

Latest Developments in Access and Privacy at the IPC

Brian Beamish
Commissioner

Municipal Access and Privacy Forum
May 10, 2017



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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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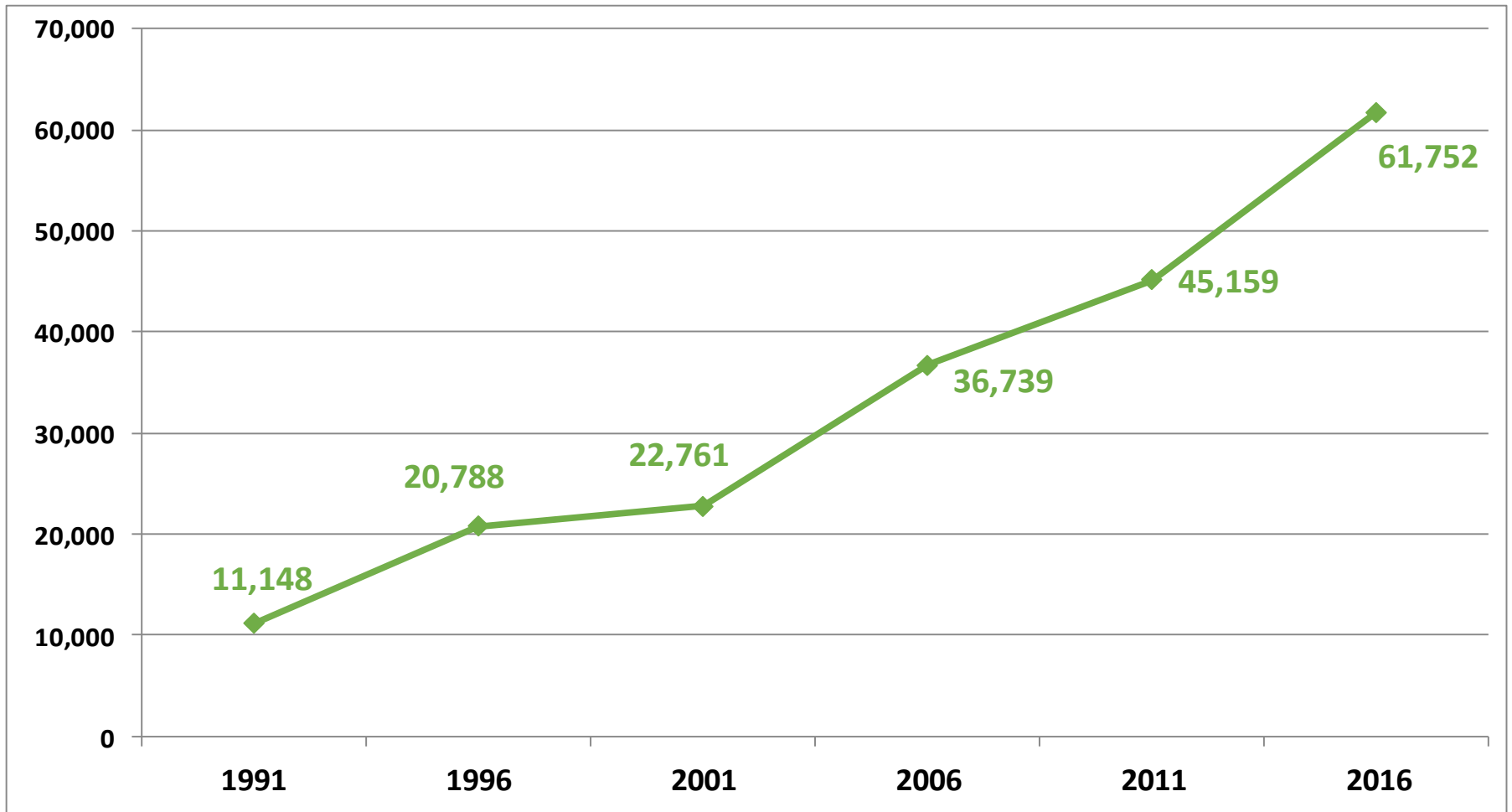
ACCESS



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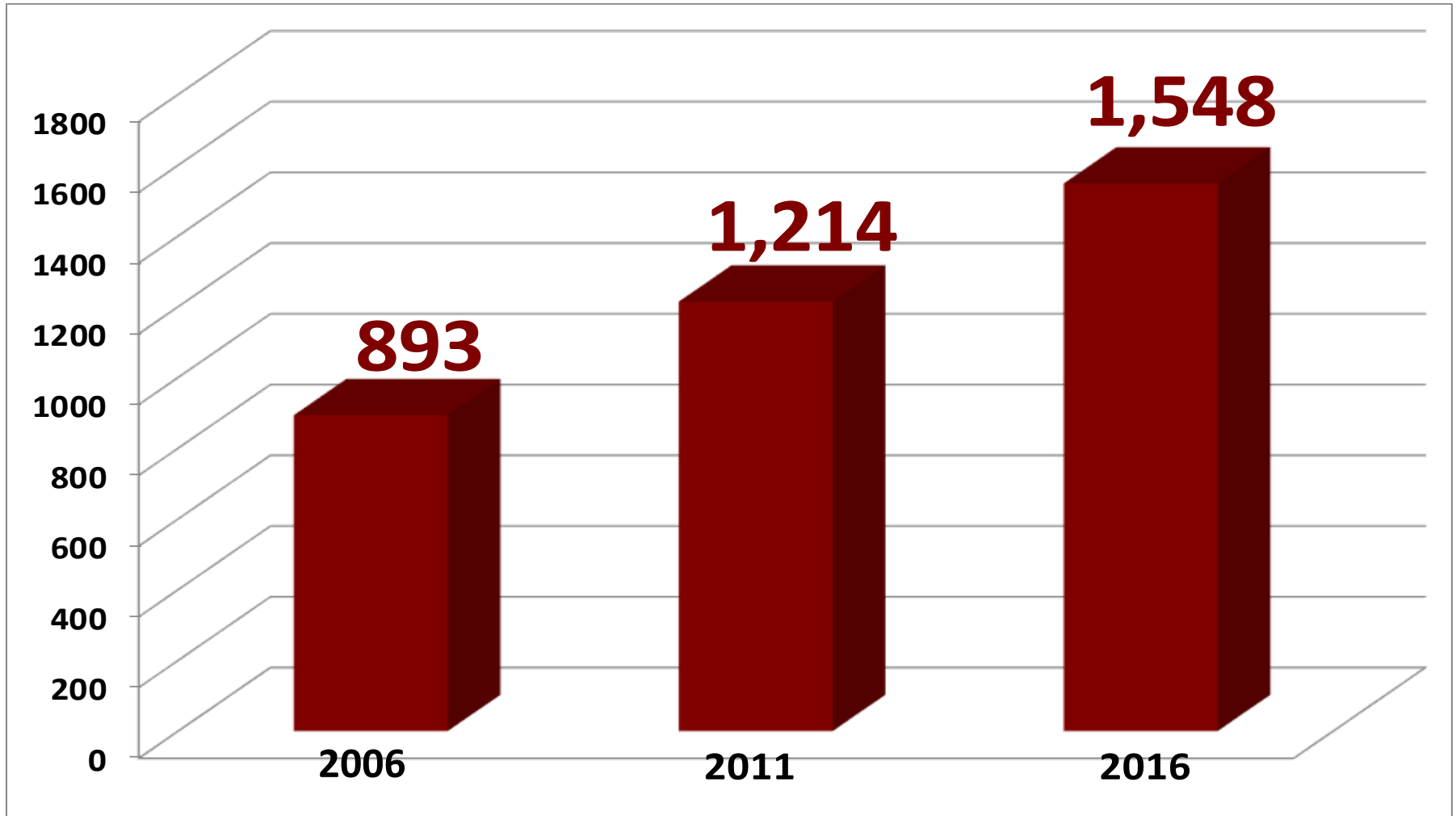
Total Access Requests Per Year



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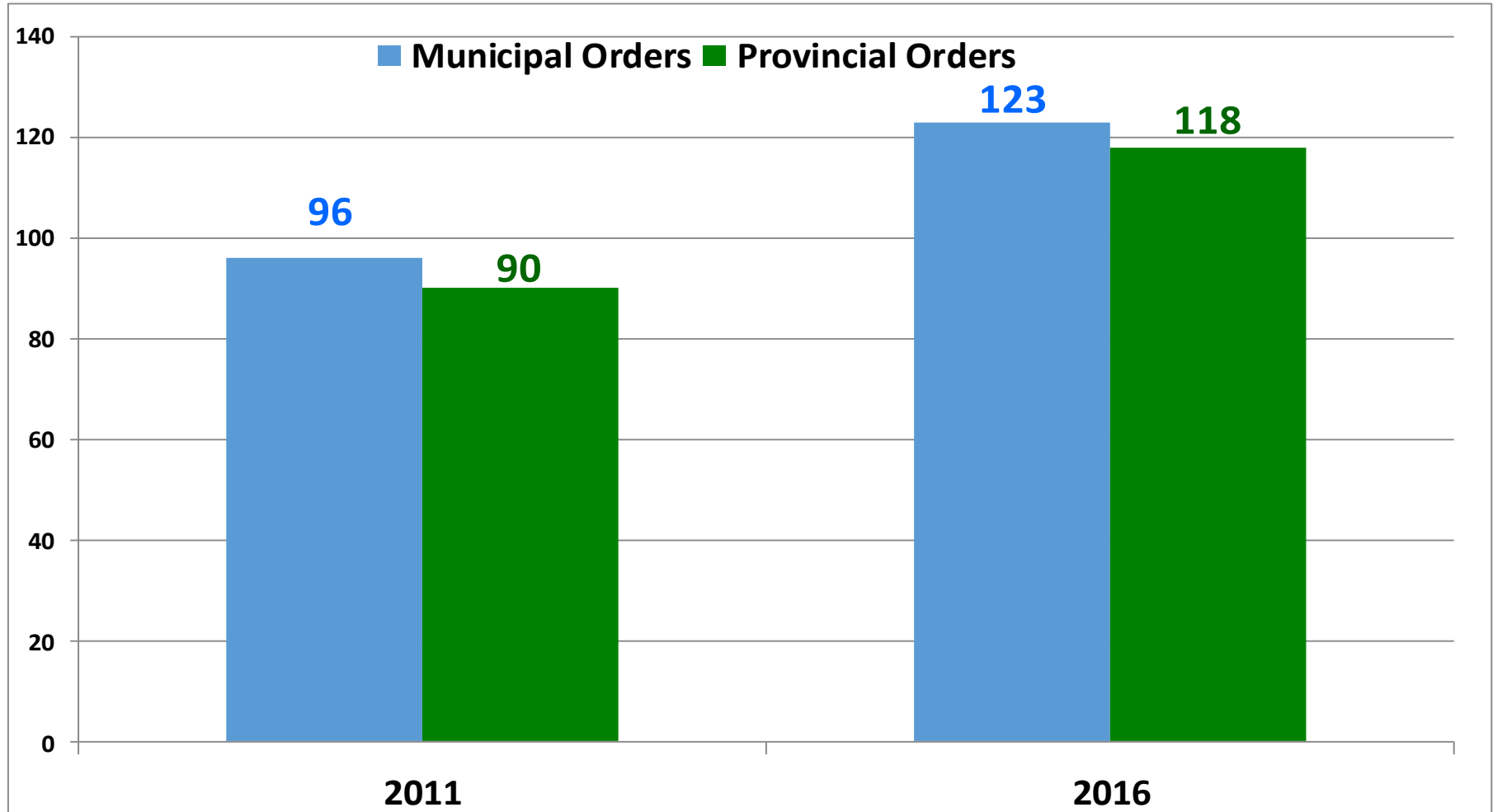
Total Appeals Received Per Year



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Total Access to Information Orders



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Mediation: Success Behind the Scenes

- Most appeals and privacy complaints are resolved by intake analysts and mediators
- Goal is to find a resolution which satisfies the needs of all involved
- Saves significant time and resources for all parties
- Usually, 75% of appeals and almost all privacy complaints are closed before adjudication/investigation



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Bill 68, *Modernizing Ontario's Municipal Legislation Act*

- Bill 68 proposes to expand open meeting exceptions of the *Municipal Act* and *City of Toronto Act*
- Could restrict the public's right of access – public may be excluded from more meetings
- Expanding the circumstances for closed meetings could lead to more refusals to disclose information



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Bill 68, Modernizing Ontario's Municipal Legislation Act (Cont'd)

- No evidence that exceptions need to be expanded
- Proposed amendments should be struck from the bill unless there is compelling evidence
- If there is evidence, IPC recommends amendment to limit the impact on access rights
- Our amendment would ensure access requests could not be refused simply because a record was discussed in a closed meeting



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Closed Meetings Orders

- **MO-2964-I** - Sudbury withheld requested employment contracts saying they revealed the substance of deliberations of a closed meeting
- Adjudicator found the records did not reveal the substance of deliberations, but rather “the subject or the ‘product’ of the deliberations” – not exempt under 6(1)(b)



Closed Meetings Orders

- **MO-3228** – Toronto District School Board denied access to audit report about "Focus on Youth" program
- Board claimed disclosure would reveal deliberations of a closed meeting on the "security of the property" of the board
- Our office decided audit report is not about "security of the property" and ordered it disclosed
- Closed meeting exemption only applies if board is authorized under the *Municipal Act* to hold a closed meeting



Bill 84, *Medical Assistance in Dying Statute Law Amendment Act*

- IPC submission to Standing Committee in March, focused on proposed exclusion of names of facilities providing services related to medical assistance in dying
- No evidence provided to justify erosion of the public's right-to-know
- Access to government information promotes transparency and meaningful public debate

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Comments of the
Information and Privacy
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on Bill 84



Brian Beamish
Commissioner
March 23, 2017



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Frivolous and Vexatious Requests

- Section 4(1)(b) creates an exception to the right of access where the institution is of the opinion on reasonable grounds that the request for access is **frivolous** or **vexatious**
- Section 5.1 of Regulation 823 explain that a request is frivolous or vexatious if the request is:
 - part of a pattern of conduct that amounts to an **abuse of the right of access**;
 - part of a pattern of conduct that would **interfere with the operations of the institution**;
 - made in **bad faith**; or
 - made for a **purpose other than to obtain access**



What makes a request frivolous or vexatious?

- Number of requests
- Nature and scope of requests – excessively broad/identical to previous requests
- Timing of requests – connected to some other event
- Purpose of requests – “nuisance” value/harass government/burden system
- Nature and quality of interaction/contact between requester and FOI staff



Example:

Frivolous and Vexatious Requests

IPC Order MO-2488

- High number of requests: **54 requests** with **372 parts** in total (an average of 6.5 parts per request)
- Requests excessively broad and unusually detailed: Open ended wording (“**any and all**”, “**including but not limited to**”)
- Purpose of the request for an objective other than access: The appellant **already possessed** many of the emails requested
- Timing of the requests: The close timing of **appellant’s lawsuit** and requests was a relevant factor in favour of finding an abuse of the right of access



MO-2488 (Cont'd)

The adjudicator imposed conditions on the processing of the appellant's requests:

- For one year, only **one transaction** by the appellant
- City may decide the **order** of processing remaining requests
- After the one year period, the appellant or the City may apply for variance
- Only one subject matter per request
- No other contact with city after request filed



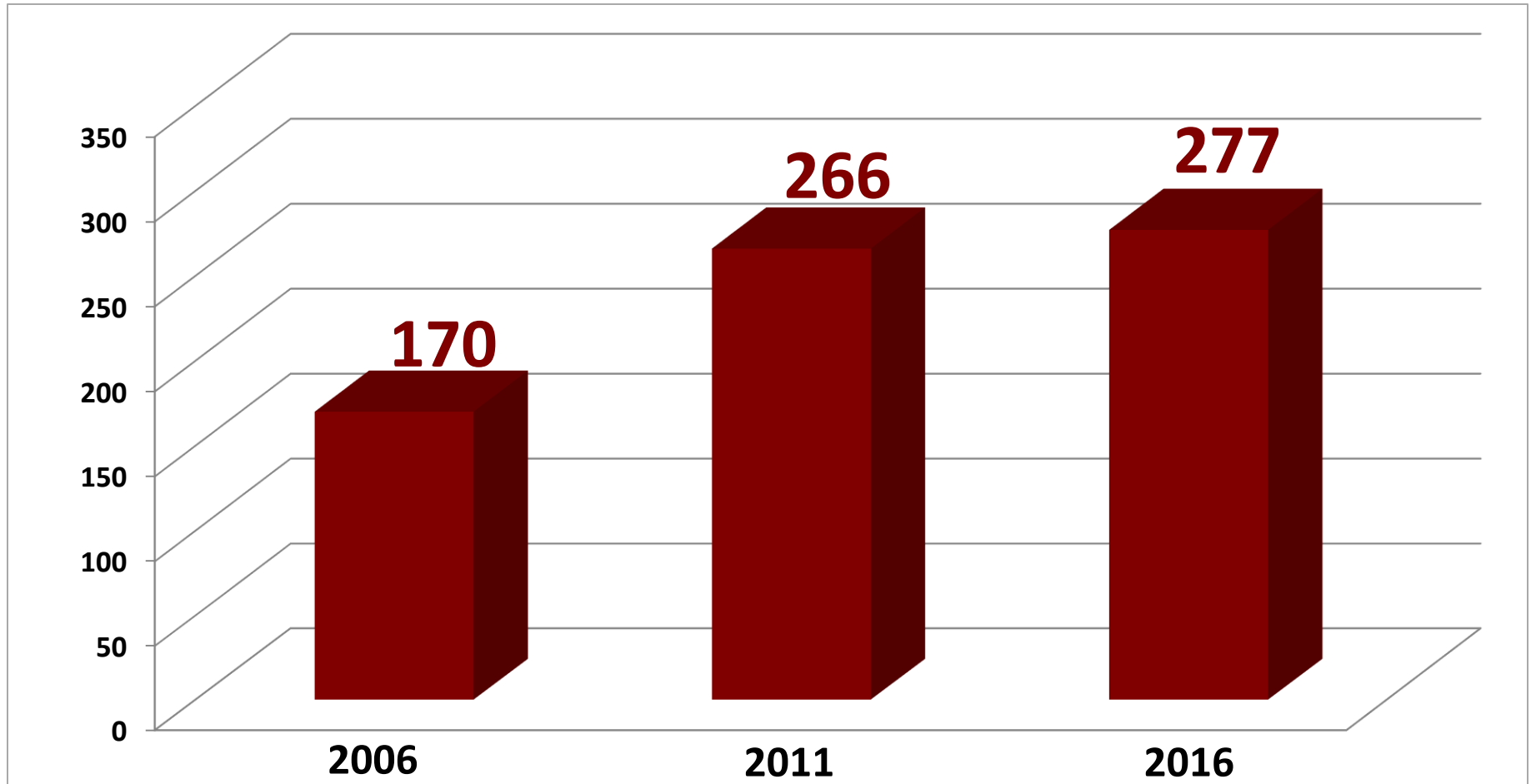
Privacy



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Total Privacy Complaints Opened Per Year



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RIM Guidance

- Effective records and information management (RIM) practices help institutions meet legal requirements and better serve the public
- Institutions are better able to:
 - respond to access requests in a timely way
 - be transparent and accountable to the public
 - ensure the confidentiality and privacy
- Publication describes best practices and how to enhance the public's ability to access information



Improving Access and Privacy with Records and Information Management

November 2016



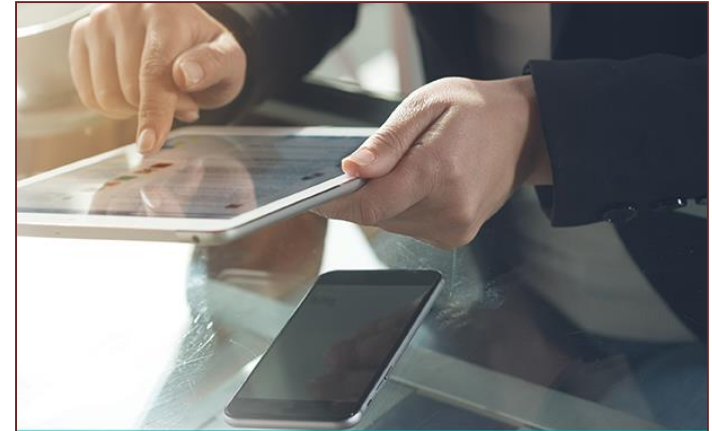
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Instant Messaging & Personal Email Accounts

- Emails sent and received from personal email accounts and instant messages are **subject to access requests**
- Challenges in managing records produced using personal email or instant messaging include:
 - **Search and production** when responding to access to information requests
 - **Retention and preservation** in compliance with the acts
 - Ensuring **privacy and security** of personal information
- We advise institutions to **prohibit use** or enact measures to ensure business records are preserved



Instant Messaging and Personal Email Accounts: Meeting Your Access and Privacy Obligations

June 2016



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Publishing on the Internet

IPC Guidance



Transparency, Privacy and the Internet:
Municipal Balancing Acts



- This guide provides municipalities with **privacy protective policy**, **procedural** and **technical** options when publishing personal information online
- The focus is primarily on personal information that is required by legislation to be published, but **may be applied** in any situation where municipalities make information available online

Publishing on the Internet

IPC Guidance *(Cont'd)*

Privacy protection may be improved through a number of risk mitigation strategies:

- **Transparent administration**
 - When information received or video is recorded (e.g., council meetings), provide clear notice about how it will be published; manage expectations
- **Redaction**
 - Develop a process where individuals can have their information redacted in certain circumstances; remove unnecessary information
- **Data minimization**
 - Request and store only as much personal information as is necessary
- **Technological measures to limit searchability**
 - e.g., robot exclusion protocols, images instead of text



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Publishing on the Internet

Privacy Complaint Report MC13-67

- A complaint was received about a municipality's online publication of **personal information** collected as part of a minor variance application
- IPC found that the publication of this information was **not in contravention** of the *MFIPPA* because the published information was required to be made publicly available under the *Planning Act*
- IPC, however, recommended that the City consider implementing privacy protective measures that obscure this type of information from search engines and automated agents



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Publishing Tribunal Decision

- Complainant was a member of a profession regulated by an administrative tribunal. As a result of a complaint about him, the tribunal initiated a proceeding, concluding that the complainant had breached his professional duties, and imposed a lifetime ban on practicing within his profession.
- Complainant alleged that **internet publication** of the tribunal's decision was a violation of his privacy
- IPC **dismissed** the complaint at the intake stage:
 - Tribunal had the authority to investigate and impose sanctions
 - Continuing publication of the information about the complainant was consistent with the purpose for which it was collected, and **not a breach of FIPPA**



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Video Surveillance Guidelines



Guidelines for the Use of Video Surveillance

October 2015



- IPC published video surveillance guidelines in 2015
- This guide consolidates previous advice provided by the IPC and presents new issues and factors to consider, including **retention periods** and **notices of collection**
- It also provides **key messages** and **examples** for clarity

Video Surveillance Guidelines *(Cont'd)*

- Best practices for municipalities implementing a video surveillance program include:
 - Consulting your **Freedom of Information and Privacy Coordinator** and the public
 - Conducting a **privacy impact assessment (PIA)**
 - Establishing **policies** and **procedures**
 - Establish a **privacy breach protocol**
 - **Training** employees
 - **Auditing** roles, responsibilities and practices
 - **Limiting retention time** for unused images



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Big Data



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The Big Data Challenge

- Big data represents an era where:
 - information technology is ubiquitous
 - types of data and analytics are complex
 - uses of personal information are less discrete and less determinate
- Striking the right balance between data use and the protection of privacy is challenging
- How can we ensure data protection while enabling the personal and societal benefits that come from the use of big data?



Privacy Risks of Big Data

- Use of poorly selected data sets that:
 - lack information/are incomplete
 - contain incorrect or outdated information
 - disproportionately represent certain populations
- Incorporation of implicit or explicit biases
- Generation of pseudo-scientific insights that assume correlation equals causation
- Lack of knowledge/transparency regarding the inner “logic” of the system
- If not designed properly, can result in uses of PI that may be unexpected, invasive and discriminatory



Legislated Framework for Data Integration

Reform of *FIPPA* and *MFIPPA*

- IPC recommends legislative changes that support greater data integration and information sharing
- Need effective governance, oversight and measures to prevent privacy risks, including:
 - additional investigation, order making and audit powers for the IPC
 - mandatory breach notification and reporting
 - requirements for privacy impact assessments
 - requirements for de-identification



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Bill 114, *Anti-Racism Act (ARA)*

- Bill 114 requires government to develop and maintain an anti-racism strategy, including targets and indicators
- *ARA* requires public sector organizations to collect race-based PI and use anti-racism impact assessment framework to promote racial equity in program delivery
- The handling of race-based PI would be subject to data standards and other privacy requirements, to be developed in consultation with the IPC



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Bill 114, *Anti-Racism Act (ARA)* (Cont'd)

- Privacy protections include ongoing oversight by our office, notably:
 - authority to review the collection and use of PI by public sector organizations, and
 - order an organization to change or discontinue any PI handling practice that contravenes the *ARA*



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Bill 89, Supporting Children, Youth and Families Act

- March 2017, IPC submission to the Standing Committee focused on privacy issues:
 - Ministry of Children and Youth Services must be subject to a greater degree of accountability and oversight than currently provided
 - legislation should be amended to strengthen privacy safeguards and narrow ministry's powers to collect, use and disclose PI to what is reasonably necessary
 - authority to share PI among government organizations and to disclose it to persons and entities that are not prescribed in the regulations must be removed from the legislation



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IPC Fact Sheet on Big Data for the Public

- Helps members of the public understand what big data is, and how it can have an impact their privacy
- Discusses key issues, such as:
 - proportionality
 - accuracy of results
 - bias in data sets
 - individual rights



The image shows the cover of a fact sheet titled "Big Data and Your Privacy Rights". The top right corner indicates the date "JANUARY 2017". The title "PRIVACY FACT SHEET" is prominently displayed in a dark grey box. Below the title, the main heading "Big Data and Your Privacy Rights" is set against a teal background. The text on the cover describes how new tools for combining and analyzing information have made it possible for researchers to uncover hidden patterns and connections in large data sets. It also mentions that private sector companies often use big data analyses to support marketing and product development, while public organizations are attracted to it as a way to improve policy and program development. The cover also includes a brief introduction to the Information and Privacy Commissioner of Ontario (IPC) and its role in overseeing the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Protection of Privacy Act, and the Personal Health Information Protection Act. The IPC logo is visible in the bottom left corner of the fact sheet cover.

JANUARY 2017

PRIVACY
FACT SHEET

Big Data and Your Privacy Rights

New tools for combining and analyzing information have made it possible for researchers to uncover hidden patterns and connections in large data sets that would have previously been unknown. Collectively, these large data sets and the analytical tools and practices used to identify trends are known as 'big data.' While private sector companies often use big data analyses to support marketing and product development, public organizations are attracted to it as a way to improve policy and program development and ensure it is supported by better evidence.

Big data has the potential to provide governments with greater insights into the quality and effectiveness of services and programs such as healthcare, social services, public safety and transportation. However, it also raises concerns regarding privacy and the protection of individuals' personal information.

The Office of the Information and Privacy Commissioner of Ontario (IPC) is responsible for oversight of the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*. Organizations governed by these acts, such as government ministries, municipalities, police services, health care providers and school boards, must comply with these acts when collecting, using and disclosing personal information.

This fact sheet has been developed to help members of the public understand what big data is, and how it can have an impact on an individual's privacy.

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Coming Soon: Big Data Guidelines

- To be released next week
- Developed to inform institutions of key issues and best practices when conducting big data projects involving personal information
- Topics include:
 - data linking protocols
 - ethics review boards
 - public notification
 - profiling
- Discussion panel at International Association of Privacy Professionals (IAPP) Canada Privacy Symposium 2017



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IPC Resources



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Practical guidance for public institutions

LEARN MORE



Go to forms



Request records



File an appeal



Make a complaint



Search IPC Decisions



Contact the IPC

What's New

Watch our live webinar on Understanding Exemptions in FIPPA and MFIPPA!

Media Centre

Health Record Snooping Case Prosecuted in Goderich

Reaching Out to Ontario: Thunder Bay

Latest Developments at the IPC

Recent Decisions

View All Decisions

@ipcinfoprivacy

The IPC recognizes CMHA's Mental Health Week and its efforts to promote mental health privacy in Ontario. #GETITLOUD <http://www3.uta.on.ca>



New Guidance Documents

- Yes, You Can
- Thinking about Clouds
- Instant Messaging and Personal Email Accounts
- De-identification Guidelines for Structured Data
- Open Government (3)
- Guidance on the Use of Automated Licence Plate Recognition Technology by Police Services
- Improving Access and Privacy with Records and Information Management
- Online Educational Services




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New IPC Fact Sheet Series

- Published to provide information in response to frequently asked questions about access to information, privacy and technology
- Series includes:
 - Councillors' Records
 - What is Personal Information?
 - Reasonable Search
 - Video Surveillance
 - Ransomware



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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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IPC Webinars

- New series on timely, in-demand topics about access to information and privacy issues.
- First two presentations are now available at ipc.on.ca:
 - Situation Tables
 - Understanding Exemptions in *FIPPA* and *MFIPPA*



Reaching Out to Ontario (ROTO)

- ROTO is an ongoing program where we visit cities across the province and host events to discuss the latest developments in access and privacy with stakeholders and the public.
 - St. Catharines
 - Ottawa
 - Sault Ste. Marie
 - Kingston
 - London
 - Thunder Bay



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Coming Soon

Spring/Summer 2017

- The Divisional Court of Ontario will hold a hearing, in June, concerning an order to release the names of the top 100 doctors billing OHIP.
- The IPC will be issuing new publications focusing on:
 - breach notification guidelines regarding compliance with recent amendments to *PHIPA*
 - guidelines for institutions considering big data projects involving personal information



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