

Council of Ontario Universities FIPPA Network

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**Office of the Information and Privacy
Commissioner of Ontario**



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Council of Ontario
Universities – FIPPA
Network (Webinar)

April 11, 2022

Appeals at the IPC

1. Tribunal Operations

- Intro to the Tribunal
- Impact of COVID-19 on IPC operations
- Updates to IPC processes and online services

3. Exceptions from the Right of Access

- Frivolous and Vexatious Requests
- Labour Relations Exclusion
- Solicitor-Client Privilege

2. Mediation – Purpose and Tips

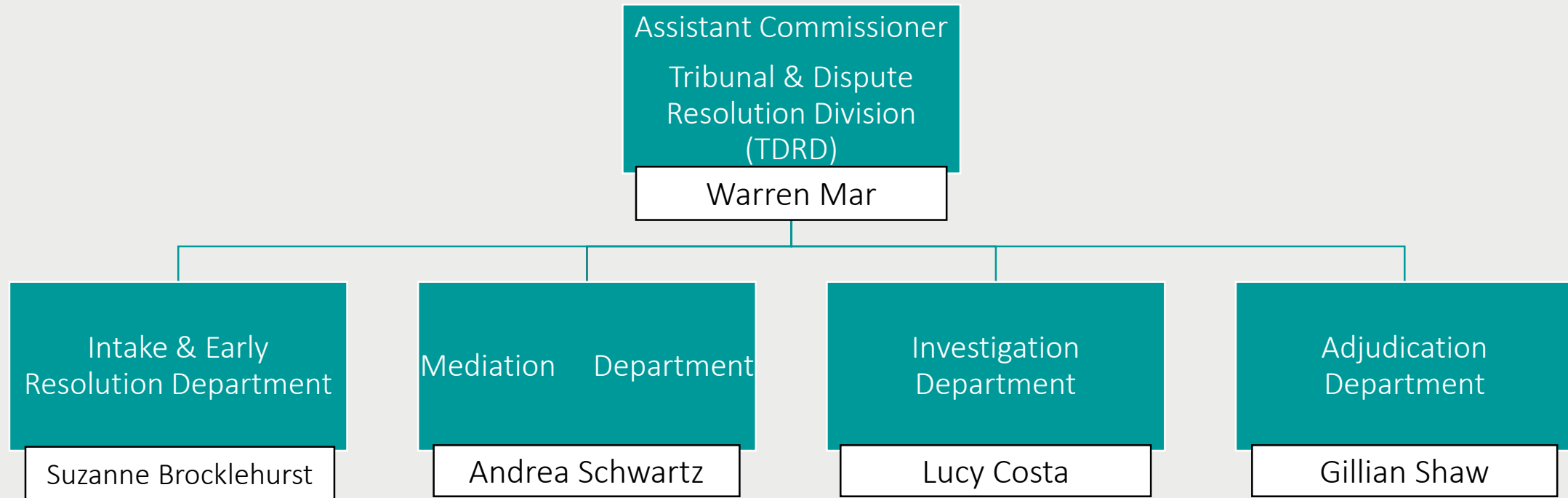
- Processing an Appeal
- Mediation Streams
- Effective Mediation
- Mediation Tips

4. University of Guelph Privacy Complaint Report

- IPC Report Regarding Vaccine Requirements for On-Campus Residents

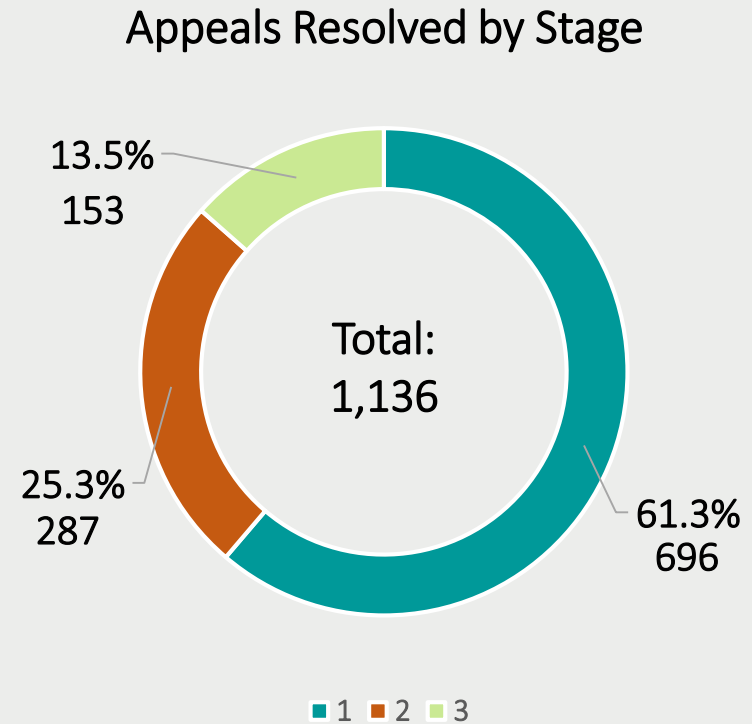
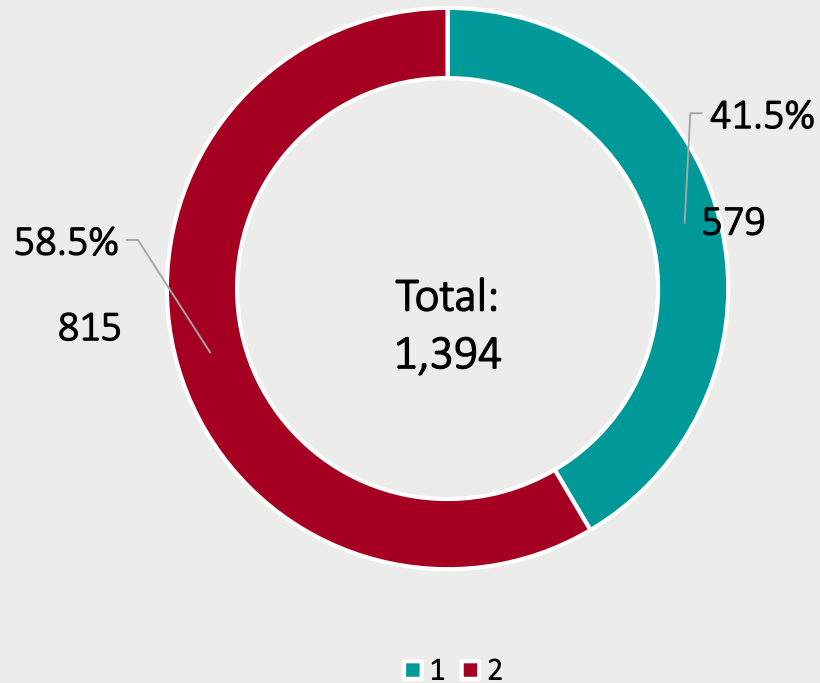
1. Tribunal Operations

Introduction to the Tribunal



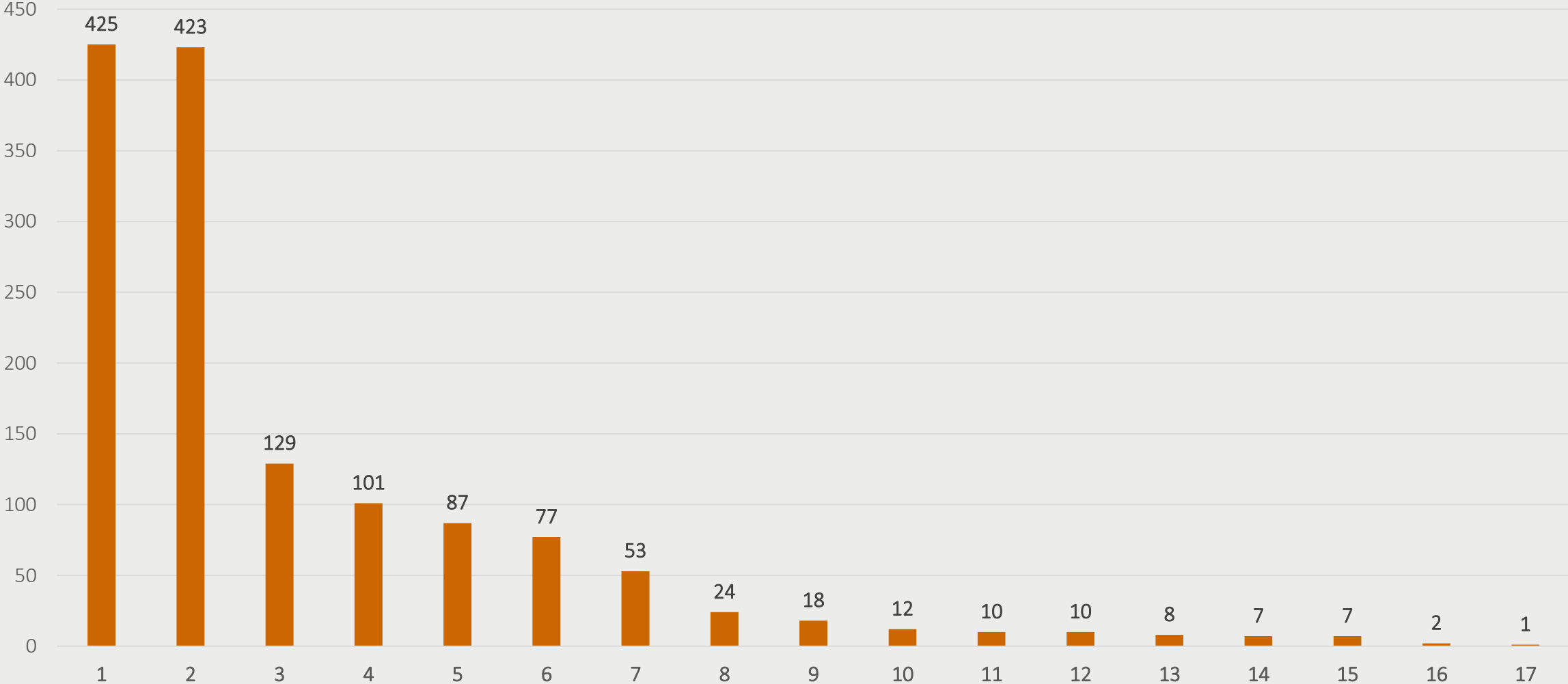
Introduction to the Tribunal

- 2021 Annual Report being drafted – deadline to submit statistics for 2021 calendar year was March 31, 2022.
- 2020 Stats:



Introduction to the Tribunal

- 2020 statistics – issues in appeals opened:



When an Appeal is Filed

- 30 day time limit to file an appeal once a decision is issued by the institution.
- If the matter cannot quickly be resolved through our Early Resolution team, it will be assigned for mediation.
- If mediation is unsuccessful, the matter will proceed to adjudication.
- A final decision will be made by the Adjudicator, either upholding the decision of the institution or ordering the records to be disclosed, in whole or in part.
- Keep and secure the records at issue.
- Always respond to IPC staff by the **deadline specified in our communications.**

Impact of COVID-19 on the IPC

- Prior to the pandemic, the IPC's processes were heavily paper-based – moved to virtual model & electronic documents.
- The IPC Policy Division is busy providing advice to government and broader public sector institutions as they deal with COVID-19: accelerated digitization, e-learning, and the use and sharing of data.
- No reduction or suspension in the statutory timeframes to process access requests or file appeals – unlike other government services or other judicial/quasi-judicial sectors.

Impact of COVID-19 on the IPC

- Resulted in a backlog of files being processed – backlog reduction project was successfully completed by March 31.
- Increase in privacy complaints, and institutions self-reporting data breaches involving sophisticated forms of ransomware and cyberattacks.
- Investigations have therefore become more complex and they take longer to resolve, given the complicated technological and legal issues involved.

IPC Tribunal Lean Process Review

- Examine and improve the **processes** that individuals and institutions interact with on a regular basis to better manage caseload and improve service.
- Create a “best-in-class” Tribunal that is fair, timely, and meaningful to Ontarians.
- Developing a culture of continuous improvement and empowerment to:
 - utilize our budget in a way that provides the most value;
 - improve the quality of our operations;
 - process files, and issue decisions and reports, more quickly; and
 - increase our responsiveness with institutions and the public.

Moving to Online Services

- IPC recognizes that not everyone lives close to Toronto – need to provide better service to residents and institutions in areas outside of the GTA.
- We have **implemented a ShareFile system** to allow institutions to submit records to us electronically, via a secure platform.
- In May 2022, the IPC will launch **two new online services** that will streamline the appeal process and improve accessibility:
 - an **electronic appeal form** that can be submitted online; and
 - a **secure payment portal** that will enable the public to submit their appeal and required fee online.
- Paper appeal forms and cheques will still be accepted; fees remain the same.



2. Mediation – Purpose & Tips

The Requester's Perspective



Tips at the Request Stage

- If the request is unfocused or overly broad, **contact the requester**
 - **Work with requester** to **reformulate request** to reduce scope/time needed/fees
 - **Explain** how the records are stored, the steps needed to locate, what may not exist, relevant retention schedules etc.
- Where appropriate, **notify** and seek consent
- Provide a **detailed decision** explaining why the exemption(s) and/or exclusion(s) apply. The more details the less likely an appeal.
- Prepare and provide a **detailed index** at request stage
- Consider exercising **discretion to disclose** if not a mandatory exemption

Tips at the Request Stage

- If you are unable to issue a decision within the required **30 days**, to avoid a deemed refusal appeal, issued a fee estimate and/or time extension.
- Best practice is to issue a fee estimate and time extension at the same time.
- Fee estimates / Time extensions should be **detailed** to help requesters appreciate:
 - The costs / time involved
 - How the costs / time is calculated
- Requesters may then choose to narrow the scope.
- Fee estimates **protect you from doing all the work** if requester decides not to proceed.
- The Devil is in the **details!** The more detailed the less likely an appeal.

A green pushpin is pinned to a map, symbolizing a specific location or a key point in a process. The map shows streets and a blue line, possibly a river or a route. The background is a soft, out-of-focus light blue.

IPC Appeals Process

Three stages:

- Intake/Early Resolution
- **Mediation**
- Adjudication

Mediation Streams

The vast majority of appeals are processed in the **Regular Stream** where the Mediator investigates the circumstances and attempts to:

- Settle all issues in the appeal
- If not settled, narrow and clarify the issues that proceed to Adjudication

Where the **sole issue** is a **time extension**, the file is processed in an **expedited stream**.

- Med/Arb. model where the mediator also acts as an Adjudicator
- If unresolved in a very short time period, the Mediator has the authority to conduct an inquiry and issue an Order



Role of the IPC Mediator

Works with parties with a goal of narrowing and ideally resolving the appeal in whole or part.

- Neutral
- Not a decision-maker
- Cannot dismiss appeals

What Does the IPC Mediator Do?

- Promotes communication
 - Explains process
 - Clarifies narrows issues
 - Identifies needs and interests & common ground
 - Encourages creative brainstorming and options generation
 - Ensures interactions are effective, respectful, timely and honest
 - Assigns tasks to parties
- Explains provisions of the *Act*
 - Ensures file is complete
 - Researches relevant precedents
 - Provides opinions
 - Identifies when to conclude mediation
 - Documents results of mediation
 - Prepares Mediator's Reports for unresolved files

How is Mediation at the IPC Unique

- **Power-imbalance** - The institution holds the records/information sought by requester
- **Mediator** works to **neutralize that imbalance** – reviews records with neutral eyes
- The **only disclosure** of records comes **from the institution**
- Parties **can convey information** to the mediator **in confidence** – helps ID interests
- **Interest based** mediation can result in **resolution with little or no actual disclosure of records**
- Mediators can **provide opinions** but do **not make findings**
- The mediator **cannot be a party to any conditional agreements** to close the file
- Mediator waits for **requester to receive information** and confirm that they are **no longer be pursuing the request**
- **Mediation does not set precedents**

Benefits of Mediation

- **Less Time** – Much more expedited than adjudication.
- **Less Formal** – Free flow conversation vs. writing representations.
- **Less Cost** – Costs of your staff time and added costs if not resolved
- **Creativity** – Interest based vs. rights based. Expands the pie so that more options are available.
- **Control of Outcome** – Tailored to needs of parties
- **Enhances Future Relationships** – Helps avoid appeals with repeat requesters!

Bottom line... Adjudication takes more time and effort and the onus is typically on you

Tips to Resolve at Mediation

- **Work with the mediator** to try and resolve
- A decision can be “right” but **benefit of resolving in mediation** is the file closes
- Many files can resolve with **little or no access to actual records**
- **Provide mediator with relevant** background information and documents
- **Recognize** the **benefits of informal resolution vs. time to write representations**
- Participate in the process with an **open mind**
- **Read relevant orders** provided by mediator and **hear mediator’s opinion**
- Follow up in a **timely fashion** as the process is appellant driven
- Participate in **Webex and/or teleconferences** as suggested, **bringing the right people to the table**
- **Most exemptions are discretionary**, very few are mandatory
- Appreciate the **give and take** of mediation and recognize the benefits of further disclosures, supplementary decisions etc.

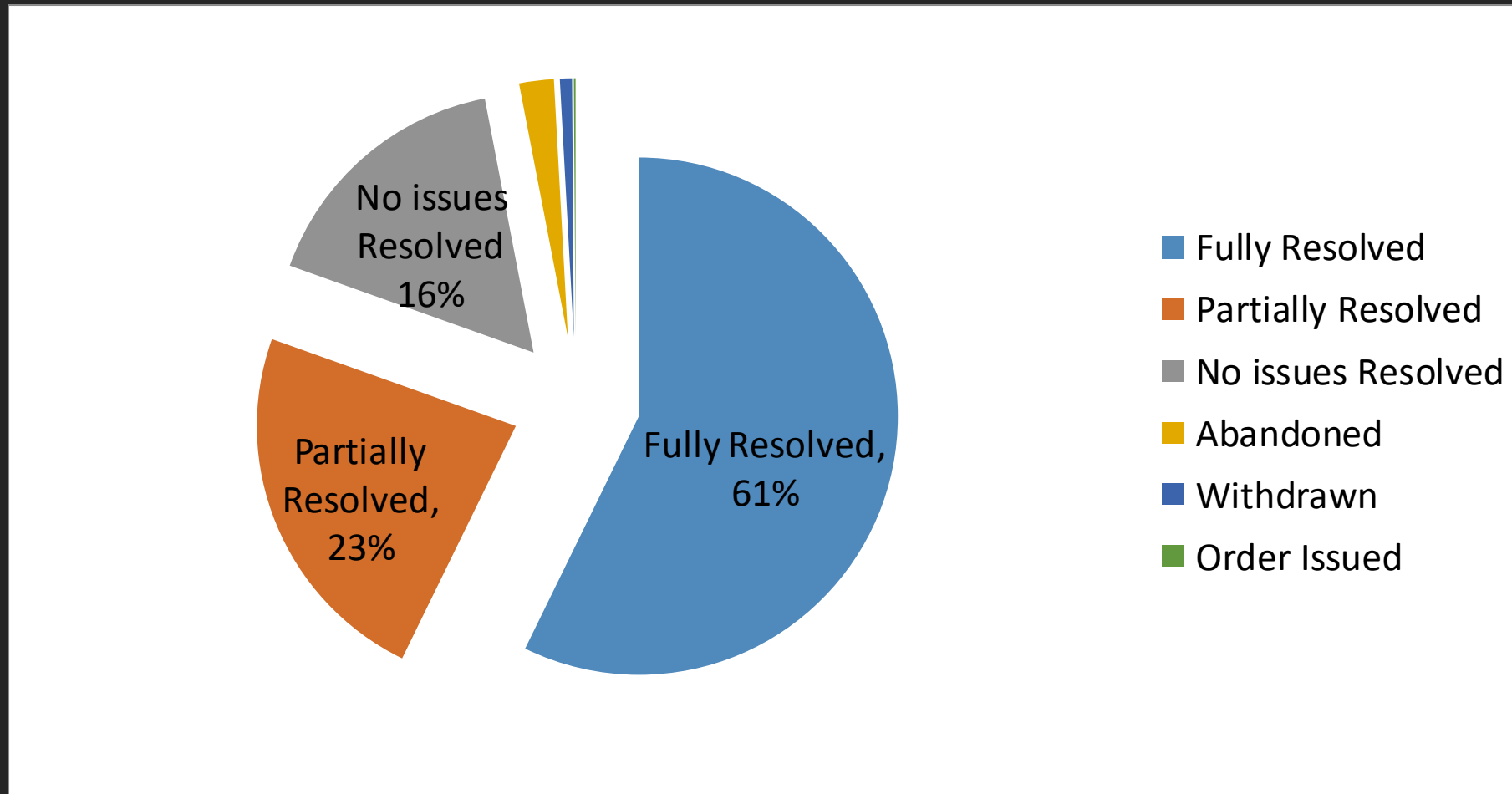
Tips for Voluminous Records

- Very important to prepare and share a **DETAILED INDEX**
 - Mediator asks appellant to review the index to try and narrow
 - Mediator reviews and attempts to **eliminate exemptions and issues** that appear not to be applicable or supportable
- Participate in an **early teleconference** with the appellant and a representative from the relevant program area
 - Listen to appellant to understand their bottom line interests
 - Explain how records are stored
 - Explore ways to re-scope request and/or places to search
- Much success with a focus on **interests vs. records**
- Give & take significant here – **most exemptions are discretionary**

Biggest Barriers to Successful Mediation

- **Lack of commitment** or **timely response** from the parties – appellant is in the driver's seat and can choose to move to adjudication if mediation is not progressing.
- Not recognizing the value of interest based mediation.
- Not reading or considering relevant orders or mediator's opinion.

Mediation Resolution Rate



What are the Odds?

Excellent!

- Approximately **84%** of access appeals under *FIPPA* & *MFIPPA* **resolve** in whole or part
- 61% of mediated files are fully resolved = your file closes!
- It's important to note that even a partial resolution means less issues on table. This reduces the time you spend writing representations.
- Great value of resolving in full AND in part.
- It's not all or nothing!

Why Adjudicate vs Mediate?



- Appellant driven process – if appellant not satisfied, file moves to adjudication
- Sometimes there are no precedents – Orders will help resolve in the future

Adjudication

- When appeals are not resolved at investigation or mediation, they proceed to adjudication.
- Adjudicator:
 - Decides whether to conduct an inquiry
 - If more information is needed, conducts an inquiry
 - Issues a decision that:
 - dismisses the appeal and upholds the institution's decision; or
 - allows the appeal and orders disclosure

Inquiry Process

- Generally a written process involving the exchange of representations (submissions).
- If necessary, the Adjudicator can:
 - Receive oral evidence
 - Ask for affidavits
 - Inspect documents
 - Ask to review a workplace or electronic system

Inquiry Process

- Adjudicator asks each party in turn for their written representations.
- Representations are shared with other parties to the complaint unless there is a confidentiality concern.
- If Adjudicator disagrees with a party's sharing position, they can make a sharing order.
- Adjudicator can also ask a party for more evidence or to answer specific questions.

Representations

- Effective representations:
 - Are thorough
 - Explain any necessary background facts and context
 - Answer the Adjudicator's questions
 - Provide supporting affidavits where necessary
 - Identify whether any part of the representations should not be shared, and why

3. Exceptions to the Right of Access

Frivolous or Vexatious Access Requests

10 (1) Subject to subsections (1.1) and 69 (2), every person has a right of access to a record or a part of a record in the custody or under the control of an institution **unless,**

(a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or

(b) **the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious**

27.1 – Decision letter must state F & V, reasons, set out right to appeal

Criteria for Frivolous or Vexatious – Regulation 460

- The request is part of a **pattern of conduct** that amounts to an **abuse of the right of access**
 - number, nature and scope ,purpose, timing, cumulative effect [Orders [M-618](#), [M-850](#) and [MO-1782](#)])
- The request is part of a pattern of conduct that would **interfere with the operations of the institution**
 - would obstruct or hinder the range of effectiveness of the institution’s activities
 - relative concept. [Order [M-850](#)]
- The request is made in **bad faith or for a purpose other than to obtain access**
[Orders [MO-850](#), [MO-1168-I](#), [MO-2390](#), [MO-1924](#)]

Bad Faith

- “The conscious doing of a wrong because of dishonest purpose or moral obliquity, a state of mind affirmatively operating with furtive design or ill will.” [Order [M-850](#)]
 - E.g. “having fun” making requests [Order [M-850](#)]
- “For a purpose other than to obtain access”: the requester is motivated not by a desire to obtain access, but by some other objective [Order [M-850](#)]
 - An intention by the requester to take action against an institution is not sufficient to support F & V finding [Orders [MO-1168-I](#) and [MO-2390](#)]
 - Requester must have an improper objective above and beyond a collateral intention to use the information in some legitimate manner [Order [MO-1924](#)]

Burden of Proof on Appeal to IPC

- High threshold to establish F & V -- Order [M-850](#)
- An institution has the burden of proof to substantiate its decision to declare a request to be frivolous or vexatious. [Order [M-850](#)]
- A third party cannot claim that an access request is frivolous and vexatious if the institution has not. [[Order MO-3891](#)]

Remedies at IPC

- Where an access request is found to be frivolous or vexatious:
 - the IPC will uphold the institution's decision to deny access on that basis and to not process the request.
 - IPC may also impose conditions, such as limiting the number of active requests and appeals that a requester/appellant may have in relation to a particular institution at any one time. [Order [MO-1782](#)]
- Where the IPC does **not** uphold the institution's decision that a request is frivolous and vexatious, it will order the institution to issue a new access decision.

Recent IPC Orders of Interest

- Frivolous/vexatious finding upheld by IPC:
 - [MO-3763](#) –TTC, excessively broad (“all contracts”), pattern of conduct
 - [PO-4158-I](#) – HRTO – requester who asked for detailed employment information of vice-chairs after an unfavorable hearing made request in bad faith
- Frivolous/vexatious finding not upheld by IPC:
 - [PO-4013](#) – McMaster University – proceedings other than FOI cannot establish “pattern of conduct” (but may be relevant to bad faith). However, no bad faith here: the requester is not trying to burden the university, just wants the information
 - [PO-4142](#) – Ryerson University – ongoing proceeding not enough to establish abuse of right of access; intention to use info against the institution is permissible

Available at www.ipc.on.ca/decisions



IPC Fact Sheet on Frivolous and Vexatious Requests

- What makes a request frivolous or vexatious?
 - FOI requests form pattern of conduct that amounts to an abuse of the right of access or interferes with operations
 - Requests made in bad faith
 - Requests made for purpose other than access

Available at www.ipc.on.ca/resources/guidance-for-organizations



Frivolous and Vexatious Requests

The Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act (the acts) give individuals the right to access their own information and general records held by an institution unless an exemption applies or the request is frivolous or vexatious.

An institution may refuse to give access to a record if it decides the request is frivolous or vexatious. The requester can appeal this decision to the Information and Privacy Commissioner (IPC).

This fact sheet explains what a frivolous or vexatious request is, what institutions should do when they receive this type of request, what a requester can do if an institution claims their request is frivolous or vexatious and the IPC's role in an appeal.

WHAT IS A FRIVOLOUS OR VEXATIOUS REQUEST?

A request is frivolous or vexatious if it is:

- part of a pattern of conduct that
 - amounts to an abuse of the right of access
 - interferes with the operations of the institution
- made in bad faith or
- made for a purpose other than to obtain access

Each of these grounds is explained below.

The Labour Relations and Employment Exclusion – section 65(6)

How does an institution determine whether the exclusion applies?

- Through at least one of the following parts of **section 65(6): records prepared, etc. in relation to:**
 1. proceedings or anticipated proceedings
 2. negotiations or anticipated negotiations
 3. meetings, consultations, discussions or communications



Court or Tribunal Proceedings – 65(6)1

- The institution must establish that:
 1. the record was collected, prepared, maintained or used by an institution or on its behalf;
 2. this collection, preparation, maintenance or use was **in relation to** proceedings or anticipated proceedings before a court, tribunal or other entity; and
 3. these proceedings or anticipated proceedings relate to labour relations or to the employment of a person by the institution.

Negotiations – 65(6)2

The institution must establish that:

1. the records were collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or use was **in relation to** negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution; and
3. these negotiations or anticipated negotiations took place or were to take place between the institution and a person, bargaining agent or party to a proceeding or anticipated proceeding.

Matters in which the institution has an interest – 65(6)3

The institution must establish that:

1. the record was collected, prepared, maintained or used by an institution or on its behalf;
2. this collection, preparation, maintenance or usage was **in relation to** meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are **about** labour relations or employment-related matters in which the institution has an interest.

What are labour relations and employment matters?

- **Labour relations** can refer to:
 - matters arising out of a collective bargaining relationship
 - conditions of work beyond those relating to collective bargaining
 - not necessarily restricted to employee-employer relationships
- **Employment matters** include:
 - human resources or staff relations matters
 - may also include volunteers

Important court cases

- *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner) (2001)*, 55 O.R. (3d) 355 (C.A.)
 - «interest» does not equal «legal interest»
- *Ontario (Minister of Health and Long-Term Care) v Ontario (Assistant Information and Privacy Commissioner)*, [2003] OJ No 4123, 2003 CanLII 16894 (C.A.)
 - “collective bargaining” includes relations between gov’t and physicians
- *Ontario (Ministry of Correctional Services) v. Goodis*, [2008] O.J. No. 289 (Div. Ct.)
 - Exclusion does not apply in cases of vicarious liability
- *Ontario (Ministry of Community and Social Services) v John Doe*, 2014 ONSC 239, affirmed, 2015 ONCA 107 (C.A.)
 - “About” = on the subject of, concerning
 - Operational records not caught by section 65(6)
- *Brockville (City) v Ontario (Information and Privacy Commissioner)*, [2020] OJ No 3160, 2020 ONSC 4413 (Div. Ct.)
 - “Relating to” means some connection, but the "some connection" standard still must involve a connection that is relevant to the statutory scheme and objects understood in their proper context.
 - Legal billings related to collective bargaining not caught by employment exclusion

Recent IPC Orders

- **PO-4223** – WSIB – operational records not excluded just because one day they might be used for training. Calls were not “about” employment matters, they were about the injured worker’s medical condition
- **PO-4224** – Wilfrid Laurier University - records at issue relate to various employment related matters of concern to the university regarding the appellant. Workload, working relationships and work responsibilities of the appellant.
 - However, “routine professorial records” not caught by 65(6)
- **PO-4250** – Ontario Institute of Technology – record produced from database of professors, showing how many full time etc. not caught by section 65(6)
 - the information in this database appears to assist the university in fulfilling its mandate as a public institution in the area of post-secondary education, in general.
 - Not created or used by the university in circumstances where the terms and conditions of employment or human resources questions are at issue such that the university has the requisite interest as employer.

Available at www.ipc.on.ca/decisions

Exceptions to the exclusion

- The labour relations and employment exclusion does not apply to:
 - agreements between institutions and a trade unions
 - **agreements which end a proceeding before a court, tribunal or other relevant entity**
 - **agreements resulting from negotiations about employment matters**
 - expense claims submitted by an employee of an institution to seek reimbursement

Best practices for public sector institutions

- Consider releasing records, even though they might be excluded.
- Claim any exemptions in addition to labour relations and employment exclusion to avoid multiple appeals.
- Be ready to produce the records in question if an appeal moves forward to mediation or adjudication.
- Consult our publication on labour relations and employment exclusion for more best practices.

Available at www.ipc.on.ca/resources/guidance-for-organizations



The Labour Relations and Employment Exclusion

Solicitor-client Privilege exemption (s. 19)

A head **may** refuse to disclose a record,

- (a) that is subject to solicitor-client privilege;**
- (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
- (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation**

IPC protocol for solicitor-client privilege exemption

- Used when the institution claims the solicitor-client privilege exemption, and does not provide the IPC with copies of the records.
- Designed to ensure that sufficient evidence is provided to allow IPC adjudicators to decide whether the records are exempt under the solicitor-client privilege exemption.

IPC protocol for appeals involving solicitor-client privilege claims where the institution does not provide the records at issue to the IPC

The Office of the Information and Privacy Commissioner of Ontario (IPC) has developed this protocol for use at the adjudication stage where an institution has claimed the solicitor-client privilege exemption as the basis for denying access to the records at issue.¹

Where access is refused on the basis of an exemption from the right of access, the institution bears the burden of proving that the exemption applies. This is equally true for the solicitor-client privilege exemptions.²

In some cases where the exemption claimed is the solicitor-client privilege exemption, the institution does not provide the IPC with copies of the records. The remainder of this protocol applies to such situations, and is designed to ensure that sufficient evidence is provided to allow the adjudicator to decide the claim of privilege.³ The institution must provide sufficient information about the record that shows why the claimed privilege is applicable to it.⁴

The steps described in this protocol are for general information. The adjudicator deciding an appeal may deviate from these steps where appropriate in the circumstances. Also, as in any adjudication, the requester is generally given an opportunity to make representations on the institution's exemption claim.

Available at www.ipc.on.ca/resources/guidance-for-organizations



¹ See the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, s. 12; *Freedom of Information and Protection of Privacy Act (FIPPA)*, s. 19.

² See *MFIPPA*, s. 42, *FIPPA*, s. 53.

³ However, this protocol does not apply for exemption claims other than solicitor-client privilege.

⁴ *Alberta (Information and Privacy Commissioner) v. University of Calgary*, 2016 SCC 53.

Steps: solicitor-client privilege exemption

1. Adjudicator will first ask the institution to provide a copy of the records to the IPC.
2. If the institution does not provide the records, it may need to submit an affidavit listing the records with a description of each.
3. If the affidavit does not show that the exemption applies, the institution **may** have the opportunity to provide more evidence — or the IPC may simply find that the institution has not proven the exemption and will order disclosure of the record.



Recent IPC orders

- [PO-4109-I](#) – Ryerson University – legal advice given to university on how to respond to the appellant’s complaint about a staff member is protected under section 19
- [PO-4106](#) – University of Toronto – emails between university’s counsel and the university about a medical resident are protected under section 19
- [PO-4187](#) – University of Toronto – emails contain communications relating to confidential legal advice, which was sought from or being given by the university’s internal legal counsel to the university’s staff, protected by section 19
- [MO-3449-I](#) – Waterloo Region – IPC relied on an affidavit provided by the institution – however, the IPC still rejected the solicitor-client privilege claim for some of the records
- [PO-3372](#) – MAG – just because a lawyer is involved doesn’t necessarily mean privilege – depends on function

Available at www.ipc.on.ca/decisions



4. University of Guelph Privacy Complaint Report

Dated April 5, 2022 – Published April 7, 2022

University of Guelph – Privacy Complaint PI21-00003

- IPC received three related privacy complaints about the University of Guelph concerning the university's collection of information relating to the COVID-19 vaccination status of students who wished to live on residence for the 2021–2022 academic year.
- Complainants believed that the collection breached the students' privacy under FIPPA.
- Report found that the information at issue is “personal information” as defined in section 2(1) of FIPPA. It also finds that the collection of the personal information and the notice of collection were in accordance with sections 38(2) and 39(2) of FIPPA.

University of Guelph – Privacy Complaint

- University advised that the full COVID-19 vaccination requirement came into effect on July 22, 2021 and that it gave notice to students who wished to live in the residences by email on July 22, 2021 and on August 28, 2021.
- To address questions that these students had about its COVID-19 Vaccination Policy, the university emailed them a link to its “COVID-19 Vaccination FAQs” webpage on July 22 and 29, 2021.
- University believed that for 2021-22, its collection of the vaccination information was necessary to the proper administration of a lawfully authorized activity pursuant to section 11 of the *University of Guelph Act, 1964* and *O. Reg. 364/20, Rules for Areas at Step 3 and at the Roadmap Exit Step*.

University of Guelph – Privacy Complaint

- No dispute about whether the information at issue is “personal information” within the meaning of section 2(1).
- Section 38(2) of FIPPA prohibits the collection of personal information other than in certain limited circumstances. This section states:

“No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.”

University of Guelph – Privacy Complaint

- First, the university must show that the activity at issue is “**lawfully authorized.**”
- Second, the university must show that the collection was **necessary** to the proper administration of that activity.
- “Necessary” in this circumstance means **more than merely helpful**. As a result, a collection of personal information that was only merely helpful to the proper administration of a lawfully authorized activity would not meet the “necessary” standard.

University of Guelph – Privacy Complaint

- Section 11 of the *University of Guelph Act*, in part, states:
“Except as to such matters by this Act specifically assigned to the Senate, the government, conduct, management and control of the University and of its property, revenues, expenditures, business and affairs are vested in the Board **which has all powers necessary or convenient to perform its duties and achieve the objects and purposes of the University.**”
- Management and administration of the university to achieve its objects and purposes, which include “the intellectual, social, moral and physical development of its members and the betterment of society”, is a lawfully authorized activity.

University of Guelph – Privacy Complaint

- As an organization allowed to be open at Step 3 of reopening in Ontario, the university explained that, at the start of 2021-22, its collection of the vaccination information was necessary in order for it to comply with the advice, recommendations and instructions of the Guelph Health Unit and the COMOH, which strongly recommended that all students be fully vaccinated against COVID-19.
- University also explained that, for 2021-22, its collection of the vaccination information was necessary as a part of its ongoing health and safety efforts to protect its students in the residences (who live closely together) and elsewhere on campus by preventing the spread of COVID-19 and creating a safer space for everyone.

University of Guelph – Privacy Complaint

- Finding on issue of necessity:
 - university's collection of the vaccination information was “necessary” and not merely helpful to its proper compliance with the advice, recommendations or instructions of the Guelph Health Unit and the COMOH.
 - collection was necessary to the proper administration of the university's lawfully authorized activity of managing its affairs in accordance with section 11 of the *University of Guelph Act* in order to achieve its objects and purposes.
- Notice of collection improved after discussion with the Investigator.
- Postscript: “Whether collection of this information can continue to be justified in future school terms must be continually reassessed and re-evaluated in accordance with applicable Ontario regulations and public health advice as they exist at that time.”

Resources

- IPC Practices: *Drafting a Letter Refusing Access to a Record*
- Fact Sheet: *Frivolous and Vexatious Requests*
- Fact Sheet: *Labour Relations and Employment Exclusion*
- Fact Sheet: *Public Interest Disclosure*
- Fact Sheet: *Reasonable search*
- Fact Sheet: *Third Party Information Exemption*
- Protocol: *Solicitor-Client Privilege*



Questions?

THANK YOU!

HOW TO CONTACT US:

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