

Canadian Institute Privacy Law & Compliance

**David Goodis
Assistant Commissioner
Information and Privacy Commissioner
of Ontario**

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

Mandate and Role

- Information and Privacy Commissioner of Ontario (IPC) provides **independent** review of government decisions and practices concerning access and privacy
- Commissioner is appointed by, reports to the **Legislature** -- independent of the government of the day to ensure impartiality



Mandate and Role



Toronto Star

- Brian Beamish now acting Commissioner
- 5 year appointment expected to be confirmed this month



Oversee Three Acts

- ***Freedom of Information and Protection of Privacy Act (FIPPA),
Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)***
 - right of access to government information, appeal to the IPC
 - privacy rules for government, complaints to IPC – investigations may result in recommendations or orders
- ***Personal Health Information Protection Act, 2004 (PHIPA)***
 - privacy rules for personal health information; right of access to that information
 - may complain to IPC -- reviews may lead to orders



Privacy role

- IPC conducts investigations, mediations, adjudications under “tribunal” mandate
- issues reports, recommendations, binding orders
- also, conduct research, give advice and comment on proposed programs, legislation that impact privacy



Law enforcement

- “**Crossing the Line**” special investigation report (June 2014)
- Toronto woman denied entry to US at Pearson Airport on basis of mental health concern
 - 2012 attempted suicide on **CPIC** due to 911 call
 - US border officials have direct, instant access to CPIC
- IPC finds police uploading of information about suicide attempt/threat is improper disclosure
[*FIPPA*, s. 42]



Law enforcement

- disclosure permissible only where valid **public safety** concern
 - (i) threat of harm towards others, (ii) provocation of lethal police response (iii) history of violence towards others (iv) attempt in police custody
- most police services comply, but Toronto Police refuse to implement IPC recommendation
 - IPC commenced application for judicial review against TPS, asking court to order compliance



Law enforcement

- **Police record checks**; continuing privacy concern
 - checks now routine for many jobs, volunteer positions
 - growing concern that employers obtain irrelevant information, particularly **non-conviction** info
- IPC calls for legislative reform, consistency
 - IPC worked with OACP, MCSCS to develop solution
 - province now says it will introduce legislation!



Law enforcement

- body worn cameras
 - working with Toronto Police on pilot project
 - important accountability tool, but privacy must be respected
 - F/P/T Commissioners' **guidelines** (Feb 17)
 - mission creep concern: combine with facial recognition technology?



Law enforcement

- **surveillance; Bill C-51**
 - concerns about expanded information sharing among agencies, insufficient oversight
 - joint statement with cross-Canada counterparts, support federal Privacy Commissioner Thérien



Privacy Impact Assessments

- critical component of project management
 - assists with ensuring regulatory compliance
 - MGCS guidelines work well for larger institutions such as ministries; OPS focused
- IPC will soon issue user-friendly **PIA guidelines** for M/FIPPA institutions
 - e.g., smaller municipalities, police, school boards
 - adaptable to broad range of programs, information systems (private sector also)



Health information: snooping

- unauthorized access or “snooping”
 - continuing, persistent problem, especially in hospital setting
 - motivations: curiosity, celebrities, relationships, financial gain
- IPC Rouge Valley Order HO-013 (December 2014)
 - two staff gathered “new baby” information, sold to RESP providers
 - hospital had deficient audit measures to detect, deter snooping



Patient consequences of snooping

- discrimination, stigmatization, psychological harm
- deterrence from seeking testing or treatment
- withholding or falsifying information
- loss of trust, confidence in health care providers
- loss of confidence in electronic health records



Staff/Hospital consequences of snooping

- disciplinary action (suspension, termination)
- damage to reputation
- lost time and expenditure of resources
- legal liabilities and ensuing proceedings



Health information: snooping

- how can we prevent it?
 - better system controls, audits
 - employee discipline/regulatory college sanctions
 - *PHIPA* offence prosecutions (MOHLTC/MAG)
 - better training/education
- class actions (*Hopkins v. Kay* 2105 ONCA 112)
 - Ontario Court of Appeal affirms patients' right to sue hospitals for invasion of privacy tort (outside *PHIPA*)



Educational Outreach: New Guidance Document



Detecting and Deterring
Unauthorized Access to
Personal Health Information



- benefits and risks of electronic records
- impact of unauthorized access
- reducing the risk of unauthorized access

How to Contact Us

David Goodis

Assistant Commissioner

Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400

Toronto, Ontario, Canada

M4W 1A8

Phone: (416) 326-8723/1-800-387-0073

Web: www.ipc.on.ca

E-mail: david.goodis@ipc.on.ca

