

REACHING OUT
TO ONTARIO

Latest Developments in Access and Privacy

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HAMILTON

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Open Contracting

- Proactive disclosure of procurement records
- Benefits 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



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Open Contracting

- Design an open procurement process
- Make records publicly available
- Engage with stakeholders and contractors
- 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
- Publish information for every contract awarded (e.g., vendor name, payment data) in a timely manner



Does Third Party Exemption Apply?

- **Order MO-3376** – request to City of Hamilton for successful proposal relating to city’s purchase of refuse packers, any related contract and/or purchase orders
- City decides to grant full access
- Third party appeals, citing third-party commercial information exemption
- IPC rejects third party’s claim, upholds city’s decision to disclose
- Contracts and proposals generally not exempt

Balancing Transparency with Privacy

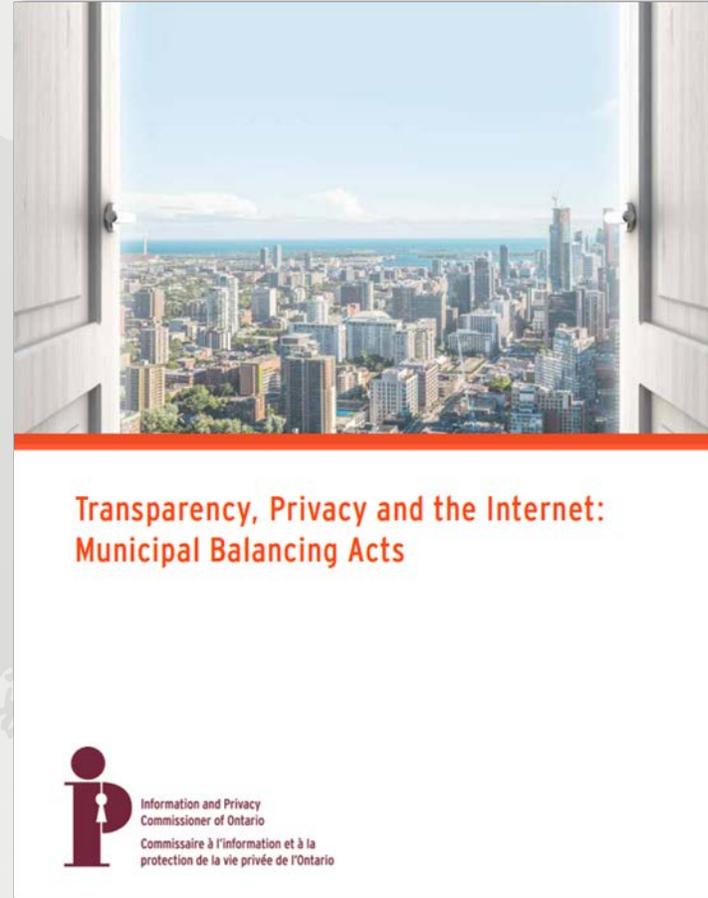
- Proper stewardship of personal information collected by institutions is fundamental to maintaining public's trust and confidence
- Disclosure of personal information by an institution is not permitted except in specific circumstances

Publishing on the Internet

- Privacy Complaint Report MC13-67
- Complaint about a municipality's online publication of personal information collected as part of a minor variance application
- IPC finds publication not breach of *MFIPPA* because the information was required to be made public under the *Planning Act*
- IPC recommends that city consider implementing privacy protective measures that obscure the information from search engines and automated agents

Transparency, Privacy and the Internet

- Provides municipalities with privacy protective policies, technical options for publishing personal information online
- Focuses on personal information but may be applied whenever municipalities post information online



Publishing on the Internet IPC Guidance

- 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

When does Public Interest Outweigh Privacy?

- **PO-3617**- reporter asks Ministry of Health and Long-Term Care for names, specialties and payments to OHIP's top 100 billers
- Ministry discloses payment amounts and specialties of some doctors, withholds names and some specialties, claiming invasion of privacy
- IPC orders disclosure
 - not personal information
 - public interest outweighs privacy concerns

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.



When does Public Interest Outweigh Privacy?

- Ontario Divisional Court dismisses applications by doctors' groups to quash order, ruling it was reasonable
- Court agrees names, amounts, specialties not personal information
- Ontario Court of Appeal to hear appeals from this decision in June 2018

Data Analytics

- Change how we think about and use data
- New combinations of data may reveal hidden patterns and insights
- Data integration (sharing, linking, analyzing data) can enhance
 - policy development
 - system planning
 - resource allocation
 - performance monitoring



Privacy Risks of Data Analytics

- Poorly selected data sets
 - lack information, are incomplete
 - contain incorrect or outdated information
 - disproportionately represent certain populations
- Pseudo-scientific insights can assume correlation equals causation
- Lack of knowledge/transparency regarding the inner “logic” of the system
- If poorly designed, can result in the use of personal information in ways that are invasive, inaccurate or discriminatory

Privacy Risks of Data Integration

- Not based on consent – lack of transparency
- Replication of massive government databases of linked and identifiable PI
- Surveillance/profiling of individuals
- Increased cybersecurity risks
- Potential discrimination based on inaccurate data/flawed algorithms

The Need for Legislative Reform

- *FIPPA* treats government institutions as silos; indirect collection, sharing/linking across government not envisioned
- Call for single dedicated unit in Ontario to:
 - collect PI across government
 - link records securely
 - de-identify
 - make de-identified data available to public bodies
- Would mirror *PHIPA* approach [s. 55.9]
- Avoids replicating databases, profiles of sensitive PI across government

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GUIDANCE



Ransomware Attacks

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

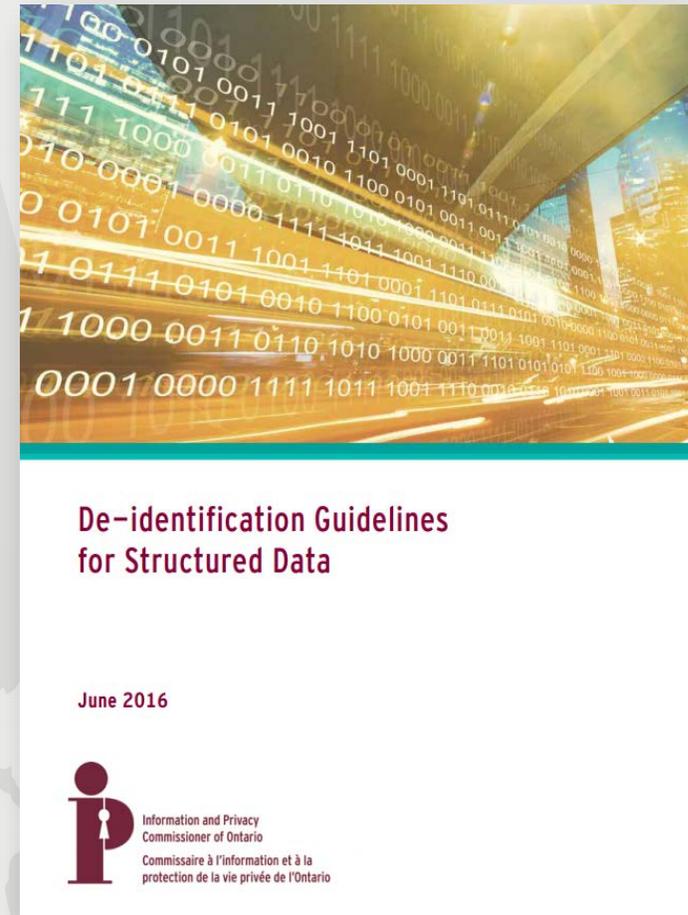
Protecting Against Ransomware

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



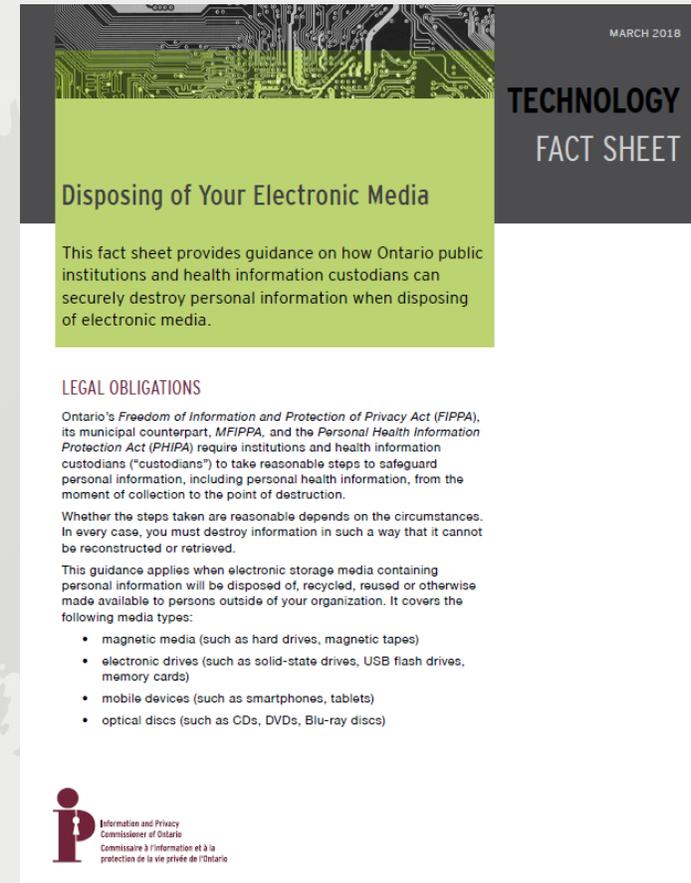
De-Identification Guidelines

- Best practices for removing personal information from a record or data set
- Written in plain language
- Recognized at International Conference of Data Protection and Privacy Commissioners (2017)
- Received the global privacy and data award for excellence in research



Disposing of Electronic Media

- Institutions must take reasonable steps to securely destroy personal information when disposing of electronic media
- Electronic media include:
 - electronic or flash drives
 - mobile devices
 - optical discs



Reasonable Search

- Institutions must conduct reasonable search for records in response to FOI request
- Considerations:
 - clarification of requests
 - review of files in all formats
 - documenting details of search



APRIL 2017

ACCESS FACT SHEET

Reasonable Search

Ontario's access and privacy laws require public institutions to conduct a reasonable search for responsive records when they receive a request for access to information.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Office of the Information and Privacy Commissioner (IPC). The IPC may review the search conducted by the institution to determine if it was reasonable. If the IPC decides that the search is not reasonable, it can order the institution to conduct a further search.

This fact sheet explains what a reasonable search is, how institutions can comply with their search obligations, how requesters can support institutions' efforts to find responsive records, and the role of the IPC in an appeal.

WHAT IS A REASONABLE SEARCH?

A reasonable search occurs when an experienced employee who is knowledgeable in the subject matter of the request makes a reasonable effort to locate records related to the request.¹

A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

¹ Orders M-909, PO-2469 and PO-2592.

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Frivolous and Vexatious Requests

- FOI requests form pattern of conduct that amounts to an abuse of the right of access or interferes with operations
- Made in bad faith
- Made for purpose other than access



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Coming Soon: Fees, Fee Estimates and Fee Waivers

- Will assist institutions in determining the what, when, and how of claiming and calculating fees
- Supplements existing resources such as IPC orders and practical guidance materials
- Updated to reflect a number of important orders and court decisions

Records and Information Management (RIM) Access and Privacy

- Clarifies relationship between RIM practices and Ontario's access/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



Toronto Star v. Ontario Attorney General

- Newspaper seeking easier and fuller access to records of public hearings
- Court agrees *FIPPA* an unreasonable barrier to accessing adjudicative records [*Charter*, s. 2(b)]
 - gives province a year to consider how to make tribunals more open
- Provides IPC opportunity to advise government on *FIPPA* amendments
- Must balance openness with privacy



Reasonable Expectation of Privacy: *Jarvis* (SCC)

- High school teacher charged with voyeurism
- Using pen camera to surreptitiously record face and cleavage of 27 female students in common areas of school
- IPC intervened before Supreme Court of Canada on “reasonable expectation of privacy” in public spaces issue
- Crown/IPC say students in common areas have objective expectation of privacy, including in areas with existing video cameras
- Decision expected later in 2018

Student Records and Privacy

- **Order MO-3320** – reporter requests number of students suspended or expelled at each high school in Durham
- Board denies access, citing exemptions such as economic harm, personal privacy
- IPC orders disclosure
- Board failed to provide sufficient evidence to support exemptions

Pursuing Remedy for Dog Bites

- **Order MO-3370** – individual requests name and address of owner of dog that bit them
- City of Hamilton grants access to records documenting the incident, but withholds dog owner’s personal information
- Individual appeals, claiming identity and address necessary to continue their dog bite liability case
- IPC orders release of name and address; non-disclosure restricted individual’s right to pursue legal action

Frivolous and Vexatious Requests

- **Order PO-3691** – 40 requests in nine weeks to Public Guardian and Trustee (PGT) related to a deceased person's estate
- PGT limits number of requests the requester can make at one time
- Requester appeals
- IPC views high volume of requests as interfering with the operations of the institution
- Finds requests “frivolous and vexatious”

Can Councillors' Records Be Accessed Through *MFIPPA*?

- **Order MO-3471** – request for access to communications sent or received by staff relating to city councillor's Twitter account
- IPC rules records are personal/political, relating to councillor's activities as an elected representative
- Therefore, not accessible (outside city's custody or control)



Personal Email Accounts

- **Order MO-3281** – City of Oshawa receives request for access to emails between councillor and individual retained by city to investigate alleged staff wrongdoing
- City identifies email from councillor to individual on personal email
- City denies access, citing not in custody or control because sent from personal account
- IPC finds city has control over the record because it relates to city business
- IPC orders city to disclose record



Compelling Public Interest: Police Carding

- **Order MO-3476** – requester seeks information about street checks and racial data from Peel police
- Police deny access to six records, claiming they contain advice and recommendations
- IPC partially upholds decision, denying access to one record but ordering release of the others
- Compelling public interest [*MFIPPA* s. 16] in race data related to street checks; outweighs “advice” exemption

Privacy Investigation: School Photos

- **Privacy Complaint MC16-4** – complaint about Toronto school board disclosing student’s personal information to photographer, who then contacted parents to market their services
 - very common practice throughout province
- IPC finds school authorized to collect student photos for ID, safety reasons [*Education Act*]
- IPC also finds school permitted to disclose photos, other PI to photographer, for valid administrative/marketing purposes [*FIPPA* s. 32]
 - as long as restricted to PI necessary to carry out process
- IPC recommends school more carefully choose what PI needs to be given
 - also, school should allow parents to “opt out”

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