Perfect Partners: Access to Information, Open Government and Records Management

David Goodis
Assistant Commissioner
Ontario Information and Privacy Commissioner

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Outline

- Who we are

- The three acts

- What is a record?

- Why good records management is essential

- Best Practices

- Deleting Accountability

- Bill 8

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Our Office

- Information and Privacy Commissioner (IPC) provides an **independent** review of government decisions and practices concerning access and privacy

- Commissioner is appointed by and reports to the Legislative Assembly; remains independent of the government of the day to ensure **impartiality**

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The Three *Acts*

IPC oversees compliance with:

- *Freedom of Information and Protection of Privacy Act* (**FIPPA**)
- *Municipal Freedom of Information and Protection of Privacy Act* (**MFIPPA**)
- *Personal Health Information Protection Act, 2004* (**PHIPA**)

Purposes of *MFIPPA* and *FIPPA*

The purposes of *MFIPPA* and *FIPPA* are

- to provide a **right of access to information** under the control of institutions in accordance with the principles that,
  - information should be **available to the public**
  - access exemptions should be **limited and specific**
  - access decisions should be reviewed **independently** of government

- to **protect the privacy of individuals** with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

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What is a Record?

Record means **any record of information however recorded**, whether in printed form, on film, by electronic means or otherwise and includes, for example:

- correspondence
- memorandum
- plans
- maps
- drawings, diagrams, pictorial or graphic work
- photographs, film, microfilm, sound recording, videotape

Why Good Records Management is Essential to FOI

- Improves ability to respond to **FOI requests** in a timely manner
- **Reduces costs** to organization and requester by making searches more efficient
- Facilitates responses to requests for **correction** of personal information
- **Reduces risk of a privacy breach** and improves privacy breach response
- **Reduces reputational risks** by improving statistical reports and relationships with requesters

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Why Good Records Management is Essential to Open Government

Strong records management fuels **Open Government**

- File planning and effective storage ensures that information resources are more easily found and understood, facilitating proactive disclosure
- Creation and use of metadata makes open data and information useable and understandable
- Early classification of sensitive records and records containing personal information will help prevent the publication of confidential information
- Retention schedules ensure that records are not inadvertently destroyed

Records Management Best Practices

- Create a requirement to document business actions and decisions and the reasons for them
  - decisions made in meetings or on the phone should be recorded in order to ensure transparency
- Define appropriate media for communication of business information
  - using technologies such as BBM not appropriate for business conversations - they do not automatically create a lasting record
- Develop and implement record retention schedules and policies
  - record retention practices are essential for ensuring that records are not inappropriately destroyed

Records Management Best Practices

- Organize records into functional file classifications and plans, rather than by structure of the organization or media used to record information
  - organizational structures change often, but the core functions of organizations don't; functional plans will help future users quickly find relevant materials
- Understand the sensitivity of your records and plan for access, privacy, security throughout the information life cycle
  - personal and other sensitive information should be identified and appropriately protected
- Develop and use file naming conventions to improve searchability
  - standard approaches to naming files will help users find information more quickly and reduce time associated with access requests

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Records Management Best Practices

- Develop plans for ensuring that records are retained and protected when staff leave
  - entry and exit protocols for staff to ensure records moved out of personal drives and email into corporate storage
- Train and support staff
  - records management training should be regularly available in order to reinforce best practices
- Make compliance a performance measure
  - success of a records management program depends on the participation of all staff; including compliance as a performance measure encourages staff to always consider records management
- Regularly review and audit for compliance
  - include records management in your organizations' review and audit processes

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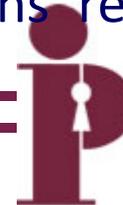
Best Practices in Action:
OPS Land and Resources I&IT Cluster

For one day, all operations at the Land and Resources I&IT Cluster were suspended to facilitate a file clean-up day

Staff were provided with training on how to identify transitory records, and support throughout the day while they reviewed their information holdings

By the end of the day, staff had deleted

- 700,000 (450 GB) of electronic transitory records
- 20 bins (or the equivalent of 18 5-drawer file cabinets) of paper records

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Best Practices in Action: Ministries of Education/Training, Colleges and Universities

Learning ministries have developed a comprehensive records and information management transformation plan that has increased awareness and improved practices broadly

Some highlights of their approach include:

- early buy-in from senior management
- broad engagement on the approach and implementation
- development of a RIM self-assessment tool
- creation of a priority plan for branches in urgent need of file plan development
- establishment of a RIM Advisory Committee, Community of Practice, list of champions for each branch and division

Deleting Accountability

**Deleting Accountability:
Records Management Practices
of Political Staff**

A Special Investigation Report

June 5, 2013

Information & Privacy Commissioner,
Ontario, Canada

Ann Cavoukian, Ph.D.
Commissioner

- IPC conducted an investigation into deleted emails and found that thousands of documents had been destroyed without authorization

- Commissioner made a number of recommendations regarding appropriate records management practices

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Deleting Accountability

In addition to recommendations on record retention policies and staff training, IPC also recommended amendments to *MFIPPA* and *FIPPA*:

1. Create legislative duty to document business actions and decisions and the reasons for them

2. Require institutions to define, document and put into place reasonable measures to securely retain records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*

3. Prohibit the willful destruction of records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*

4. Make it an offence under *FIPPA* and *MFIPPA* for any person to willfully destroy records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*.

Bill 8, Public Sector and MPP Accountability and Transparency Act

- Requires institutions to take **reasonable measures** to protect their records in accordance with recordkeeping requirements

- Makes it an **offence** to alter, conceal or destroy a record with the intention of denying a right to access the record, with a penalty of up to $5,000

- The amendments have been enacted, expected to come into force on January 1, 2016

- MGCS has published guidance highlighting how the legislation will affect **record retention** and how to ensure the **preservation** of records

- IPC will release some guidance before the end of the year

Implementing Changes

- Where record keeping policies, procedures or legislated requirements **exist**:

  - policies are not enough – reasonable measures must be taken to protect records in accordance with those requirements

  - objective standards for compliance may require ongoing and regular training, development of training tools, regular reviews and audits to ensure compliance and performance measurement

- Where policies or procedures **do not exist**:

  - record retention policies and procedures must be developed

  - institutions need to consider entire lifecycle of their records in order to protect them at all stages

  - no one-size-fits-all solution

  - institution's size, budget, volume and types of records will affect what is reasonable
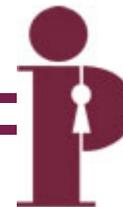
Opportunities

- Implementing information management best practices will ensure compliance with Bill 8 changes, in addition to:
  - improve response times and efficient use of resources in FOI requests
  - improve ability to locate and preserve an institution's most valuable resources
  - facilitate Open Government and proactive disclosure by making records accessible and protecting sensitive information
  - reduce costs:
    - fewer FOI requests as information is increasingly released routinely
    - time saved for staff searching for records
    - storage costs can be reduced by eliminating transitory and duplicate records in accordance with policy

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First Steps

- engage senior management and your own in-house RIM expertise

- consult with the Information, Privacy and Archives Division of MGCS or other institutions, where appropriate

- join existing or develop new communities of practice to share strategies for compliance, and to learn from others' experiences

- start with a plan that looks at your existing and anticipated information resources spanning the information lifecycle – creation and collection, maintenance and use, retention and destruction

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Questions?

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How to Contact Us

Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400

Toronto, Ontario, Canada

M4W 1A8

Phone: (416) 326-3333 / 1-800-387-0073

TDD/TTY: 416-325-7539

Web: www.ipc.on.ca

E-mail: info@ipc.on.ca