

REACHING OUT  
TO ONTARIO

# Key Developments in Access and Privacy

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Sudbury

October 11, 2019



## REACHING OUT TO ONTARIO

ROTO is an ongoing program where the IPC visits communities across Ontario to discuss the latest developments in access and privacy



- St. Catharines
- Windsor
- Ottawa
- Hamilton
- Sault Ste. Marie
- Barrie
- Kingston
- Waterloo
- London
- **Sudbury**
- Thunder Bay

# IPC's Mandate

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
  - 300 provincial institutions
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
  - 1,200 municipal organizations
- *Personal Health Information Protection Act (PHIPA)*
  - individuals and organizations involved in the delivery of health care services
- Expanded Mandate: *Child, Youth and Family Services Act* (January 1, 2020)

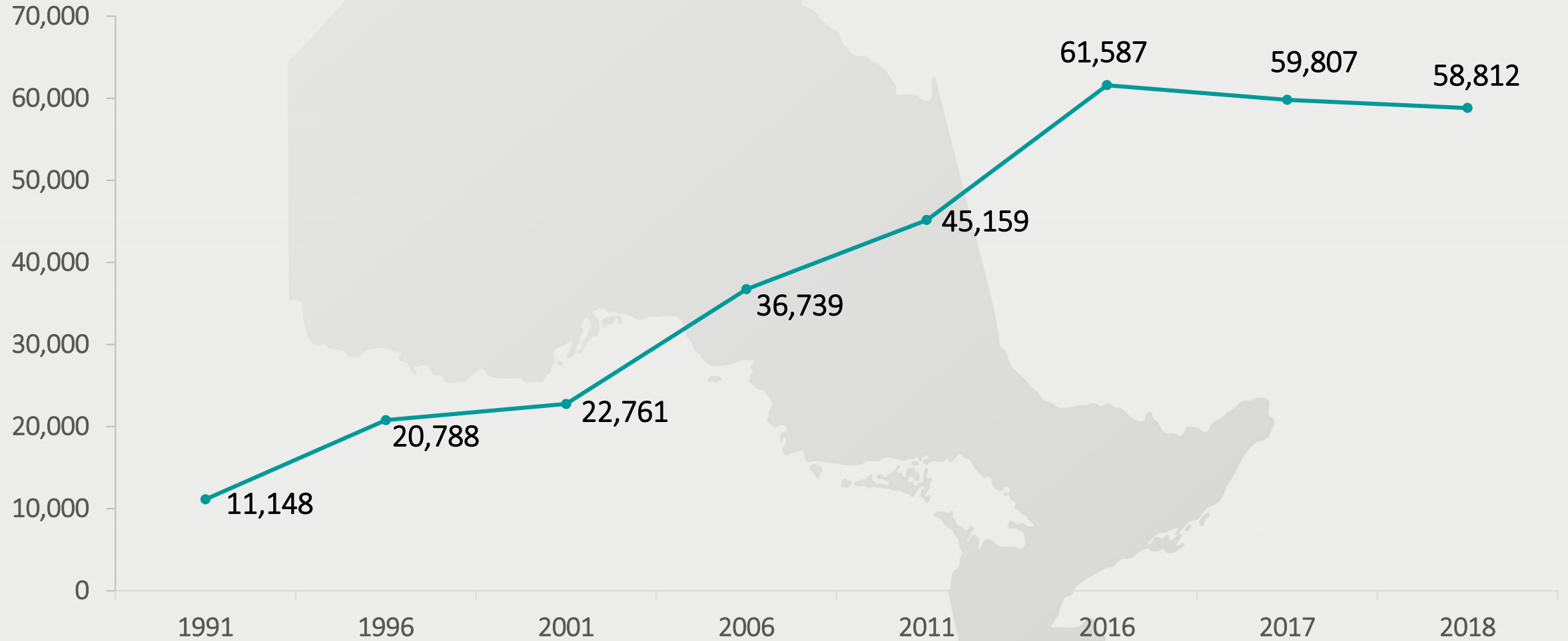
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ACCESS

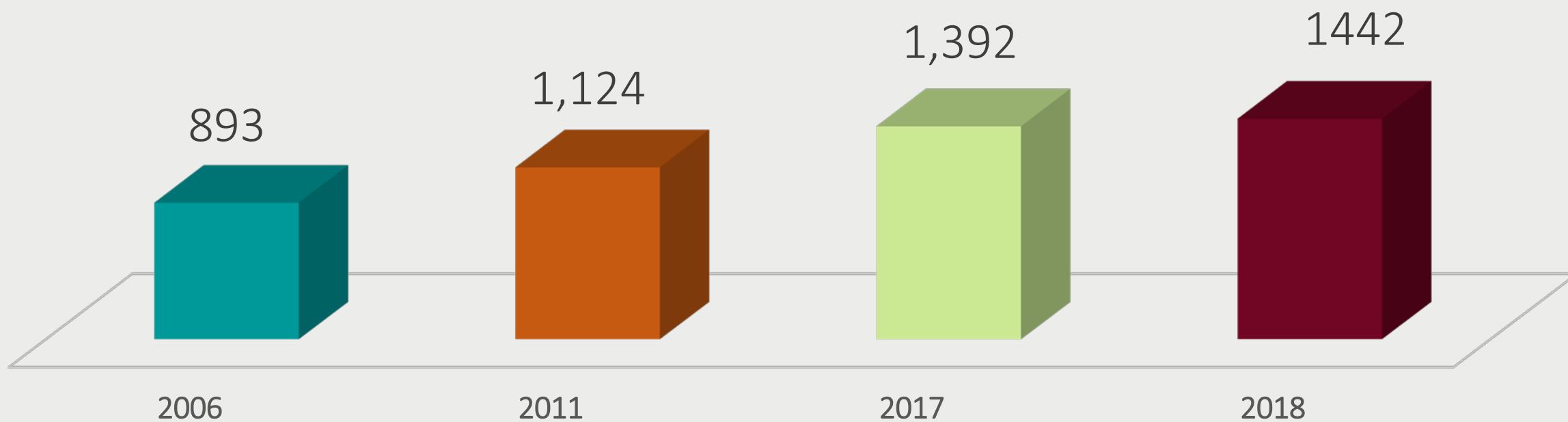


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# Access Requests Per Year

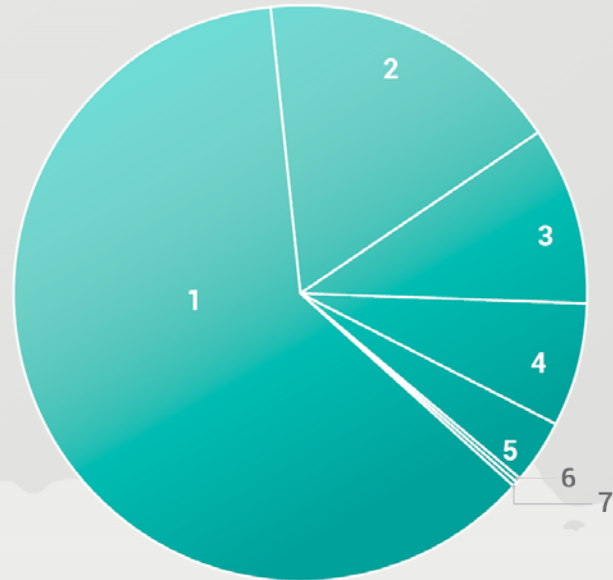


# Appeals Received per Year



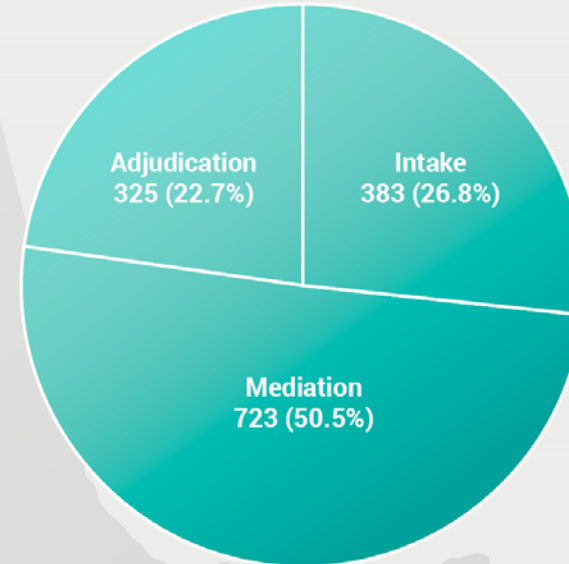
# Appeals for 2018

OUTCOME OF  
APPEALS



- 1. Mediated in full: 885 (61.8%)
- 2. Order/Decision issued: 245 (17.1%)
- 3. Screened out: 142 (9.9%)
- 4. Withdrawn: 100 (7.0%)
- 5. Abandoned: 55 (3.8%)
- 6. Dismissed without inquiry/  
review: 2 (0.1%)
- 7. Dismissed without order/  
decision: 2 (0.1%)

APPEALS  
CLOSED  
BY STAGE



# OHIP Billings

- Toronto Star sought access to top 100 OHIP billing physicians for 2008-2012
- Ministry discloses the dollar amounts but withholds names under the personal privacy exemption
- IPC orders disclosure – OHIP billings are “business” not “personal”
- Ontario Medical Association applies for review at Ontario Divisional Court – dismissed
- OMA appeals – Ontario Court of Appeal Upholds IPC order  
*An individual's gross professional or business income is not a reliable indicator of the individual's actual personal finances or income [not PI]*



# Supreme Court of Canada Denies OMA Leave

- SCC Denies OMA leave to appeal – March, 2019
- IPC's 2016 decision stands
  - sharing names of physicians who bill OHIP with the public falls in line with growing public expectation for transparent government and accountability
  - billings of other professionals and consultants not considered personal information and are accessible to the public under Ontario's access legislation
  - Ontarians have a right to scrutinize government spending and decision-making; right to access government-held information is a cornerstone of a healthy democracy
  - individuals need to know what their government is doing to hold it accountable

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TORONTO STAR

CANADA POLITICS WORLD OPINION LIFE SPORTS ENTERTAINMENT BUSINESS STA

Upgr

GTA

## They're Ontario's top-billing doctors, but for years their identities have been kept secret. Until now

By **May Warren** Staff Reporter  
**Theresa Boyle** Health Reporter  
**Andrew Bailey** Data Analyst  
Thu., June 27, 2019 | 13 min. read



# Government Mandate Letters

- Journalist was refused access to mandate letters from Premier Ford to government ministers
- Access denied based on cabinet documents exemption
- IPC determines exemption does not apply; orders government to disclose by August 16
- IPC notified on August 14 of government application to challenge decision in court

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Toronto

## Ford's senior officials hoped to keep mandate letters away from public view 'as long as possible'

CBC News plans to continue fight for marching orders to ministers as Ontario looks to keep them secret

CBC News · Posted: Aug 22, 2019 4:00 AM ET | Last Updated: August 22



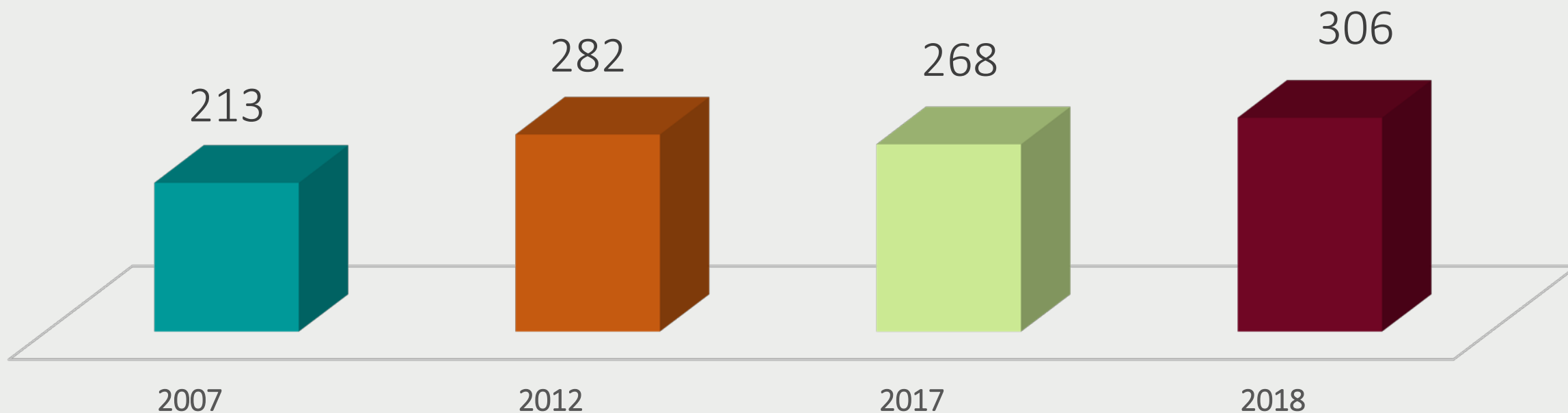
Premier Doug Ford's government has gone to court to fight an order to release mandate letters to his cabinet ministers. (Tijana Martin/The Canadian Press)

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# PRIVACY



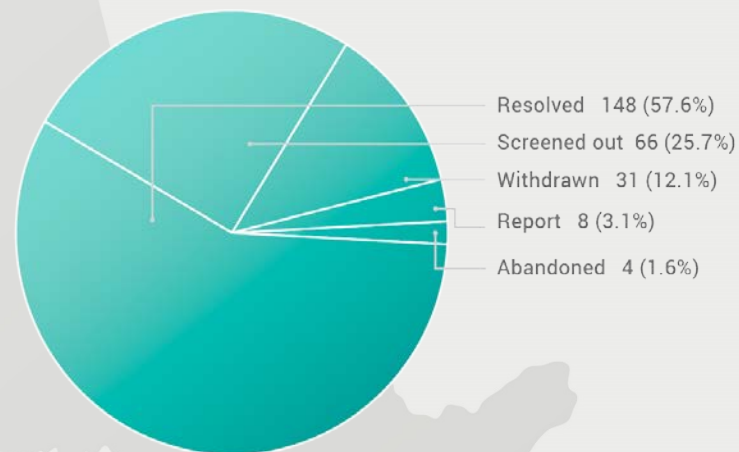
# Total Privacy Complaints Opened Per Year



# Privacy Complaint Process: Early Resolution

- Most complaints are resolved at the intake stage
- All complaints are received by the IPC registrar
- The registrar or intake analyst may attempt to resolve the complaint informally
- Complaint can be dismissed at an early stage if:
  - it is clearly outside the IPC's jurisdiction
  - the IPC is satisfied with the response to the complaint

PRIVACY COMPLAINTS CLOSED BY TYPE OF RESOLUTION



# Privacy Risks of Smart Cities

- Privacy not barrier to smart cities, but they require strong **privacy protections**
- Without adequate safeguards, excessive **personal information** may be collected, used, disclosed
- Potential hazards:
  - tracking individuals as they go about their daily activities (**surveillance**)
  - use/disclosure for other purposes without consent (**function creep**)
  - security breaches (**cyberattacks**)



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# Keep in Mind

- Smart City issue far more than Sidewalk Toronto
- These are CITIES
- The private sector needs to realize that involvement with public sector changes the rules





# Annual Report Recommendation

- *MFIPPA* is outdated in the face of current digital technologies and practices
- Government should lead a comprehensive review of our privacy laws and modernize them to address the risks inherent in smart city technologies
- Areas of concern:
  - Need for proper oversight and enforcement
  - Address public/private partnerships
  - Data trust?



# Ransomware and Cyber Attacks on the Rise

- Hacker gained access to eight City of Stratford servers that contained personally identifiable information
- The servers were disconnected to contain the attack
- The city returned to normal business operations about two weeks after the attack



# The Philadelphia Model

- Review of police sexual assault files to look for deficiencies and biases
- Since implementation in Philadelphia 17 years ago, “unfounded rape” rate dropped to four per cent
- U.S. national average is seven per cent



Globe and Mail Series: *Unfounded*  
Robyn Doolittle

# MOU for Use by Ontario Police

- IPC worked with police and stakeholders to develop model Memorandum of Understanding and Confidentiality Agreement
- Sets the terms for the review of sexual assault cases by police and external reviewers
- In 2018, the Ontario Association of Chiefs of Police endorsed this approach to sexual violence case review
- The IPC has reviewed elements of the OACP's guidance document that sets best practices for police response to sexual violence

MEMORANDUM OF UNDERSTANDING respecting the External Sexual Assault Case Review Program made this 1st day of November, 2017 (the "Effective Date").

BETWEEN:

SEXUAL ASSAULT CENTRE KINGSTON  
(Hereinafter referred to as "SACK")

-AND-

PAMELA CROSS, BA, LLB  
(Hereinafter referred to as "Pamela Cross")

-AND-

OTTAWA RAPE CRISIS CENTRE  
(Hereinafter referred to as "ORCC")

COLLECTIVELY REFERRED TO AS THE "KINGSTON VAW ADVOCACY GROUPS"

-AND-

KINGSTON POLICE  
(Hereinafter referred to as "Kingston Police")

COLLECTIVELY REFERRED TO AS THE "PARTIES"

WHEREAS the Kingston Police as a municipal police service are governed by the *Police Services Act*, R.S.O. 1990, c. P. 15 (*PSA*) and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 (*MFIPPA*);

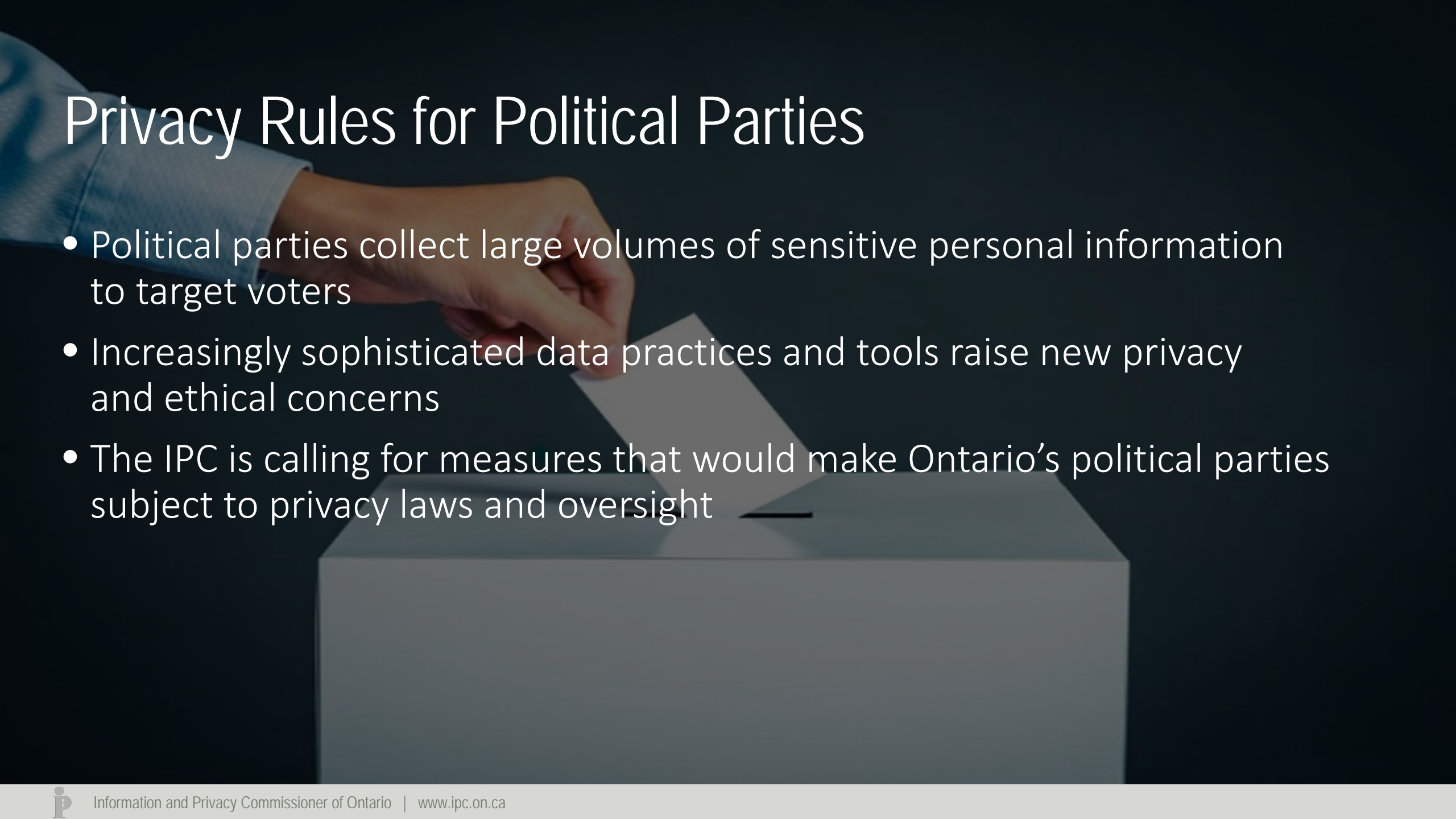
WHEREAS, under section 1 of the *PSA*, police services shall be provided in accordance with principles, including the need for co-operation between the providers of police services and the communities they serve; the importance of respect for victims of crime and understanding of their needs; the need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society; and the need to ensure that police forces are representative of the communities they serve;

WHEREAS, under section 4(2) of the *PSA*, core police services include crime prevention, law enforcement, and providing assistance to victims of crime;

WHEREAS, under section 41(1) of the *PSA*, the duties of the Chief of the Kingston Police include ensuring that the Kingston Police provide community-oriented police services and that its members carry out their duties in a manner that reflects the needs of the community;

WHEREAS the duties and functions of the Kingston Police include investigating reports of sexual assault and supervising and monitoring those investigations, including for the purpose of identifying deficiencies, errors and anomalies in and improving the efficiency of individual sexual assault investigations and the sexual assault investigative process as a whole;

# Privacy Rules for Political Parties

A hand in a blue shirt sleeve is shown dropping a white ballot into a grey ballot box. The background is dark, and the scene is lit to highlight the hand and the box.

- Political parties collect large volumes of sensitive personal information to target voters
- Increasingly sophisticated data practices and tools raise new privacy and ethical concerns
- The IPC is calling for measures that would make Ontario's political parties subject to privacy laws and oversight

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# RECENT DECISIONS AND RESOLUTIONS

Sherry Liang  
Assistant Commissioner



# Algoma Public Health

- **Order MO-3295** - Algoma Public Health (APH) received a request for final report of 2015 KPMG forensic review
- Report relates to whether conflict of interest regarding appointment of APH's former interim CFO, and whether any funds were subsequently misappropriated or lost by APH
- APH decides personal privacy exemption applies, but decides full report should still be disclosed on basis of **public interest override (first time ever!)**
- IPC upholds APH decision to disclose
- April 2019: Ontario Court of Appeal affirms APH/IPC decision

# Compelling Public Interest in Salary Information

- **Order MO-3684-I-** a request to the City of North Bay for all records related to a specific employment opportunity revealed one responsive record – an employment agreement – and denied the appellant full access
- City claimed a number of exemptions, including discussions held at a closed meeting and personal privacy
- IPC did not uphold city's decision
- The agreement revealed the results of the closed meeting, it did not contain the deliberations that occurred
- Compelling public interest in the disclosure of salary information
- Personal privacy considerations did not justify withholding



# A Streetcar Named Disclosure

- **Order MO-3827** - An access request to the TTC for records related to the company manufacturing streetcars, including information about delays in delivering streetcars
- The TTC notified the manufacturer and granted partial access to the responsive records
- The manufacturer appealed the TTC's decision on the basis that third party information applied to information
- IPC found that some of the information at issue was exempt under the act but ordered it disclosed on public interest grounds
- TTC agreed there was a public interest in disclosure of the information

# Personal Privacy Exemption and Marijuana Grow Operations

- **Order MO-3685** – The Greater/Grand Sudbury Police Services Board received a request for information about marijuana grow operations
- Police disclose a chart, listing the dates of seizures and number of plants seized but withheld property addresses claiming personal privacy exemption
- Public interest outweighs privacy considerations; public scrutiny, consumer protection and promotion of public health and safety

# Mediation: Critical to Our Success

- Usually, 75 per cent of access appeals are closed before adjudication
- More than 60% are fully mediated, and others screened out or otherwise resolved at an early stage
- Goal is to find a resolution which satisfies the needs of all involved
- Saves significant time and resources for all parties
- Even appeals that go forward to adjudication are often considerably narrowed through mediation

# Mediation Success Stories: Access for Compassionate Reasons

- The Greater/Grand Sudbury Police Services Board received a request for access to reports and photographs related to the death of the requester's sibling
- The investigation into the death was ongoing and access to the records was denied
- The investigation concluded during mediation and the police issued a revised decision granting partial access to the reports and photographs
- The mediator notified several affected parties and obtained consent to disclose most of their personal information, which the police subsequently disclosed to the appellant
- The appellant viewed the photographs with an officer
- The appellant subsequently advised the mediator that she would not proceed further with the appeal

# Ministry of the Environment and Climate Change

- Citizens group asked Ministry of the Environment and Climate Change for records relating to concerns about wells near a quarry
- After notifying an affected party, ministry granted partial access, denied access to some based partly on personal privacy
- Third party (quarry owner) also appealed, objecting to ministry's decision to grant partial access
- Through mediation, third party consented to disclosure of all records at issue, also invited citizens group to view quarry site and ask questions

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# PRIVACY COMPLAINTS



# School Photos

- **Privacy Complaint MC16-5** – complaint from a parent about a school board’s picture-taking program because students’ personal information was shared with the photographer
- **Conclusions/Findings:**
  - collection and use of students’ photographs for education-related purposes permissible
  - however, use of photos for ID cards in association with Canadian Centre for Child Protection goes beyond original purpose
- **Recommendations:**
  - parents/guardians can:
    - **opt out** of receiving marketing from photographers and the ID card program
    - request the photographer **destroy** their children’s personal information, so long as it does not interfere with the board’s administrative requirements

# Casino Rama Investigation

- In November 2016, OLG reported to the IPC that Casino Rama Resort was subjected to a cyberattack
- IPC launched investigated the circumstances of the breach and whether reasonable security measures were in place to protect personal information of Rama customers
- The investigation revealed weaknesses in the cyber security practices – particularly with response to suspicious activity
- OLG/Casino Rama have taken steps to address the weaknesses identified – IPC satisfied
- Institutions should plan for cyberattacks by having appropriate measures in place to secure their systems and ensure early detection



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# RESOURCES



# Part X of the *Child, Youth and Family Services Act*: A Guide to Access and Privacy for Service Providers

- Overview for service providers on the rules for collecting, using, disclosing, safeguarding personal information under Part X

Part X of the *Child, Youth and Family Services Act*: A Guide to Access and Privacy for Service Providers



# Privacy Breaches: Guidelines for Public Sector Organizations

- This guide explains what a privacy breach is and how to respond to one. It also describes the IPC's process when notified of a privacy breach.

PRIVACY

Privacy Breaches  
Guidelines for Public Sector  
Organizations



# Resources for Schools

- Answers to common questions about privacy and access to information in schools
- Helps school officials and teachers understand rights and obligations related to students' personal information

A Guide to Privacy and Access  
to Information in Ontario  
Schools



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

# Dealing With Law Enforcement

- Answer frequently asked questions about access and privacy rights
- Explains the obligations of law enforcement agencies under Ontario's laws



**Police record checks**

In Ontario, the *Police Record Checks Reform Act* sets the rules for police record checks. This fact sheet describes the different types of checks, the information they contain, and your rights under the law.

The *PRCRA* applies to all police record checks in Ontario except where the legislation establishes an exception, such as for screening related to child custody, adoption, and children's residential care.

**WHAT IS A POLICE RECORD CHECK?**

When you apply for certain jobs, volunteer positions, educational programs or licenses, you may be asked to consent to a police record check. A police record check involves a search of police record-keeping systems such as the Canadian Police Information Centre database. A check may also involve the search of a local police service's records.

Police records contain information about the people police interact with, in both criminal and non-criminal situations. They may describe interactions that range from informal contacts with a police officer to being found guilty and convicted of a criminal offence. A police record check only includes some of the information in police records.

**WHAT KINDS OF POLICE RECORD CHECKS ARE PERMITTED?**

The *PRCRA* sets out three types of record checks that can be used for screening purposes and the kinds of information those checks can disclose.

## Release of personal information to police: your privacy rights

Ontario public sector organizations, such as provincial ministries and agencies, municipalities, schools, and transit systems, are required by law to protect your personal information and to follow certain rules when collecting, using, and disclosing your personal information.

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This fact sheet describes the key situations where institutions can share your personal information with a law enforcement agency. For information on disclosure of your personal information to police by a private organization, such as a cellphone company, contact the Office of the Privacy Commissioner of Canada, which oversees the rules for how businesses handle personal information.

### WHAT IS PERSONAL INFORMATION?

Under Ontario's access and privacy laws, personal information means, "recorded information about an identifiable individual." For a full explanation of the definition, see our fact sheet *What is Personal Information?*

# Next Sessions

- Session A  
Latest Developments in Protecting Personal Health Information  
SalleTrisac
- Session B  
Responsibilities under Part X of the *Child, Youth and Family Services Act*  
Au Pied Du Rocher

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