

# **Municipal Freedom of Information and Protection of Privacy Act**

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**Information and Privacy Commissioner of Ontario**

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# Agenda

- Mandate and Role of the IPC
- *MFIPPA* – Access Overview
- Recent Orders
- Statistics
- Open Government
- *MFIPPA* – Privacy Overview
- Questions?



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# Our Office

- The mandate of the Information and Privacy Commissioner (IPC) is to provide an **independent** review of government decisions and practices concerning access and privacy, conduct research and education, and comment on proposed legislation and programs
- The Commissioner is appointed by and reports to the Legislative Assembly and remains independent of the government of the day to ensure **impartiality**



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# The Three Acts

The IPC oversees compliance with:

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



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# History of FOI: From Williams Commission to FIPPA

- Williams Commission on Freedom of Information and Individual Privacy was created in 1977
- Recommendations to the government made in 1980 were used as the foundation for Ontario's *FIPPA* and *MFIPPA*
- When Attorney General Ian Scott introduced *FIPPA* he stated:  
“We do not now and never will accept the proposition that the business of the public is none of the public's business.”



# Access to Information: *A Pillar of Democracy*

*“The overarching purpose of access to information legislation...is to facilitate democracy.”*

—Justice La Forest

*Dagg v. Canada (Minister of Finance), 1997*



# MFIPPA

## Access Overview



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# Right of Access

- *MFIPPA* provides right of access to government-held records unless:
  - Contents fall within the exemptions
  - The request is frivolous or vexatious
  - The record is specifically excluded, or
  - Another Act overrides *MFIPPA*
- Right of access applies to records in the custody and control of the municipality such as:

Correspondence

Memos

E-mails

Draft documents

Working notes (notebooks)

Expense Accounts

Appointment Books &

Schedules

Voicemails and Texts

Photos

Videos



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# Requests

- Requests can be made for any type of record, by anyone, with no obligation on the requestor to provide a reason for making the request
- A requestor's identity may be considered their personal information and, if so, cannot be disclosed without consent
- Three types of requests under *MFIPPA*:
  - General information requests
  - Personal information requests
  - Correction requests



# Access Request

- In writing and accompanied by a \$5.00 fee
- Once a request is received, **all responsive records must be retained** – they cannot be altered, deleted or shredded
- Duty to sever if possible



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# Exemptions: Limited and Specific

## DISCRETIONARY

- Draft by-laws, record of closed meetings (s. 6 *MFIPPA* only)
- Advice or recommendations (s. 7 *MFIPPA* / 13 *FIPPA*)
- Law enforcement (s. 8 *MFIPPA* / 14 *FIPPA*)
- Economic and other interests (s. 11 *MFIPPA* / 18 *FIPPA*)
- Solicitor-client privilege (s. 12 *MFIPPA* / 19 *FIPPA*)
- Danger to safety or health (s. 13 *MFIPPA* / 20 *FIPPA*)
- Species at risk (s. 21.1 *FIPPA* only)
- Information soon to be published (s. 15 *MFIPPA* / 22 *FIPPA*)
- Requester's own personal information (s. 38 *MFIPPA* / 49 *FIPPA*)

## MANDATORY

- Relations with other governments (s. 9 *MFIPPA* only)
- Cabinet records (s. 12 *FIPPA* only)
- Third party information (s. 10 *MFIPPA* / 17 *FIPPA*)
- Someone else's personal information (s. 14 *MFIPPA* / 21 *FIPPA*)



# Exclusions

- *MFIPPA* does not apply to certain records because they are excluded from the application of the *Act*. If a record falls under an exclusion, it can still be disclosed.
- Some examples of excluded records are:
  - s. 52(2.1) – ongoing prosecution
  - s. 52(3) – labour relations or employment related matters



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# Councillors' Records

- **Challenge:** individual members of municipal councils (except for the Mayor) are not officers or employees of the municipality
- Municipal Councillors' records are not **subject to MFIPPA** unless they are in the “**custody or control**” of the municipality
- **Records held by the municipality** - consider a **number of factors** to determine whether a record is in the municipality's **custody or control** including the purpose of the record, its originator and whether it pertains to the municipality's mandate
- **Records not held by the municipality** - consider if the record relates to the municipality's business and if the municipality could reasonably expect to obtain a copy upon request



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# Councillors' Records (2)

## The *Municipal Freedom of Information and Protection of Privacy Act* and Councillors' records April 2016

### INTRODUCTION

The Information and Privacy Commissioner of Ontario (IPC) sometimes decides appeals relating to requests for access to records created or held by municipal councillors. The *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* does not expressly refer to records of municipal councillors and, therefore, before a determination can be made on access to those records, the IPC must decide whether *MFIPPA* applies. In making this decision, the IPC examines the specific facts of each case in light of a number of principles.

The IPC has been calling for amendments to *MFIPPA* to clarify when it applies to these records, including in August 2015, when the IPC wrote to the Minister of Municipal Affairs and Housing setting out proposed amendments (this letter is available on the IPC's [website](#)).

In the absence of amendments, however, the IPC is issuing this fact sheet, which explains when and how councillors' records are subject to *MFIPPA*.

### WHEN ARE COUNCILLORS' RECORDS SUBJECT TO *MFIPPA*?

Councillors' records are subject to *MFIPPA* where:

1. a councillor is acting as an officer or employee of the municipality, or performs a duty assigned by council, such that they might be considered part of the institution, or
2. the records are in the custody or control of the municipality.

### WHEN IS A COUNCILLOR AN OFFICER OR EMPLOYEE OF A MUNICIPALITY?

A councillor is likely to have several roles, such as an individual constituent representative, a politician, or a head or member of a municipal committee or board, such as a transit corporation. Some of these roles may entail the councillor acting as an officer or employee, while others do not.

- IPC guidance about Councillors' records published in April 2016
- Includes a series of questions to help guide staff determining whether a record is in the custody and control of an institution

# Instant Messaging & Personal Email Accounts

- Instant messages and emails are forms of electronic correspondence and are considered records under the acts, regardless of the tool or service used to create them
- Challenges in managing these types records include:
  - Search and production when responding to access to information requests
  - Retention and preservation in compliance with *MFIPPA*
  - Ensuring privacy and security of personal information



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# Instant Messaging & Personal Email Accounts (2)

- New guidance: *Instant Messaging and Non-Institutional Email Accounts: How to Meet Your Access and Privacy Obligations*
- Designed to help manage the use of instant messaging and non-institutional email accounts to conduct business

***Emails sent and received from personal email accounts and instant messages are subject to freedom of information requests. We advise institutions to prohibit use or enact measures to ensure business records are preserved.***



**Instant Messaging and  
Personal Email Accounts:  
Meeting Your Access and Privacy  
Obligations**

June 2016



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# Contentious Issues Management

## Ministry of Finance

- CIM – Some institutions have procedures in place to alert political or senior leadership about requests that are received which may attract media attention
- IPC investigated allegations of political interference in **two FOI requests** by a Legislative Assistant in the office of the Minister of Finance
- **Findings:** The CIM processes, absent politically-driven influences, are not inconsistent with the government's responsibilities under the *Act*
- **No evidence** of inappropriate political interference in was found
- Ministry's CIM process allowed inaction by political staff to lead to **unacceptable delays** in processing one request because of other priorities
- IPC offered training, and a comprehensive review of Ministry procedures was undertaken



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# Contentious Issues Management

## TDSB Order MO-3230

- IPC investigated accusations of **document tampering** and interference in the FOI process
- Investigator found no evidence of wrongdoing, but a **failure in the procedure** to seek clarification when a request is unclear
- Lessons for institutions:
  - Well-documented **procedures** for access requests need to be in place and followed
  - Always seek **clarity** especially when there are multiple versions of the same request
  - Ensure when **notice** is provided to a third-party that it is clear what information is being sought and the records at issue

Watchdog finds no evidence of tampering in TDSB expense records request

**KAREN HOWLETT**

TORONTO — The Globe and Mail



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# IPC Appeals

- A requester may appeal any decision of the institution, including a decision to:
  - Deny access
  - Charge a fee and/or deny a fee waiver
  - “Deemed refusal” – failure to provide a decision within 30 days
  - Extend the time for a decision beyond 30 days
  - Deny a correction request
- A third party may appeal the institution’s decision to disclose information that affects its interests



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# Appeals Process

## Intake

- Parties may be contacted by the Registrar to gather more information and determine jurisdiction
- Appeal may be dismissed at this stage

## Mediation

- Mediator works with the parties to arrive at a resolution

## Adjudication

- If mediation is not successful the case is forwarded to adjudication
- Adjudicator conducts an inquiry and issues an order, which may support the decision under appeal in full, in part, or overturn the decision



# Recent Orders



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# MO-2964-I – Closed Meetings

- The closed meeting exemption in *MFIPPA* section 6(1)(b) allows municipalities to withhold records if they would reveal the substance of deliberations during a closed meeting
- City of Greater Sudbury received six requests for “current and any previous” employment contracts of six named city employees
- City granted access in part, but denied access to portions of employment contracts under the closed meetings exemption
- IPC ordered the City to release the records finding that they did not reveal the substance of the deliberations of the closed meetings



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# M0-3183 – Third Party Information

- Request for access to the names and bid prices from **all proponents** that responded to a particular RFP
- City granted access to the names of the proponents, but denied access to the corresponding total **bid prices**
- Under *MFIPPA*, the city and affected parties must establish evidence that there is a **reasonable expectation of harm** with release of information
- IPC found **no evidence** harm would come from release of this information and ordered it to be disclosed



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# Statistics



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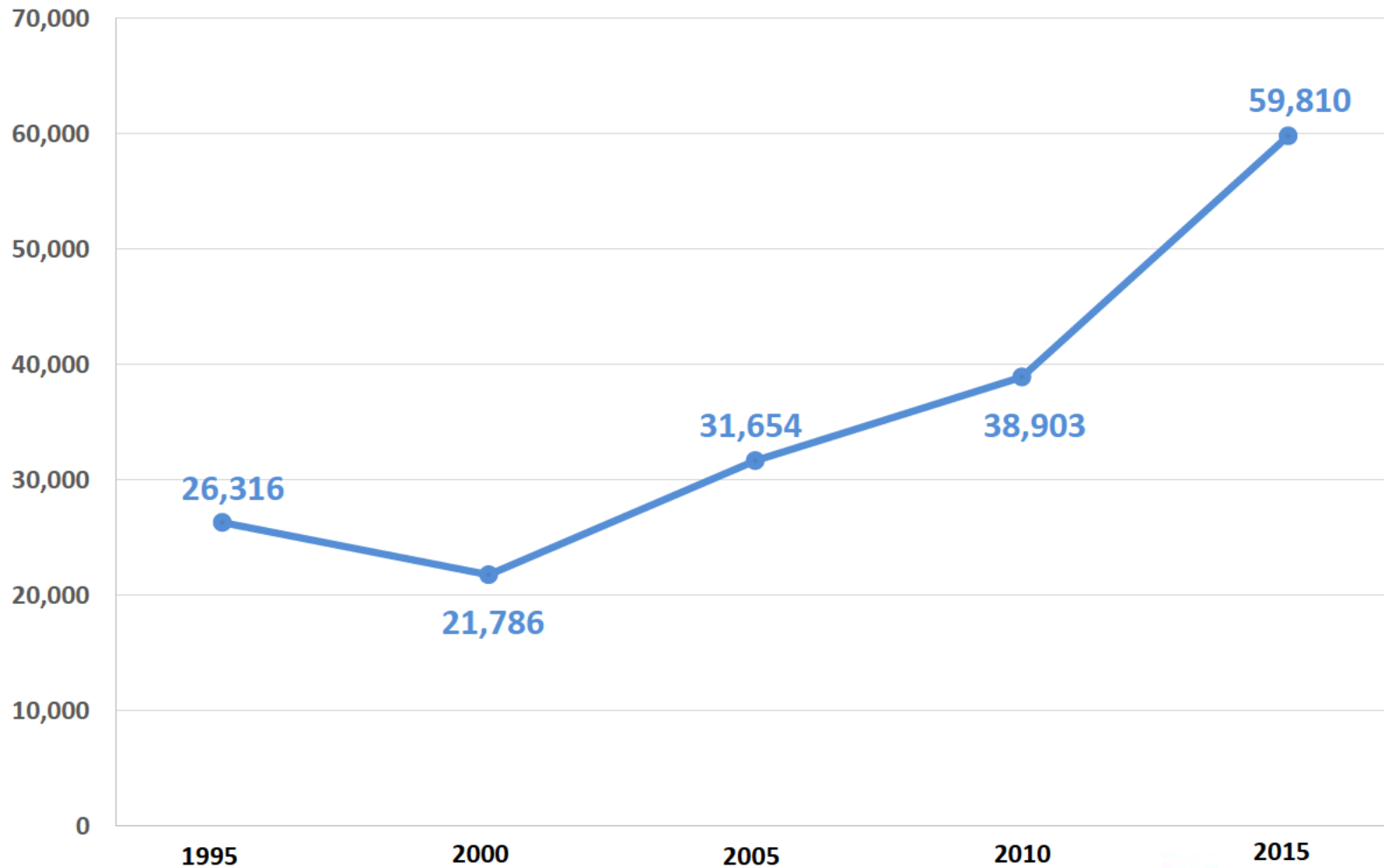
# IPC 2015 Statistics

- Municipalities responded to **36,859** access to information requests
- IPC received **688 appeals** related to MFIPPA access to information requests
- **478** appeals were related to **general records**
- **210** appeals were related to **personal records**
- **74.3%** of all appeals (both provincial and municipal) were **resolved** either at the intake stage (25%) or through mediation (49.3%)



# Access Requests Per Year

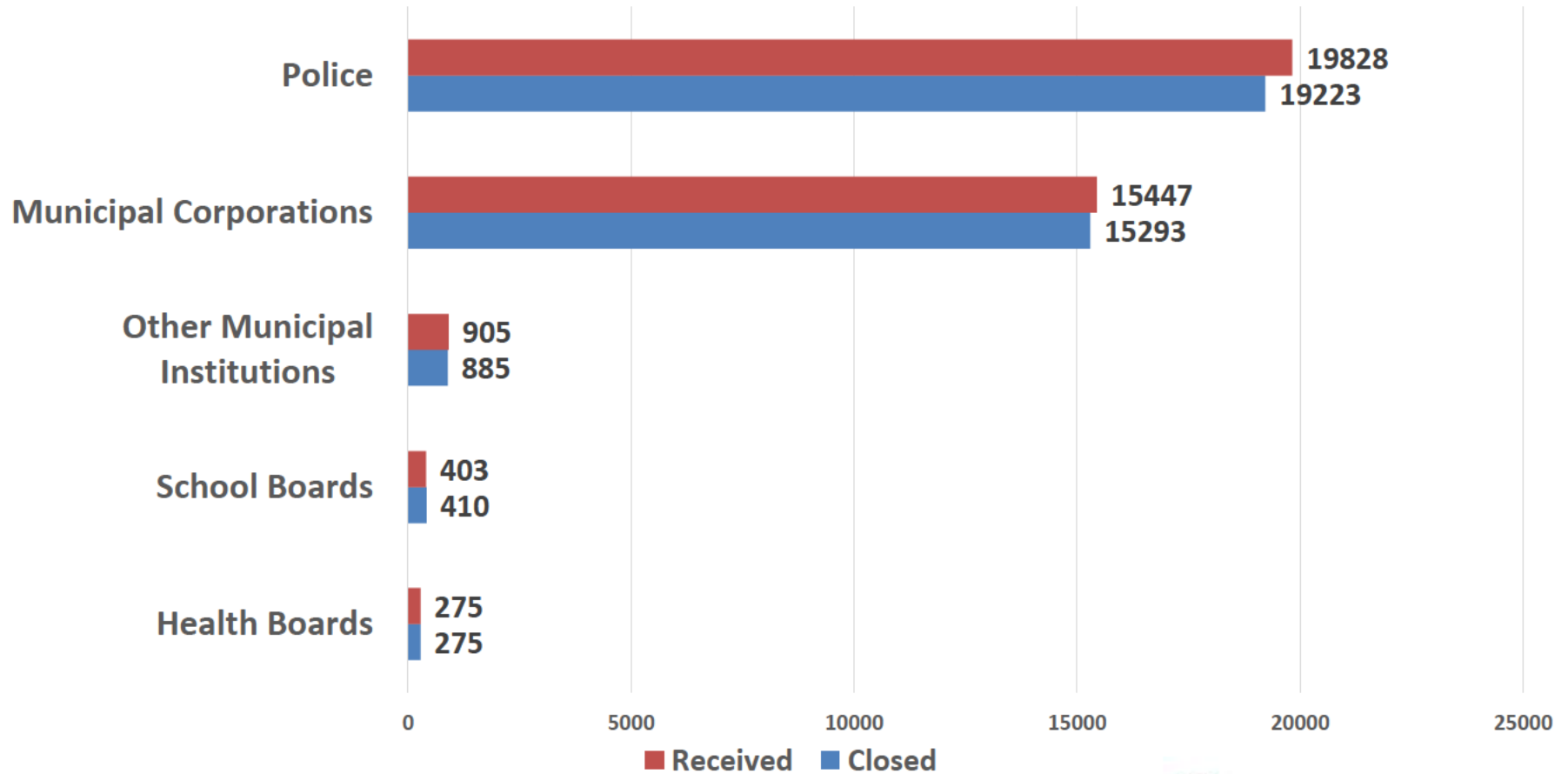
Total number of access to information requests under both *FIPPA* and *MFIPPA*



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# 2015 MFIPPA Access Requests by Institution Type



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# Open Government



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# Open Government Municipal Leadership

## City of Toronto

- In 2007 Toronto became first Canadian municipality to post online details of Councillors' expenses
- In 2009 Toronto launched its Open Data catalogue, and currently has over 200 data sets available
- In 2010 the City worked with Edmonton, Vancouver and Ottawa (G4) to develop Open Data Framework
- Toronto continues to collaborate with other levels of government and municipalities and stakeholders to develop common practices and processes



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# Open Government Municipal Leadership (2)

## City of Guelph

- In November 2012, Council approved an Open Government framework, which outlined vision, principles, directions and action areas
- In February 2014, Guelph released first datasets, and currently has 37 posted datasets
- In February 2015, Deloitte and the Institute of Public Administration of Canada recognized Guelph as one of the top three cities in the municipal sector – Open Government was one of the main initiatives cited for the award



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# Open Government

## Open Data

- Proactive disclosure of government data is essential for **transparency and accountability**, but some privacy issues must be addressed when datasets that contain PI are released as Open Data
- Adequate **de-identification**
  - Data that allows person to be identified must be anonymized
  - Simply removing direct identifiers may not be sufficient
- Regular review of data to evaluate new **re-identification risks**
  - As new data sets emerge, it may be possible for individuals to be re-identified through data matching between more than one data set



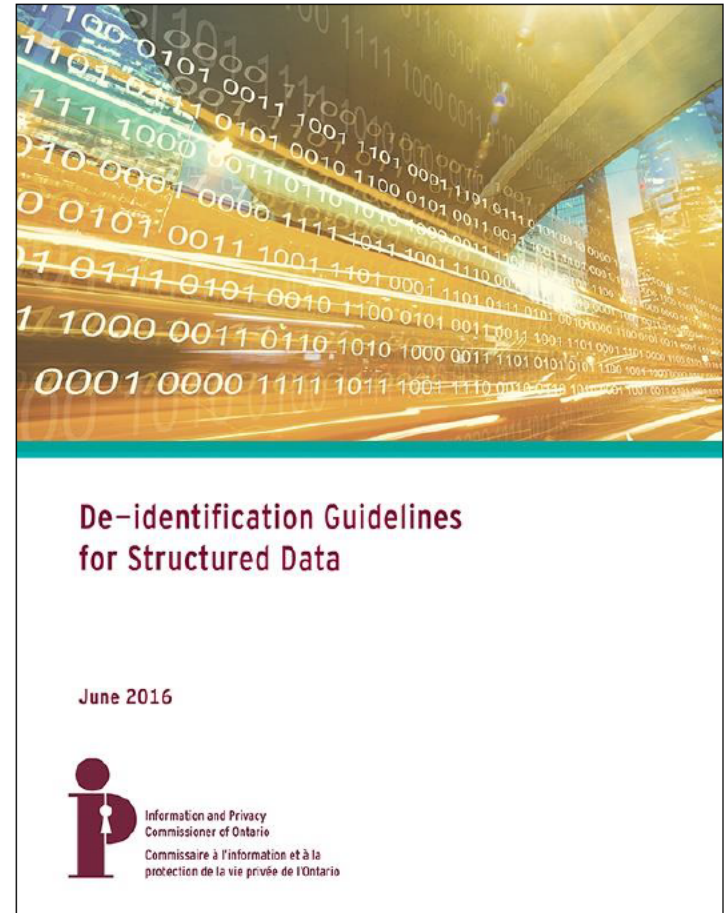
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# De-identification

## Guidelines for Structured Data

- “De-identification” - the process of removing PI from a record or data set
- Outlines a risk-based, step-by-step process to assist institutions in de-identifying data sets containing PI
- Covers key issues to consider when publishing data:
  - *Release models*
  - *Types of identifiers*
  - *Re-identification attacks*
  - *De-identification Techniques*





# Open Government

## Open Contracting



### Open Contracting: Proactive Disclosure Of Procurement Records

September 2015



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- The proactive disclosure of procurement records will improve the **transparency of government spending** and reduce resources required to respond to access to information requests
- This paper provides guidance on how to make procurement records publically available, while protecting sensitive **third party information** and **personal information**



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# Open Government

## Open Contracting (2)

- Make proactive disclosure **the default**
  - Commitment of senior leadership is key
- **Engage** your stakeholders regarding the design of your procurement process
- Design your procurement with **limited exceptions** in mind
  - Understand how to deal with third party information and personal information
- **Be transparent** about transparency
  - Be upfront and clear when gathering information from third parties about your intentions to disclose



# MFIPPA

## Privacy Overview



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# Privacy

- *MFIPPA* protects the privacy of individuals concerning their personal information while providing them with the right to access that information
- *MFIPPA* establishes rules for the collection, use and disclosure of personal information
- For information in a record to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed



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# Examples of Personal Information

- Race, colour, religion, age, sex, sexual orientation or marital or family status of the individual
- Education or the medical, psychiatric, criminal or employment history of the individual
- Any identifying number or symbol assigned to the individual
- Address, telephone number, fingerprints or blood type of the individual
- Individual's name where it appears with other personal information relating to the individual

## **Does not include:**

- Information associated with an individual in a professional, official or business capacity, for example:
  - names of individuals who provided services to an institution on a fee-for-service basis
  - information relating to business costs incurred by named employees during the course of their employment as public employees



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# Privacy Obligations Under the Acts

*MFIPPA* sets out rules for the **collection, use, and disclosure** of personal information

To **collect** personal information, it must be:

- Expressly authorized by statute
- Used for the purposes of law enforcement, or
- Necessary to the proper administration of a lawfully authorized activity

**Example:**

Government institutions must have a legitimate reason and purpose for collecting personal information, such as requiring a birth certificate to issue a driver's license.

You can only **use** personal information for:

- The purpose it was collected
- A consistent purpose or with consent (preferably in writing)

**Example:**

We cannot use information from the birth registry to send out birthday cards.

You can only **disclose** personal information:

- With consent
- For a consistent purpose
- To comply with legislation
- For law enforcement
- For health and safety reasons
- For compassionate reasons

**Example:**

A video capturing evidence of a crime can be shared for law enforcement, even if it contains personal information.



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# Privacy Breaches

- A privacy breach occurs when personal information is collected, retained, used or disclosed in ways that are not in accordance with the provisions of the *Act*
- Among the most common breaches of personal privacy is the unauthorized disclosure of personal information, such as:
  - Sending communications to the wrong recipient due to human error
  - Improper records destruction procedures
  - Loss or theft of unsecured assets, such as laptop computers, digital cameras, or portable storage devices (USB sticks)
- The IPC:
  - May investigate privacy complaints and report publicly on them
  - Can order the institution to cease and destroy a collection of personal information
  - May make recommendations to safeguard privacy



# Best Practices in Protecting Privacy

- Do not ask for names or identifying information unless required
- Dispose of personal information in a safe and secure way when it is no longer needed (i.e. shred – do not recycle or throw in the garbage)
- Make sure your communications (electronic and hardcopy) are correctly addressed (e.g., check to make sure address and contents of envelope are correct before mailing)
- Consult with your institution's Freedom of Information Coordinator with questions or concerns



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# Best Practices in Protecting Privacy

## USB keys or other portable storage media

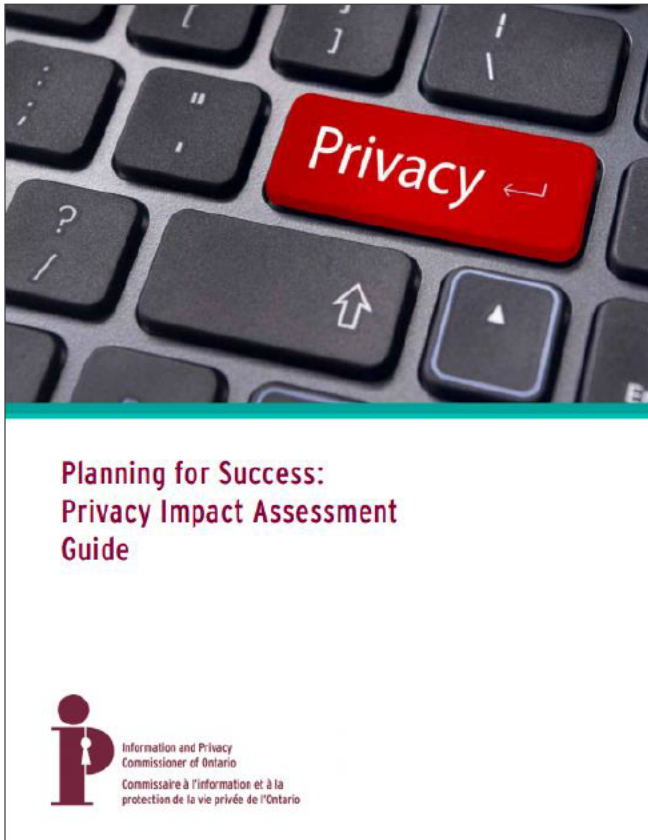
- Only store the information you need for the job
- Use de-identified data instead of personal information whenever possible
- Ensure personal information is encrypted whenever stored on portable storage devices and use strong passwords
- Keep devices safe from theft and loss, and always know what, if any, personal information is on the device
- Report lost or stolen devices containing personal information to your employer as soon as possible
- Securely remove personal information from your device as soon as you are done with it



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# Privacy Impact Assessment Guide



- PIAs are tools to identify privacy impacts and risk mitigation strategies
- PIAs are widely recognized as a best practice
- This guide provides institutions with step-by-step advice on how to conduct a Privacy Impact Assessment (PIA) from beginning to end.

# Privacy Complaint Investigations

- Individuals may file a privacy complaint with the IPC or the Commissioner may decide to commence an investigation on his own initiative
- The IPC's goal is to assist institutions on taking whatever steps are necessary (e.g. policies, procedures, staff training) to prevent future occurrences



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# Privacy Complaint Process

## Intake

- All privacy complaints are assigned to an Intake Analyst who will contact the complainant to obtain additional information, explain the process, and identify privacy issues
- The Intake Analyst may also contact the institution to discuss the possibility of a settlement
- A complaint may also be dismissed at Intake if it is determined to be unfounded



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# Privacy Complaint Process Investigation

If the complaint is not resolved at the Intake stage, a Mediator/Investigator:

- clarifies issues, does research and initiates settlement discussions with the parties
- if the matter is resolved, issues a report outlining the settlement and the file is closed
- if not, after giving the parties the opportunity to submit any additional information, issues a report with recommendations (the report is made publicly available)

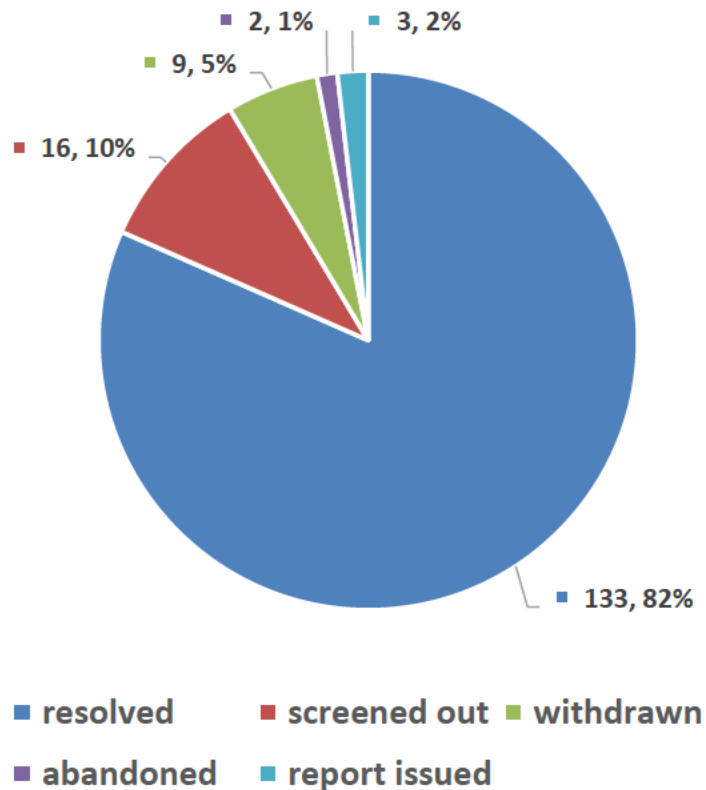


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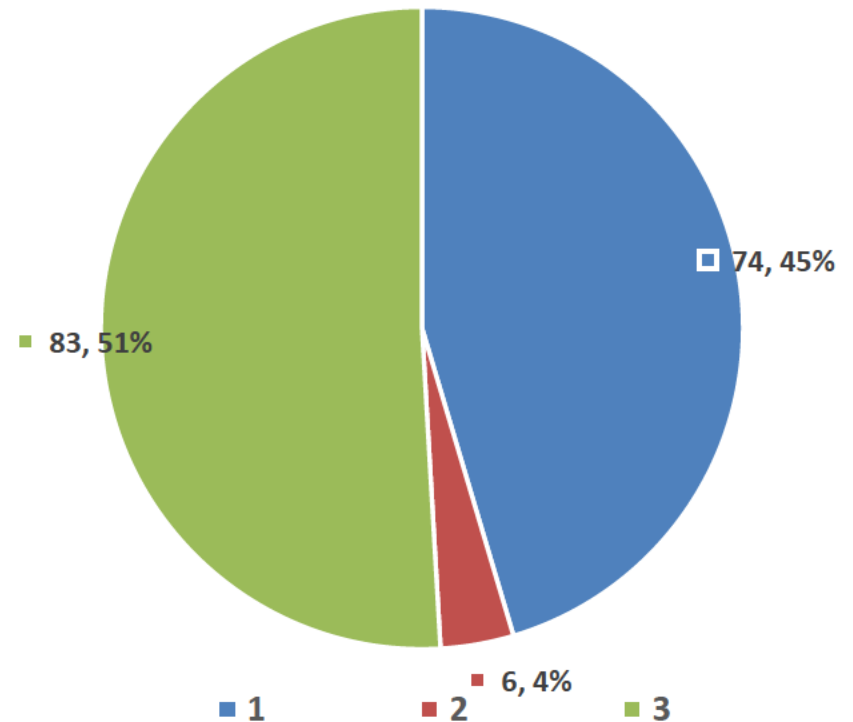
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# 2015 Municipal Privacy Complaints

163 Municipal Privacy Complaints Closed



Sources of Municipal Privacy Complaints



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# Questions?



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# How to Contact Us

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