

How Records and Information Management Enable Access and Privacy

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Ontario Public Service, Records and Information

Management Advisory Council

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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)*



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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

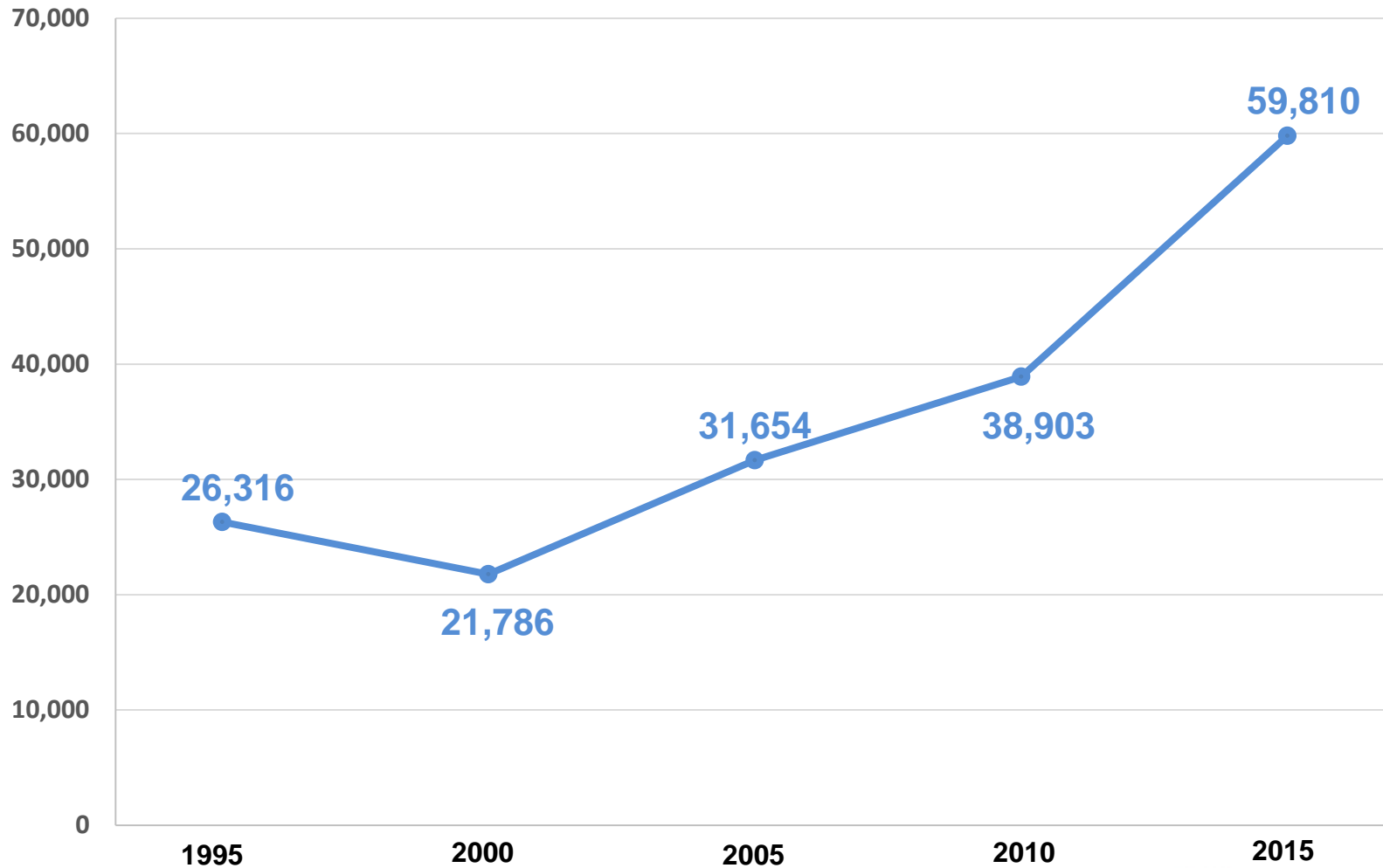


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Access Requests Per Year

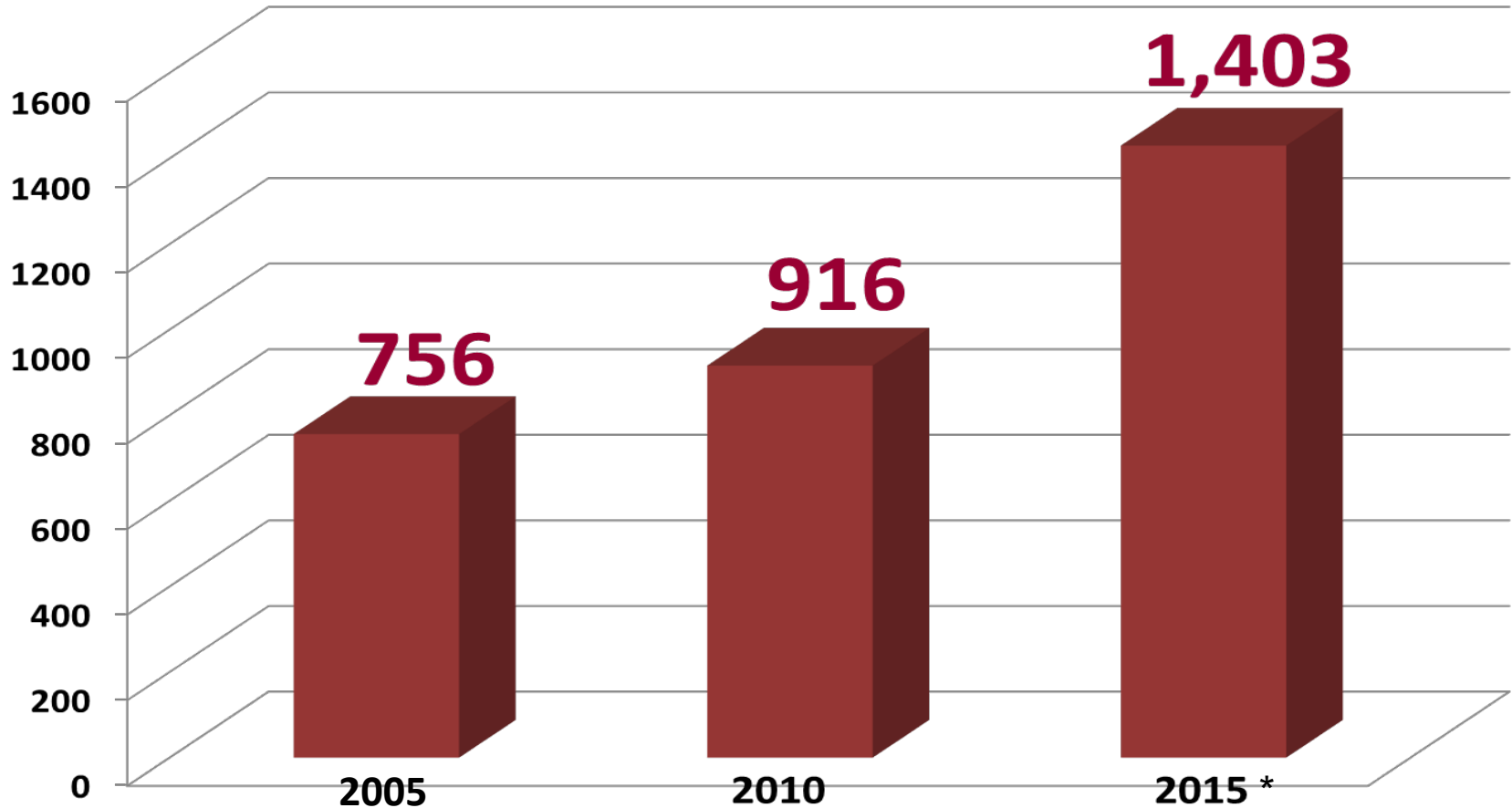
Total number of access to information requests under both *FIPPA* and *MFIPPA*



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Appeals Received Per Year



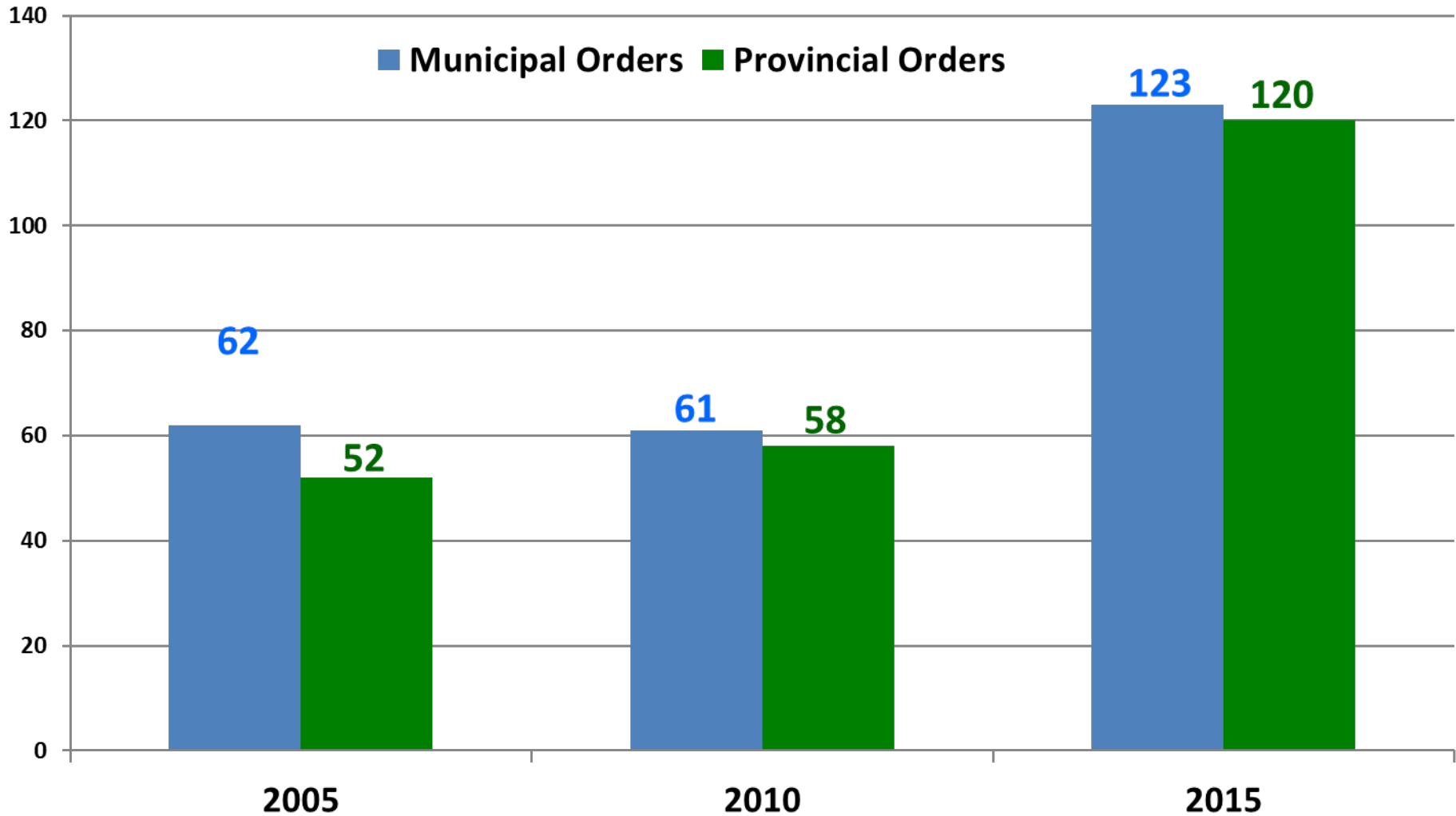
* 64.3% of all appeals received in 2015 were resolved at the Intake stage (25%) or through Mediation (49.3%)



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Orders Issued



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RIM and the Acts

- RIM practices have a direct impact on FOI and privacy:
 - Excessive fees charged due to inability to extract data from databases or find records due to failure to maintain records in an organized manner
 - Unauthorized disclosures of personal information due to poor RIM practices and the lack of appropriate classifications
 - Destruction of records without authorization
 - Inappropriate use of instant messaging, personal email and other technologies to evade FOI requests
 - Failure to create records of important business activities



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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



Personal Email Use

Order MO-3281:

- The City of Oshawa received a request for access to all communications between a named councillor and a named individual
- The city identified one responsive record, an email from the councillor to the investigator, but denied access to it on the basis that it was not in its custody or under its control, as the email was sent from a personal email account
- The IPC applied the two-part test to determine custody or control and found that the city had control over the record due to its relation to city business
- The email was ordered released



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Instant Messaging & Personal Email Accounts

- Emails sent and received from personal email accounts and instant messages are **subject to access requests**
- Challenges in managing records produced using personal email or instant messaging include:
 - **Search and production** when responding to access to information requests
 - **Retention and preservation** in compliance with the acts
 - Ensuring **privacy and security** of personal information
- 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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Fees

57. (1) A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,

- (a) the costs of every hour of manual search required to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
- (d) shipping costs; and
- (e) any other costs incurred in responding to a request for access to a record.



Excessive Fees

Order PO-3035:

- McMaster University received an access request for financial records related to travel for a named individual
- The University issued a fee estimate of \$1,115.00 for 81 records. The cost was primarily due to search time associated with finding “intermingled” records that could not be searched easily
- IPC found that the appellant should not bear the financial burden of the university’s failure to implement proper record management practices
- Fee was ordered lowered to \$120



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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 and Security of Records

Privacy complaint: accusation that a government employee was accessing and using information from a database containing sensitive personal information

- The IPC investigated and found that access was unauthorized
- The investigation exposed flaws in the security of system
- Result: comprehensive plan to improve security of system presented to IPC
 - Plan includes technical fixes, policy changes, training, etc.
 - Time line given for each component of plan
 - Report back to IPC as commitments met
 - IPC satisfied with result and closes file



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Privacy and Security of Records (2)

- Lessons from the health sector
 - High profile privacy breaches have highlighted importance of safeguarding electronic health information systems
 - Lack of adequate safeguards can lead to inadvertent breaches and intentional snooping
 - Measures being taken in health sector include:
 - Building in logging and auditing capability
 - Stronger access controls
 - Privacy warning messages and flags
 - Annual training and confidentiality agreements



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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*



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Bill 8, Public Sector and MPP Accountability and Transparency Act



FIPPA and MFIPPA: Bill 8 – The Recordkeeping Amendments

December 2015



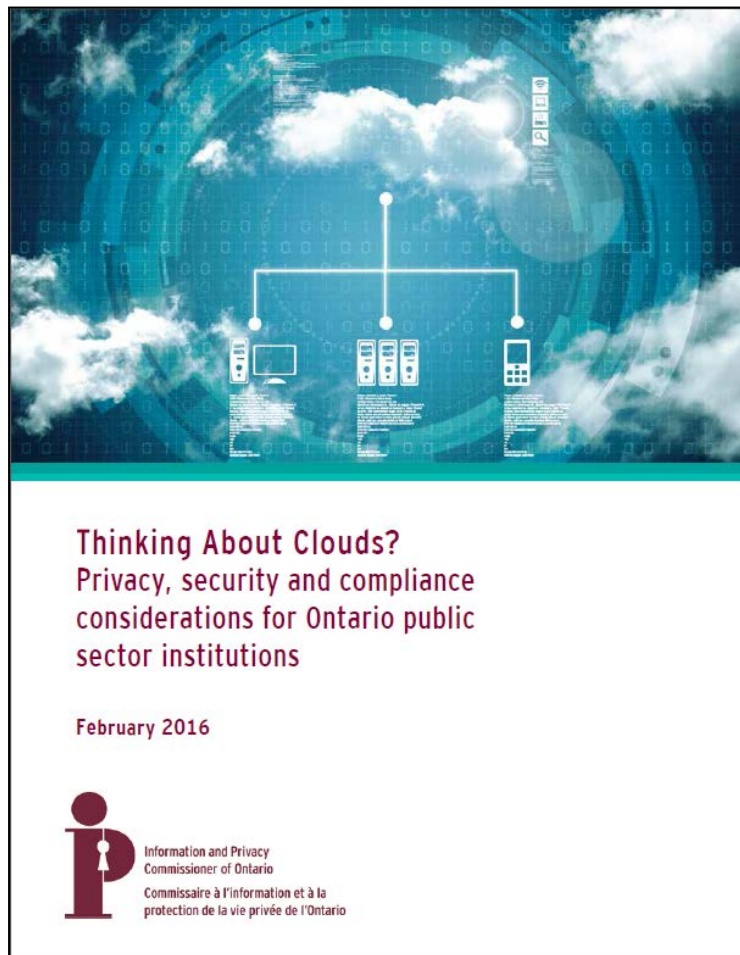
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- Requires institutions to take **reasonable measures** to protect their records in accordance with recordkeeping requirements
- Makes it an **offence** to alter, conceal or destroy a record with the intention of denying a right to access the record, with a penalty of up to \$5,000
- MGCS has published guidance highlighting how the legislation will affect **record retention** and how to ensure the **preservation** of records



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Cloud Computing



- IPC issued this guidance to help institutions understand various **cloud storage** options and the risks associated with them
- Security, privacy and compliance risks are identified, along with **risk mitigation strategies**



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RIM Guidance



Improving Access and Privacy with Records and Information Management

November 2016



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- IPC issued this guidance to help institutions understand the relationship between strong RIM practices and compliance with the acts
- Intended to be a brief introduction to basic RIM concepts and best practices with the hope that it will encourage further conversations with RIM professionals



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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



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Questions?



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How to Contact Us

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