

# Protecting and Balancing Access and Privacy Rights

## The Role of the Public's Right to Know

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University of Ontario  
Institute of  
Technology

Distinguished  
Visitors Lecture  
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# Our Office

- Information and Privacy Commissioner (IPC) provides **independent** review of government decisions and practices on access and privacy
- Commissioner appointed by, reports to the Legislative Assembly, to ensure **impartiality**

# IPC's Mandate

- *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)*
- Expanded Mandate:
  - *Child Youth and Family Services Act*
  - *Anti-Racism Act*

# Ontarians' Access and Privacy Rights

- Right to file freedom of information (FOI) requests
- Right to appeal FOI decisions
- Right of access to their personal health information
- Right to file privacy complaints



## The Importance of Access to Information and Privacy to Canadian Democracy

“...for this democracy to function well in the complex context of the modern world, two rights must be safeguarded – the right to access to information and the right to privacy...”

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada



## Privacy in the Internet Age

“Privacy legislation has been accorded quasi-constitutional status (Lavigne). This Court has emphasized the importance of privacy – and its role in protecting one’s physical and moral autonomy – on multiple occasions...the growth of the Internet, virtually timeless with pervasive reach, has exacerbated the potential harm that may flow from incursions to a person’s privacy interest...”

Supreme Court of Canada (Doez v. Facebook, 2017)

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



## FOI and Democracy

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

Attorney General Ian Scott, 1987



# A Breach of Privacy is a Breach of Trust

Ontario's privacy laws protect your personal information from improper collection, use or disclosure

Proper stewardship of personal information is fundamental to maintaining the public's trust and confidence.

TRUST



## Balancing Transparency and Privacy

Privacy should not be a barrier to disclosure where the public interest requires transparency.

# Public Interest

The public interest must be considered to ensure that privacy does not get in the way of the greater good.

# Public Sector Expense Disclosures

- Sunshine List - Publishing salary information for the highest paid public servants is important for accountability and transparency.
- Proactive, on-line disclosures of travel and hospitality expenses of senior public servants.



# Emergency and Compassionate Situations

Personal information can be released in situations where it is necessary to protect the health or safety of an individual, or in compassionate circumstances, where disclosure is necessary to facilitate contact with loved ones.



# Jurisdictional Attitudes Towards Public's Right to Know

American vs. Canadian expectations about public disclosure of politicians' health status



# Jurisdictional Attitudes Towards Public's Right to Know

The background of the slide features two flags on poles against a light blue sky. On the left is the Canadian flag, and on the right is the United States flag. The flags are slightly faded and semi-transparent, allowing the text to be overlaid on them.

## Sex Offender Registries

- American law favours disclosure of personal information of sex offenders
- Under Ontario's Christopher's Law, sex offenders must be registered, but this information is not publicly available
- IPC has ordered de-identified or aggregated information from sex offender registries disclosed



## Privacy, what privacy?

“When top earners’ tax returns are published in Finland, they call it “national envy day”. In Sweden, one phone call will get you your lawmaker’s tax bill. Norwegians’ fascination with each others’ taxes has been labeled “financial porn”.

“Many Nordic tax records are a phone call away”, Reuters, April 12, 2016



“A truly transparent system will provide citizens with enough detail for them to understand where and how taxpayers’ money is spent on travel, accommodation, and other costs, and judge for themselves whether it is being spent appropriately.”

Access Info Europe



# Privacy - An Absolute?

# The life and bloody death of Andrew Loku: Toronto police officer's face 'went white as a ghost' after shooting



RICHARD WARNICA | July 17, 2015 | Last Updated: Jul 19 2:06 PM ET  
More from Richard Warnica



## Andrew Loku

Special Investigations Unit

“... an overwhelming need for greater transparency in cases where the SIU decides not to lay a charge.”

Honourable Michael H. Tulloch



# Nadia Kajouji Case

Ontario's privacy law does not stand in the way of ensuring the health and safety of an individual.



# Jeffrey Baldwin Inquest



Yes, you can share information with a Children's Aid Society to protect a child.

Find out more at [www.ipc.on.ca](http://www.ipc.on.ca)

**YES,**

**YOU**

**CAN.**

**DISPELLING THE MYTHS ABOUT  
SHARING INFORMATION WITH  
CHILDREN'S AID SOCIETIES.**

 Information and Privacy  
Commissioner of Ontario

Provincial Advocate  
*for Children & Youth*

# Cancer Care Ontario

## Stem Cell Statistics

Generally, statistical information is not considered to be personal information unless it is reasonably foreseeable that the information could be used — either alone or together with other information — to identify an individual.



## Alberta Association of Chiefs of Police's Homicide Victims Policy

New rules work to strike an appropriate balance between protecting the privacy of homicide victims and the public's right to know.



# Patients' Right to Know

“...an individual whose file has been inappropriately accessed has the right to know, not only the identity of the staff member who accessed their file, but the details of any disciplinary action taken, including the quantum of any penalty.”

IPC Order HO-010





# Enhancing Transparency

# Transparency in Procurement

Proactive disclosure of procurement records strengthens clarity and accountability around government spending.



## Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



# Disclosures supporting transparency

- Ministry of Health and Long-Term Care – Per-diem rates
- Chief of Police employment contracts
- University CEO's
- IPC publishes its expenses and service contracts online



# OHIP Billings

“...the concept of transparency, and in particular, the closely related goal of accountability, requires the identification of parties who receive substantial payments from the public purse...”

IPC Order PO-3617

News · Queen's Park

## Ontario's top-billing doctor charged OHIP \$6.6M last year

Health minister flags 500 doctors who made more than \$1 million last year in a bid for public support in reforming outdated OHIP system.





## Algoma Public Health

Growing understanding by institutions of the importance of the public interest override.

# Transparency, Privacy & the Internet

- The public expects to be able to access publicly available information online.
- Information can be made publicly available in this manner while protecting privacy.



## Transparency, Privacy and the Internet: Municipal Balancing Acts



# Where do we go from here?

- Enhance public transparency and accountability through expanded Open Government activities
- Time for *FIPPA* and *MFIPPA* to be reviewed and renewed to meet the needs of a modern, data-driven Ontario



# Where do we go from here?

- Ask “is this information that the public has a right to see?”
- Positive duties to disclose information should be written into acts
- Clarify and expand public interest override provision to a broader set of circumstances

# CONTACT US

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