

# ***Delivering Services in a Time of Heightened Accountability***

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

***Provincial/Municipal Government Liability***

***February 7, 2017***



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# Agenda

- mandate and role of the IPC
- government **transparency**
- protecting **privacy**



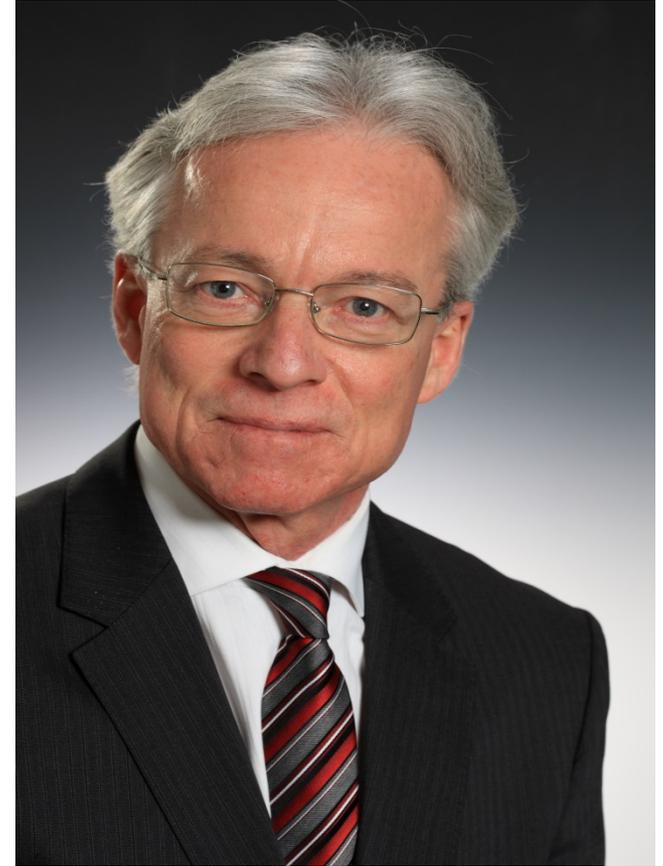
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# Who is the Information and Privacy Commissioner?

- **Brian Beamish** appointed by Ontario Legislature (March 2015)
  - 5 year term
  - reports to Legislature, not government or minister
  - ensures independence as government “watchdog”



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# Commissioner's Mandate

- Commissioner oversees three statutes:
  - *FIPPA/MFIPPA*: public sector access (FOI) and privacy (ministry, municipality, police, school board, university, hospital)
  - *PHIPA*: privacy of health information
- Commissioner's **tribunal** role in **access** matters:
  - if government agency denies access to document, or gives only partial access
  - appeal to Commissioner, who can conduct inquiry, order agency to disclose document
  - order is final, unless judicial review (*JRPA*)



# Commissioner's Mandate

- Commissioner's **tribunal** role in **privacy** matters:
  - investigate complaints about government/HIC breach of *FIPPA/PHIPA* privacy rules
    - e.g. improper collection, use, disclosure
    - can be on Commissioner's "own motion"
  - *FIPPA*: **report** with findings of fact and law, recommendations (no JR or appeal; Ombudsman-like role)
  - *PHIPA*: binding **order** with legal/factual findings (must be complied with unless appeal to Divisional Court)



# Commissioner's Mandate

- Commissioner's **policy** role:
  - **comment** on proposed legislation, programs that impact access/privacy rights
  - **educate** through research, publications, public speaking



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# Right of Access under *FIPPA/MFIPPA*

- every person has a right of access to a record held by an institution, with limited exceptions
- any record can be requested (the question “is this FOI-able” is a common one)
- requesters can appeal an institution’s decision to the IPC



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# Definition of Record

- “any record of information however recorded, whether in printed form, on film, by electronic means or otherwise”
- examples:
  - draft versions of documents
  - research materials
  - emails
  - maps
  - files on hard drives, shared drives, clouds, other mobile electronic storage devices
  - instant/text messages
  - voice messages
  - videos



# Requests under *FIPPA*

- three types of requests:
  - general information
  - personal information
  - correction



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# Requests under *FIPPA*

- in writing, \$5 fee
- **requester's identity** may be considered their personal information and, if so, cannot be disclosed without consent
- once a request is received, **all responsive records must be retained** – cannot be altered, deleted or shredded
- statutory 30 day response time
- exercise of discretion – ask “Why shouldn't we disclose?” **NOT** “Do we have to disclose?”



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# Exemptions: Limited and Specific

## DISCRETIONARY

- advice/recommendations (s. 13)
- law enforcement (s. 14)
- economic interests (s. 18)
- solicitor-client privilege (s. 19)
- danger to safety or health (s. 20)
- species at risk (s. 21.1)
- information soon published (s. 22)

## MANDATORY

- Cabinet records (s. 12)
- third party information (s. 17)
- someone else's personal information (s. 21)



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# Exclusions

- *FIPPA* does not apply to certain records **excluded** from the act; *but such records can still be disclosed!*
- examples:
  - s. 65(5.2) ongoing prosecution
  - s. 65(6) labour relations or employment related matters



# Political Party and Constituency Records

- political party and constituency records generally outside scope of *FIPPA/MFIPPA*
- ensure these records **stored separately** from government files
- difficulties in differentiating them from government files could arise if mixed and become subject to an access request
- even where record is sent from/received by a political or personal email account, if it relates to **institution business**, it may fall under *FIPPA*



# Councillor Records

- IPC orders: members of municipal councils (except mayor) not officers/employees of municipality, thus many councillors' records not subject to *MFIPPA*
- some councillor records are covered by *MFIPPA* if in the municipality's "custody or control"
- law is technical, not easy to understand; largely comes down to whether record is about **municipal business**
- IPC recommends changes to *MFIPPA* to clarify law, ensure business of municipalities is fully open



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# Councillor Records Decision

- request for emails between a councillor and individual hired by the city to investigate alleged wrongdoing by Oshawa staff
- city denied access, claimed it did not have custody of records because they came from a **personal email** account
- IPC ordered the information released
- records related to **government business** sent from personal email are subject to access laws

**The Oshawa Express**  
"WELL WRITTEN. WELL READ" Oshawa's Community Newspaper

HOME NEWS LIFESTYLES SPORTS POLICE BRIEFS COLUMNISTS

**BREAKING NEWS** March 24, 2016 in Lifestyles: **Night with The Boss**

Home » News » Commissioner orders release of emails

## Commissioner orders release of emails

Messages between councillor, lawyer to be made public; city can still file appeal

Posted on January 27, 2016 in News



The province's Information and Privacy Commissioner has ruled that email correspondence between Councillor Nancy Diamond and municipal lawyer George Rust-D'Eye be released. The two exchanged emails prior to Rust-D'eye being brought in by the city to investigate the findings in AG-13-09, the report by former auditor general Ron Foster detailing the purchase of 199 Wentworth St. E., now the city's consolidated operations depot.

By Joel Wittnebel/The Oshawa Express

For more than two years, Rob Vella has been at war.

It's not a battle fought with bullets and manpower, but one with paperwork, appeals and patience.

In 2013, the Oshawa resident filed a Freedom of Information request with city hall. Vella was looking to get his hands on a key piece of correspondence that, he figures, could shine a spotlight on the circumstances behind one of the most controversial decisions made by Oshawa councillors in recent memory; the hiring of municipal lawyer George Rust-D'Eye to look into the allegations made by former city auditor general Ron Foster in AG-13-09. In this report,



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# Councillor Records



## FOI Fact Sheet 1

### 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.

- fact sheet helps councillors understand their responsibilities
- summary of recent orders
- factors to consider when deciding whether record in custody or control of institution



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# Public Interest Override

- *FIPPA* s. 23 states that certain exemptions do not apply where there is a “compelling **public interest** in disclosure”
- for the override to apply, must be:
  1. public interest in disclosure
  2. public interest must be **compelling**, and
  3. compelling public interest must **clearly** outweigh **purpose** of the exemption claim



# Doctor's Billings and Public Interest

- significant public attention about amount doctors bill to public
- previous IPC decisions kept this information private
- recent order, **PO-3617**, requires disclosure – personal privacy exemption does not apply
- even if it applied, overriding **public interest in disclosure** given the importance of transparency in use of substantial public money (order currently under judicial review)

News · Queen's Park

## Ontario's top-billing doctor charged OHIP \$6.6M last year

Health minister flags 500 doctors who made more than \$1 million last year in a bid for public support in reforming outdated OHIP system.



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# Insider Wins and Public Interest

OLG ordered to release information on insider wins and their investigative practices under the public interest override [PO2657]

“The public has a right to properly scrutinize insider lottery wins and the actions of the OLG in investigating those wins.”

EPIISODES - SEASON 32

#cbcfifth



BROADCAST DATE : OCT 25, 2006

## Luck of the Draw

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We trust the people who sell us and check lottery tickets to be honest. But for some, the temptation to steal a small slip of paper worth hundreds, thousands, and sometimes millions of dollars, can be too strong. There are numerous stories, from all over North America, about legitimate lottery winners being cheated out of their winnings in just such a way. This is the story of two retailers at one store who cheated an unsuspecting winner out of his lottery winnings and the Ontario Lottery and Gaming Commission who fought him when he tried to get back what was rightfully his.

### RECENT EPISODES



APR 8, 2016  
Stolen Treasures



MAR 25, 2016  
The Trial of Jian Ghomeshi



MAR 18, 2016  
In Their Own Words



MAR 11, 2016  
The Fire Breather : The Rise and Rage of Donald Trump



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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 in 30 days
- extend 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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# Open Government



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# Open Government – Proactive Disclosure

The three pillars:

1. **Open Data:** proactive publication of data in free, accessible forms for public use [e.g. water test results]
2. **Open Dialogue:** new ways to provide public with a meaningful voice in planning, decision making [e.g. police carding consultations, e-petitions]
3. **Open Information:** proactive release of information about the operation of government [e.g., contracts]



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# Key Benefits

## Enhanced Accountability

- strengthens democracy by making government more **accountable** for its decisions, actions, spending

## Enhanced Public Participation

- public has **stronger voice**, ability to influence government
- empowers public to make better decisions impacting quality of life

## Enhanced Economic Value

- increased use of government information supports **innovation**, creates **economic opportunities** that benefit business, government, public



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# Open Government in Ontario

## Open by Default report:

- Open Government Engagement Team recommends ways to create **culture of openness**

## Open Data Directive:

- codifies minimum requirements to implement open data
- for example, ministries, provincial agencies must
  - create inventory of datasets
  - ministry open data must be made available in the **Ontario Data Catalogue** (administered by TBS)

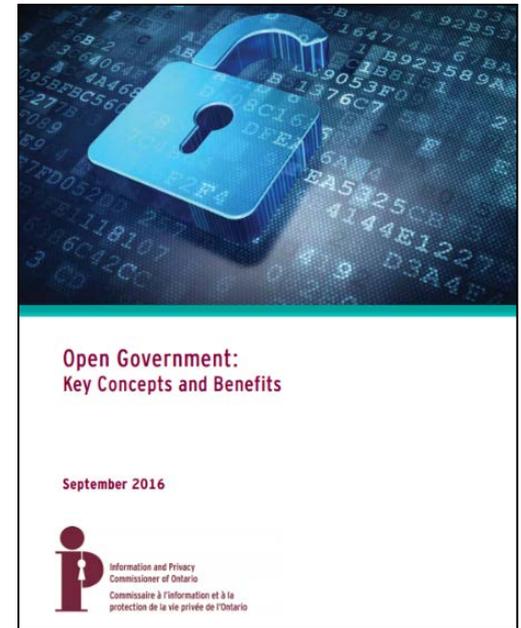


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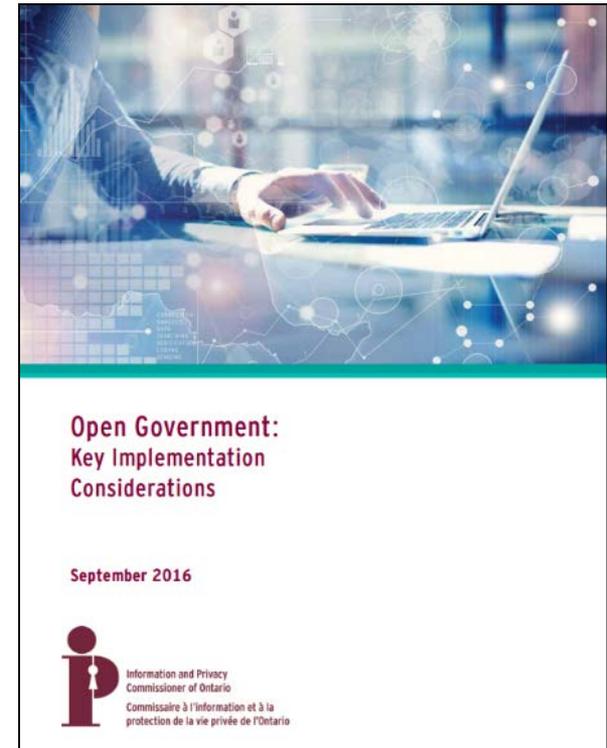
# Open Government: Key Concepts and Benefits

- Introductory, summarizes fundamental concepts and benefits, draws together variety of sources to facilitate understanding of Open Government
- Highlights two significant goals:
  1. **Enhancing transparency** to improve the quality of governance and services by becoming more open, accountable, and responsive to the public
  2. **Enhancing public engagement** to enable broad participation and true two-way dialogue, resulting in more “citizen centric” information and services



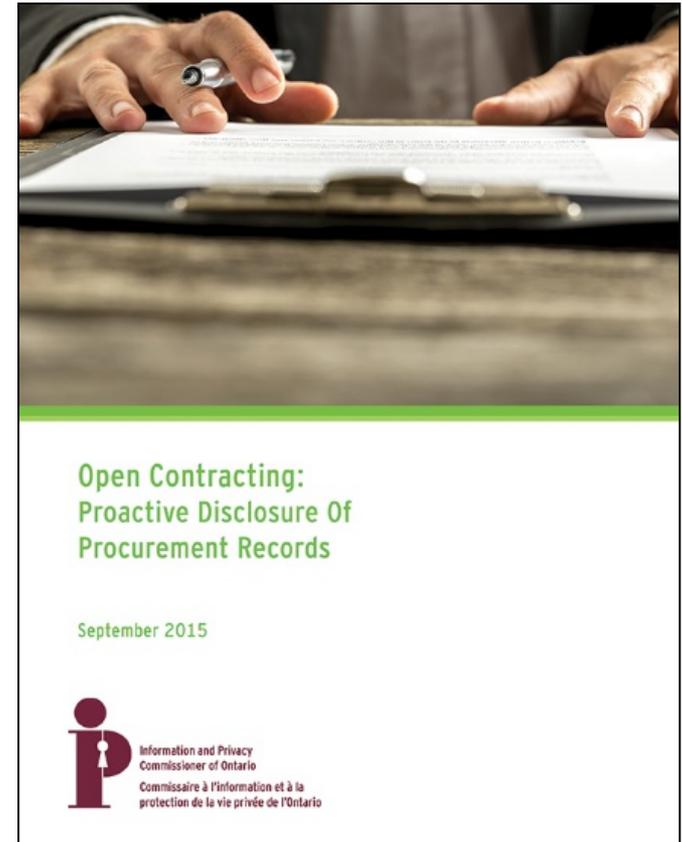
# Open Government: Key Implementation Considerations

- overview of important considerations when implementing OG
- key factors for success:
  - recognizing OG is an **ongoing program**, not short-term project
  - making sure institution has **leadership**, commitment, governance, resources necessary to sustain program
  - defining scope and **deliverables** realistically, and appropriate for institution and its users
  - **engaging** internal and external users and public as institution plans, implements and evaluates its activities and services

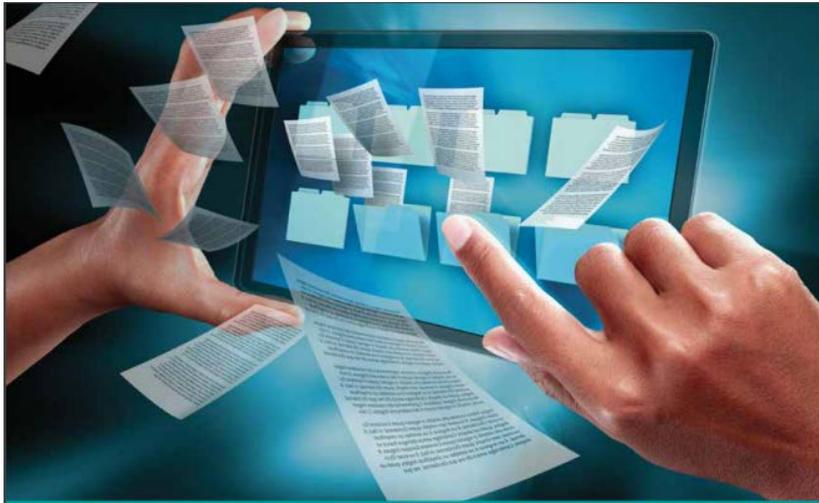


# Open Contracting: Proactive Disclosure of Procurement Records

- benefits of **open contracting**:
  - increased transparency and accountability about government spending
  - increased fairness and competition in contracting
  - **reduced resources** required to respond to related access requests
- guidance on designing/implementing **transparent** procurement process, while protecting confidentiality and privacy



# RIM Guidance



Improving Access and Privacy  
with Records and Information  
Management

November 2016



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- helps institutions understand relationship between strong RIM practices and compliance with the acts
- brief introduction to basic RIM concepts and best practices, encourage further conversations with RIM professionals



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# Bill 8, Public Sector and MPP Accountability and Transparency Act



## **FIPPA and MFIPPA: Bill 8 – The Recordkeeping Amendments**

December 2015



- as of 2016, institutions must take **reasonable measures** to protect their records in accordance with recordkeeping requirements
- **offence** to alter, conceal, destroy record with intention of denying access; penalty of up to \$5,000
- guidance on how to ensure records preserved in accordance with new legislation

# Personal Email/Instant Messaging

- managing the use of instant messaging and non-institutional email accounts
- personal email and instant messaging are subject to freedom of information requests
- best advice: **prohibit** use, or at least enact measures to ensure records are preserved



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

June 2016



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# Publishing on the Internet



## Transparency, Privacy and the Internet: Municipal Balancing Acts



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- privacy protective policy, procedural and technical options when publishing personal information online
- focus on personal information that is required by legislation to be published, but may be applied in any situation where municipalities make information available online



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# Protection of Privacy



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# Privacy

- *FIPPA* also protects the **privacy** of individuals concerning their personal information, provides them with **right to access** that information
- rules for the collection, use, disclosure of personal information
- 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, national or ethnic origin, religion, age, sexual orientation or marital or family status
- education or medical, criminal, employment history
- identifying number, symbol or other particular assigned to the individual
- address, phone number, fingerprints, blood type
- but generally not information about you in **business or professional** capacity



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# Privacy Obligations under *FIPPA*

## Collection, use, disclosure rules

No **collection** unless

- authorized by statute
- used for law enforcement or
- necessary to lawfully authorized activity

Must have a legitimate reason for collecting personal information, such as requiring a birth certificate to issue a driver's license

No **use** unless

- purpose collected
- consistent purpose
- written consent

Cannot use information from the birth registry to send out birthday cards

No **disclosure** unless

- consent
- consistent purpose
- comply with legislation
- law enforcement
- health or safety
- compassionate reasons

Video capturing evidence of a crime can be shared with police, even if it contains personal information



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# Privacy Breaches

- **privacy breach**: personal information collected, used or disclosed in ways not consistent with the *Acts*
- among most common breaches is **unauthorized disclosure** of personal information such as:
  - sending communications to wrong recipient due to human error
  - improper record destruction procedure
  - loss or theft of unsecured assets, such as laptops, digital cameras, portable storage devices (USB sticks)
- IPC may **investigate** privacy complaints, report publicly on them
  - may order government to cease and destroy a collection of personal information
  - may make recommendations to safeguard privacy



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# Best Practices in Protecting Privacy

- **limit** the amount of personal information collected and used
- ask whether it is **necessary** to use personal information to get the work done
  - e.g., is it necessary to name individuals in preparing briefings? Are all the personal details necessary?
- **protect** personal information from deliberate or accidental unauthorized use or disclosure



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# Privacy and portable storage

- 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
- securely remove personal information from your device as soon as you are done with it



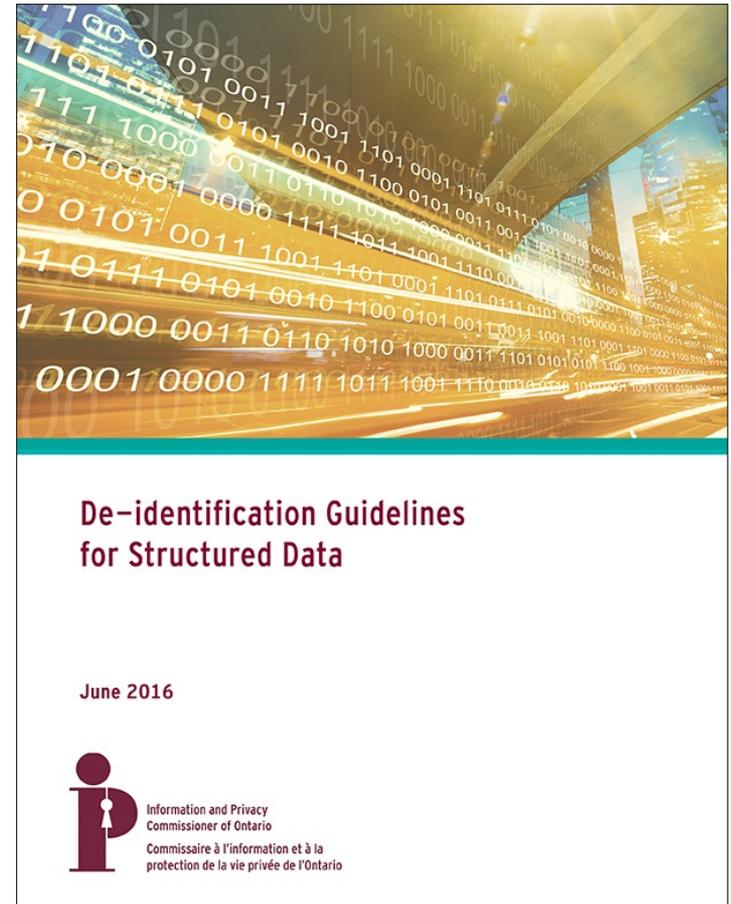
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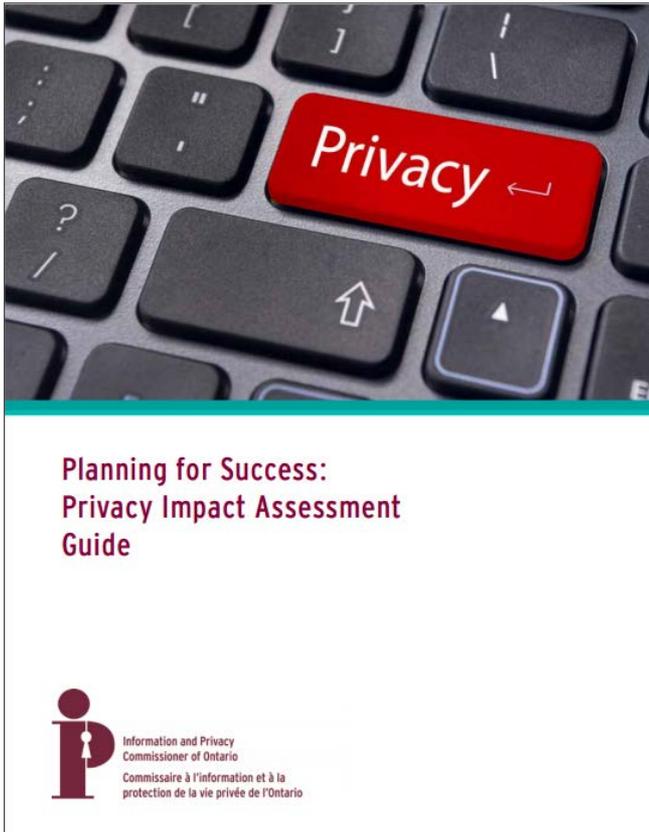
# De-identification

## Guidelines for Structured Data

- “de-identification”: the process of removing PI from a record or data set
- risk-based, step-by-step process to assist institutions in de-identifying data sets containing PI
- key points to consider when publishing data:
  - *release models*
  - *types of identifiers*
  - *re-identification attacks*
  - *de-identification techniques*



# Privacy Impact Assessment Guide



- PIAs are tools to identify privacy impacts and risk mitigation strategies
- PIAs are widely recognized as a best practice
- step-by-step advice on how to conduct a PIA from beginning to end

# PIA Methodology and Tools

Key Steps	Tools
<b>1. Preliminary Analysis</b> Is personal Information involved?	Appendix A: Questionnaire
<b>2. Project Analysis</b> Gather project info, people and resources	Appendix B: Questionnaire
<b>3. Privacy Analysis</b> Identify and mitigate risks	Appendix C: Checklist
<b>4. PIA Report</b> Document findings, get approval, proceed	Appendix D: Template

Downloadable Worksheet containing all Appendices: <https://goo.gl/aRS814>



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# IPC snooping investigation

- 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
  - IPC makes it clear that hospital liable for actions of its “rogue” staff



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# IPC **snooping** investigation

- Rouge Valley Order HO-013
  - IPC ordered hospital to upgrade its systems to permit auditing, detection of snooping
  - hospital appeals to Divisional Court
  - first ever appeal of IPC health decision
  - but matter **resolved**, hospital agrees to upgrade systems as required by order (limited to number of key databases)



# Detecting and Detering Unauthorized Access

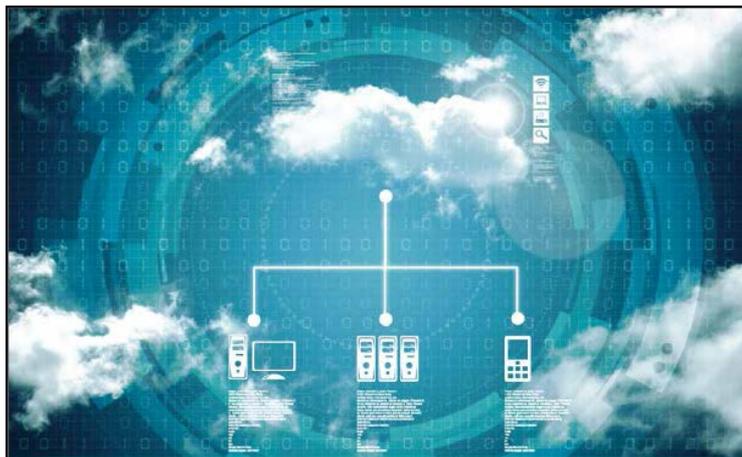


Detecting and Detering  
Unauthorized Access to  
Personal Health Information



- impact of unauthorized access
- reducing risk through:
  - policies and procedures
  - training
  - privacy notices and warning flags
  - confidentiality and end-user agreements
  - access management
  - logging, auditing and monitoring
  - privacy breach management
  - discipline

# Cloud Computing



**Thinking About Clouds?**  
Privacy, security and compliance  
considerations for Ontario public  
sector institutions

February 2016



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- origins
- definitions
- identified risks
  - security
  - privacy
  - compliance
- risk mitigation strategies

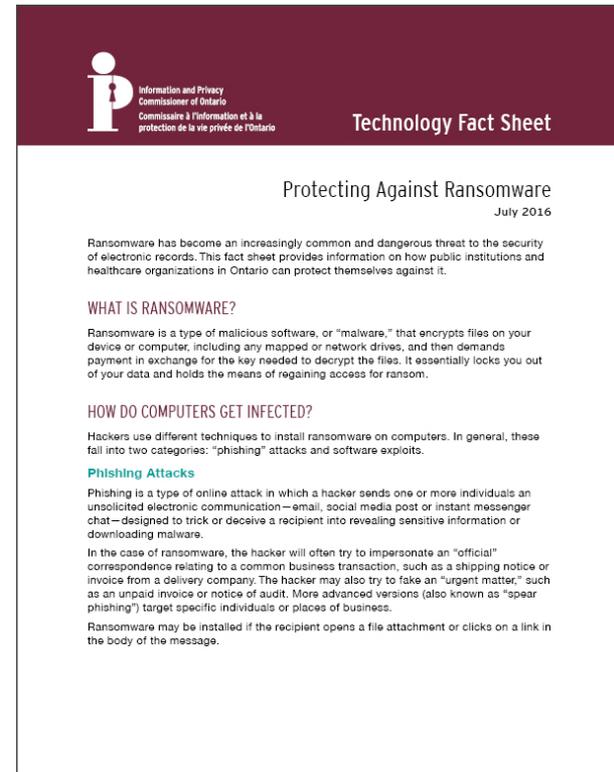


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# Protecting Against Ransomware

- what is ransomware?
- how do computers get infected?
  - phishing attacks
  - software exploits
- protecting your organization
- responding to incidents



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# Video Surveillance Guidelines



## Guidelines for the Use of Video Surveillance

October 2015



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- consolidates previous advice, presents new issues and factors to consider, including **retention periods, notices of collection**
- **key messages and examples for clarity**



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# How to Contact Us

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