

REACHING OUT
TO ONTARIO

Latest Developments in Access and Privacy

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ACCESS TO INFORMATION



Open Contracting

- Proactive disclosure of procurement records
- Benefits of open contracting include:
 - 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



Open Contracting

- How to:
 - o design an open procurement process
 - o make records publicly available
 - o engage with stakeholders and contractors
 - o protect sensitive third-party information and personal information



Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



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

Ontario's Open Data Directive: Procurement and Contracts

- All contracts between Ontario's public institutions and vendors should:
 - give government and vendors the right to publish contracts as open data
 - require vendors to agree that financial data of contracts may be released
- Information for every contract awarded (e.g., vendor name, payment data) must be published in a timely manner



Do Contracts Have to Be Disclosed?

- **MO-3499** - Dufferin-Peel Catholic School Board was asked for the details of a successful tender bid—who it was awarded to and the winning price
- The board located the record and notified the contractor, intending to release the details of the final award contract
- The contractor appealed the school board's decision, claiming the record contained trade secrets
- IPC disagreed; contractors claim did not meet the test to apply exemption
- In general, contents of a contract are not considered “informational assets” of a third party

When does the Public Interest in Disclosure Outweigh Privacy Rights?

- **PO-3617**- Reporter asked the Ministry of Health and Long-Term care for names, specialties and payments to OHIP's top 100 billers
- IPC issued a decision regarding public interest in disclosing information relating to OHIP billings
- Ministry disclosed payment amounts and specialties of some physicians, withheld names and some of the identified specialties, claiming invasion of personal privacy

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.

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



Review of Police Oversight Agencies

- In 2016, the government appointed Justice Tulloch to lead an independent review of the agencies that oversee police conduct in Ontario
- Three agencies: the Special Investigations Unit, Office of the Independent Police Review Director, Ontario Civilian Police Commission
- IPC provided advice to Justice Tulloch, including:
 - Amending *Police Services Act* to ensure disciplinary hearing decisions, SIU-related disciplinary and investigation reports are made public
 - Establishing police services data collection and retention systems to record human rights-based data on key interactions with civilians

Proposed Amendments to the *Police Services Act*

- Change name of Special Investigations Unit to Ontario Special Investigations Unit (OSIU)
- Release OSIU reports publicly, include new time limits for the completion and public reporting of investigations
- Change name of Office of the Independent Police Review Director to the Ontario Policing Complaints Agency (OPCA)
- Authorize OSIU and OPCA to collect personal information specified by regulation and publish reports to inform, evaluate and improve policing oversight

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

- Bill 68 proposes to expand the open meeting exceptions of the *Municipal Act* and the *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

Information
and Privacy
Commissioner
of Ontario

Comments of the Information and Privacy Commissioner of Ontario on the Proposed Open Meeting Amendments in Bill 68



Brian Beamish
Commissioner
April 11, 2017

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PRIVACY

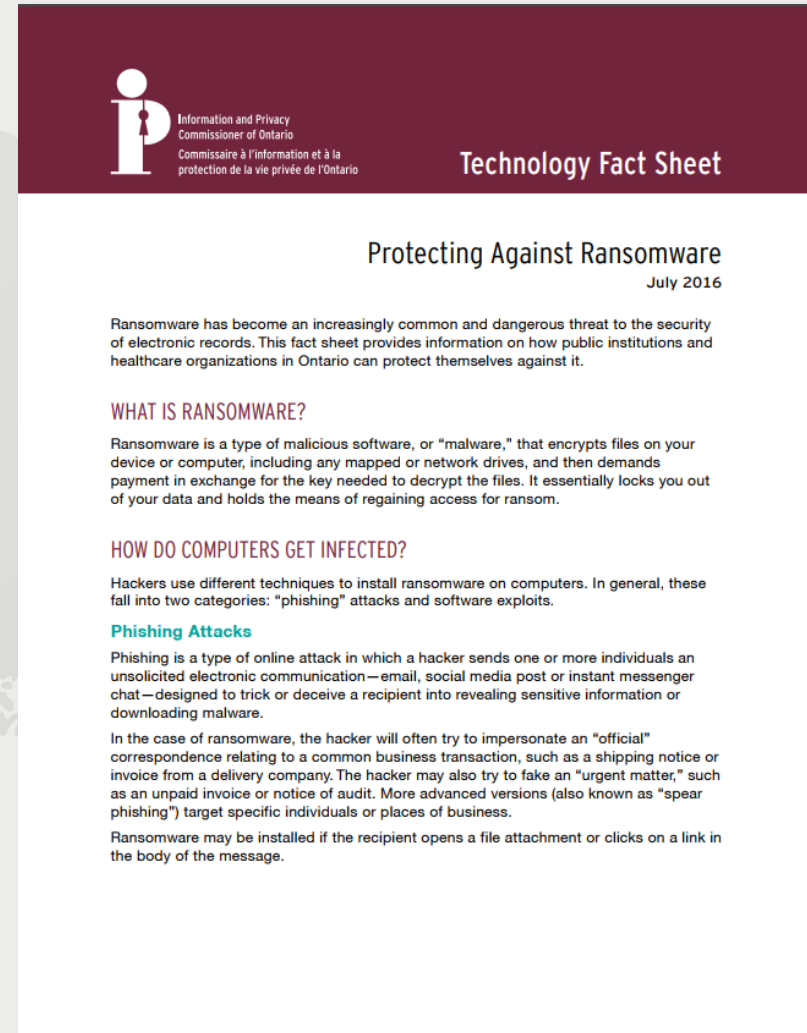


Ransomware Attacks

- In 2016, six ransomware attacks reported by health information custodians (HIC) from individual practices to hospitals
- Attackers demanded ransom in exchange for decryption keys to restore access to the data
- Some HICs paid the ransom, others relied on back-up data
- One HIC lost two years of patient data

Protecting Against Ransomware

- Only download email attachments or click links from trusted sources
- Avoid opening unsolicited email attachments
- Back up all records regularly and check to ensure data is saved
- Ensure automatic update of security software, anti-virus programs



Records and Information Management (RIM) Access and Privacy

- IPC webinar clarifies relationship between RIM practices and Ontario's access and privacy laws
- Strong RIM practices:
 - prevent lost or inappropriately deleted files
 - lower search times and fees
 - reduce risk of privacy breaches



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RECENT DECISIONS



What's in a Name?

- **PO-3695** – Individual affected by access request asked an Independent Electricity System Operator (IESO) for the name of the requester (the appellant)
- IESO disclosed the appellant's name because it was professional information, not personal
- Appellant argued their name was “personal information”
- IPC disagreed, upheld IESO's decision to release their name based on such factors as the appellant's professional profile appearing on a social media website

Student Records and Privacy

- **MO-3599** – Reporter requested a chart showing number of students suspended or expelled at each high school in Durham District School Board
- Board denied access, citing exemptions such as economic harm, personal privacy
- IPC ordered information disclosed
- Board failed to provide sufficient evidence for an exemption based on economic interests, or the presence of personal information

Pursuing Remedy for Dog Bites

- **MO-3370** – Individual requested the name and address of the owner of a dog that bit them
- City of Hamilton granted access to records documenting the incident, withheld the personal information of the dog owner
- Individual appealed the city's decision, claiming the dog owner's identity and address was necessary to continue their dog bite liability case
- IPC ordered the release of the dog owner's name and address; non-disclosure restricted individual's right to pursue legal action

Frivolous and Vexatious Requests

- **PO-3691** – Requester made 40 requests within nine weeks to Office of the Public Guardian and Trustee (PGT) related to a deceased person's estate
- PGT limited the number of requests the requester could make at one time; requester appealed
- IPC viewed high volume of requests as interfering with the operations of the institution
- Found to be “frivolous and vexatious”

Can a Third Party Claim the Request Was Frivolous and Vexatious?

- **PO-3738** – Request for access to records related to the restructuring of General Motors in 2009
- Ministry of Economic Development, Employment and Infrastructure (MEDEI) granted partial access to records
- GM appealed the release of any records, claiming the request was frivolous and vexatious
- IPC decides GM can't raise this issue when MEDEI did not



Solicitor-Client Privilege

- **MO-3497** – Request to the Town of Amherstburg for a record with information about the approval of training expenses
- The town granted partial access to the record, claiming it contained legal advice and was subject to solicitor-client privilege
- Requestor appealed on the grounds the town had already waived solicitor-client privilege; information had been made public at a council meeting and in interviews with local media
- IPC decided release of some information about the legal advice does not mean all of the advice must be disclosed

Third-Party Information

- **PO-3721** - Request to the Ministry of the Environment and Climate Change (MOECC) for access to a stormwater management plan for a wind farm
- Wind farm company appealed MOECC's decision to grant access, arguing contents could be exploited by anti-wind energy activists
- IPC disagreed and upheld MOECC's decision; insufficient evidence the contents of the plan could be used to harm the company



Can Councillor's Records Be Accessed Through *MFIPPA*?

- **MO-3471** – Request for access to communications sent or received by staff relating to a city councillor's Twitter account
- IPC decision – these are personal, political records relating to the councillor's activities as an elected representative



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