015, 18 per cent of the requests processed by their FOI office appear to have completion dates changed. Their audit report notes that modifying data that provides misleading results is a serious matter.

The ministry has provided to my office revised 30-day compliance statistics for the years 2010 to 2015, which the IPC will publish online as a correction to the previous five annual reports issued by our office. I should note that the revised statistics provided by the auditors, which I have appended to this letter, are based on informed estimates, not a review of every file. The auditors have stated that the only method to calculate the true numbers would be to revisit the hardcopies of the documents for every request file and correct the dates in the system. As an alternative, the auditors relied on certain elements in the electronic tracking system which enabled them to arrive at an informed estimate of the volume of changes made to the statistics.

Deputy Evans has also reported that through this audit the ministry identified a number of issues with their existing procedures and have made specific recommendations to address those concerns. Specifically related to statistical reporting, the ministry:

- Took immediate action to prevent any further mishandling by instructing their FOI employees to stop the adjustment and manipulation of dates in the system
- Implemented a weekly management review of 10 per cent of the hard copies for completed requests, in addition to the monthly reporting, to detect any future variances, and will immediately take action to rectify any issues
- Will ensure that compliance statistics extracted from the system are validated by management and will be accurately reported to the IPC

Deputy Evans has assured me they will continue to monitor the performance and effectiveness of the FOI office and that he has directed the Ontario Internal Audit Division to conduct a follow up review in fiscal 2017-18 to ensure the controls that have been put into place are being followed, and are effective.

I am assured that the ministry is also working with the Ministry of Government and Consumer Services (MGCS) on the development of an improved, enterprise-wide, request tracking system.

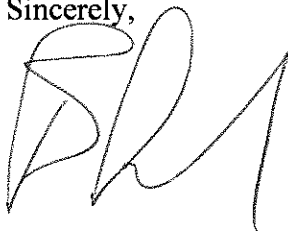
In addition to the audit described above, Deputy Evans also provided me with a copy of the report of the Forensic Investigation Team (FIT) tasked with investigating the allegation that certain individuals were involved with intentionally falsifying dates to improve compliance

statistics. The FIT audit confirmed the allegation. I have been advised that, based on the findings of this audit, the public service is taking appropriate corrective action.

Mr. Speaker, among my concerns regarding this situation is whether the practice of manipulating FOI statistics is widespread throughout the Ontario Public Service, and not just confined to the Ministry of Environment and Climate Change. It should be noted that I requested that an audit of other ministries be carried out, to determine if this is a systemic practice. In response, Secretary of Cabinet, Steve Orsini, has directed the Internal Auditing Division to undertake an audit of the FOI offices of five other ministries. They are also reviewing the practices and procedures of the remaining ministry FOI offices across the OPS. In addition, the Information Privacy and Archives Division of MGCS will be facilitating enterprise-wide FIPPA training to assist ministry staff in understanding and employing the correct practices and procedures when managing access requests.

Mr. Speaker, although I remain deeply concerned about the circumstances described above, I am satisfied that this issue was addressed swiftly and thoughtfully and action is underway to ensure accuracy of the ministry's compliance statistics in the future. I am also pleased that the government intends, at my request, to conduct audits of five other ministries in order to determine whether the issues that arose in this ministry are more widespread. My office will continue to work with the Ministry of the Environment and Climate Change, and the broader Ontario Public Service, to provide guidance and support as they ensure their compliance with Ontario's access laws.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Beamish', written in a cursive style.

Brian Beamish
Commissioner

Appendix

Reported and Corrected 30-day Compliance Statistics, 2010 to 2015

Reported Compliance Level

Year	Number of Files Reported as Closed	Reported Compliance	
		Volume	Percentage
2010	5,364	4,503	83.9%
2011	5,936	4,876	82.1%
2012	6,826	5,221	76.5%
2013	7,243	6,267	86.5%
2014	6,499	5,261	81.0%
2015	7,121	5,732	80.5%

Estimated Compliance Level

Year	Number of Files Reported as Closed	Reported Compliance	
		Volume	Percentage
2010	5,364	3,525	65.7%
2011	5,936	4,171	70.3%
2012	6,826	4,516	66.2%
2013	7,243	4,317	59.6%
2014	6,499	3,859	59.4%
2015	7,121	4,457	62.6%