

Access and Privacy in Ontario: Latest Developments

Brian Beamish
**Information and Privacy Commissioner
of Ontario**

Ontario Connections
June 6, 2017



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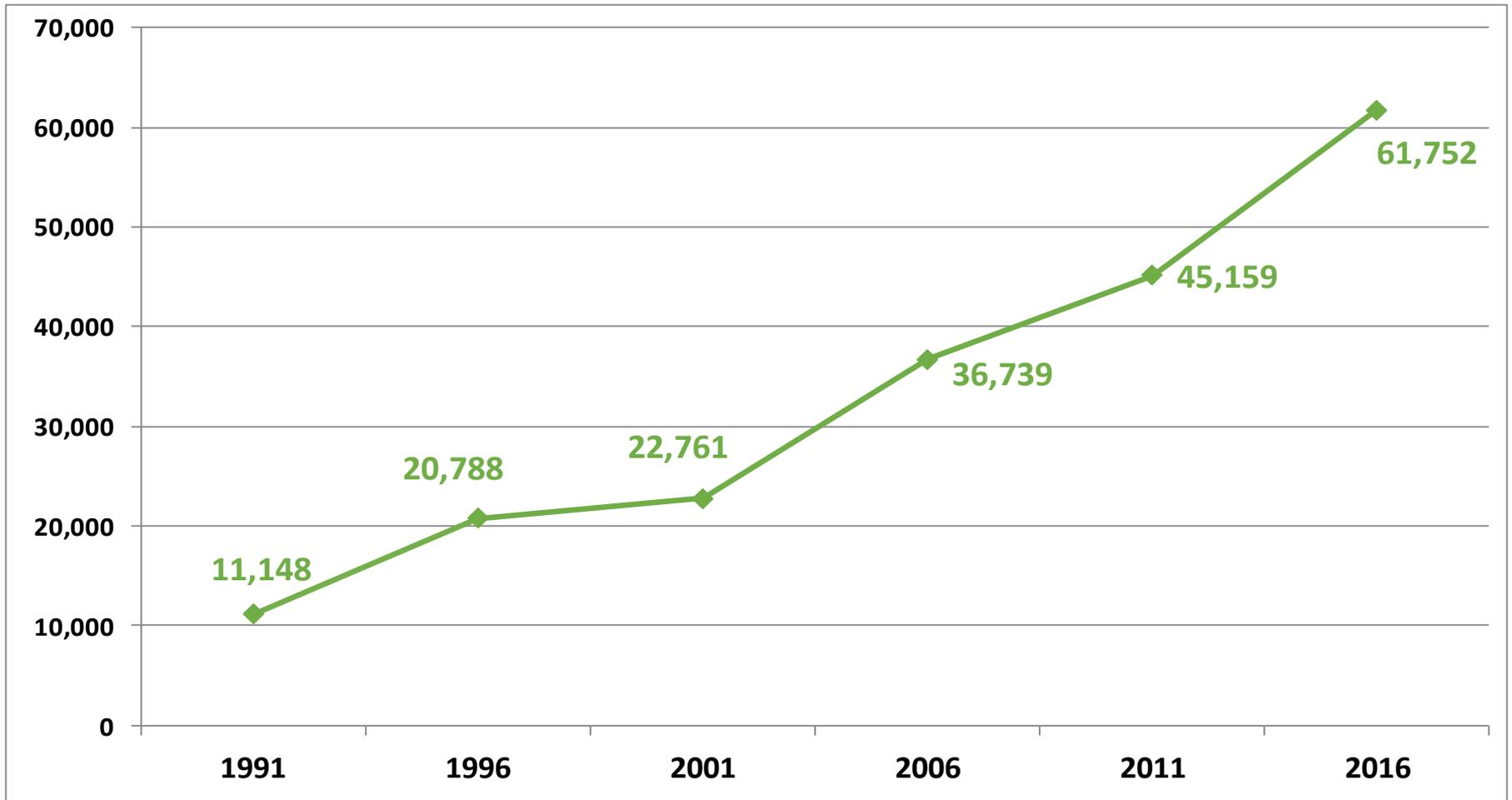
ACCESS



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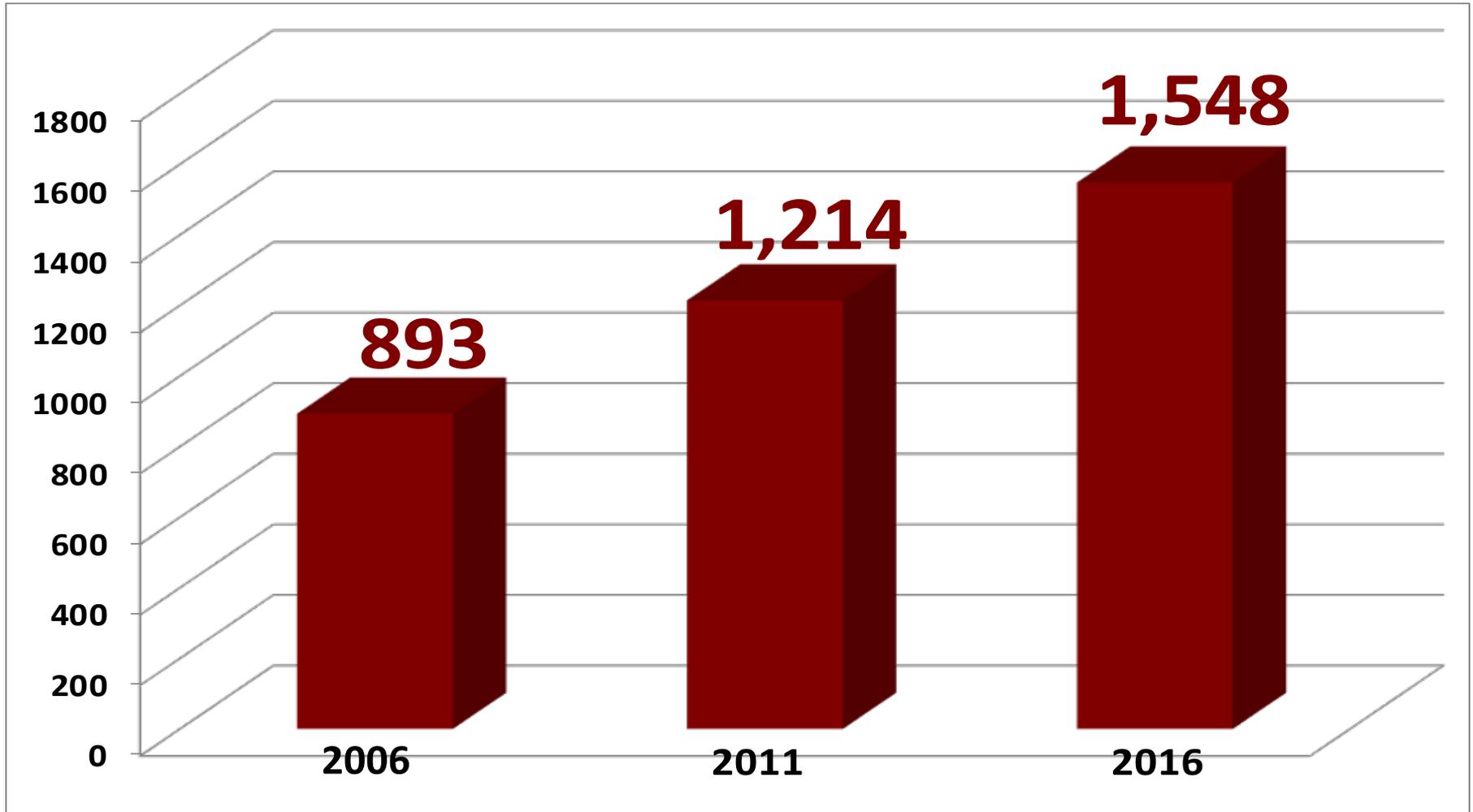
Total Access Requests Per Year



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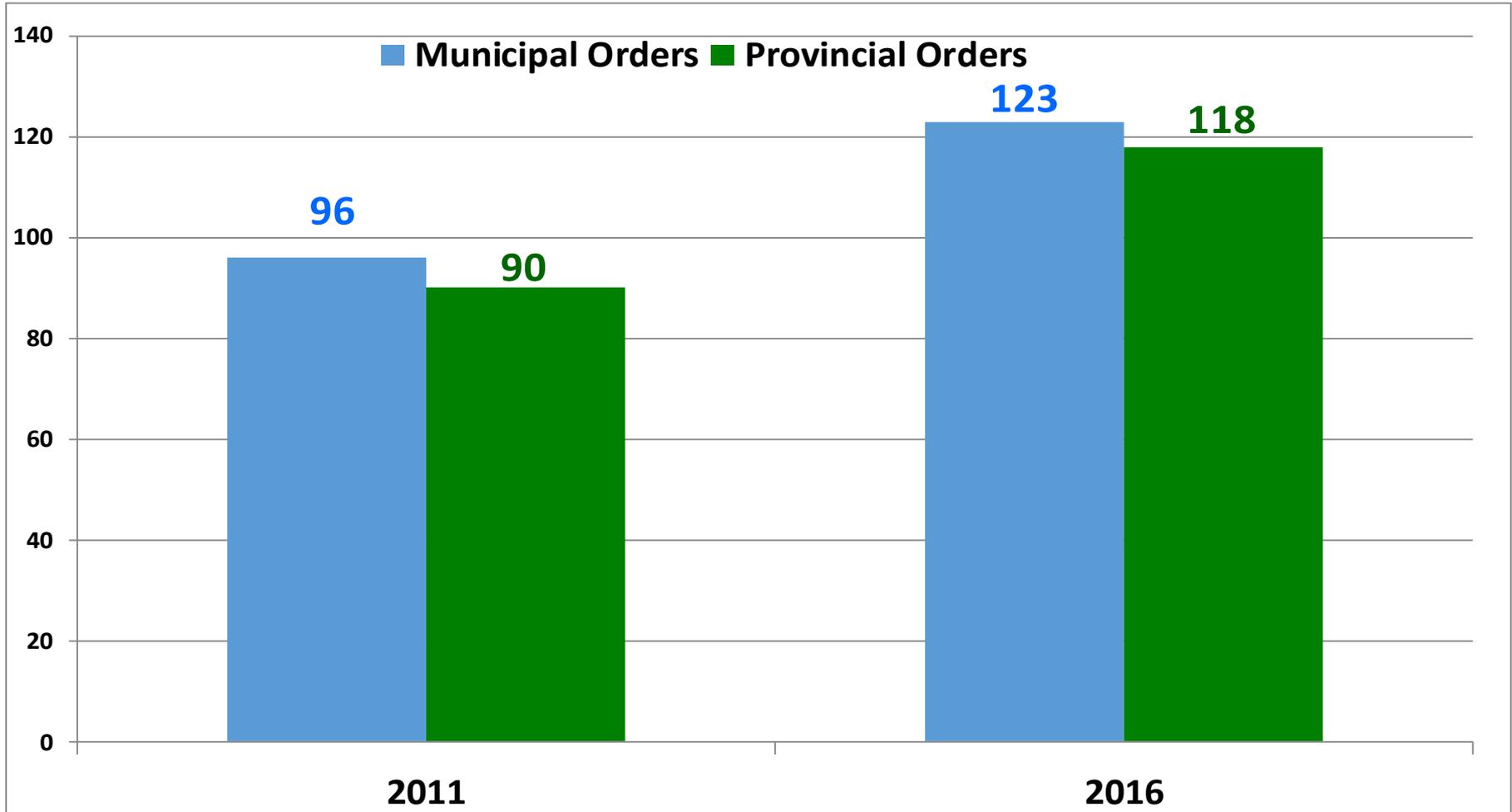
Total Appeals Received Per Year



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Total Access to Information Orders



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Mediation: Success Behind the Scenes

- Most appeals and privacy complaints are resolved by intake analysts and mediators
- Goal is to find a resolution which satisfies the needs of all involved
- Saves significant time and resources for all parties
- Usually, 75% of appeals and almost all privacy complaints are closed before adjudication/investigation



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Instant Messaging & Personal Email Accounts

- Personal email accounts and instant messages are **subject to access requests**
- Challenges include:
 - search and production
 - retention and preservation
 - privacy and security
- We advise institutions to **prohibit use** or preserve business records



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

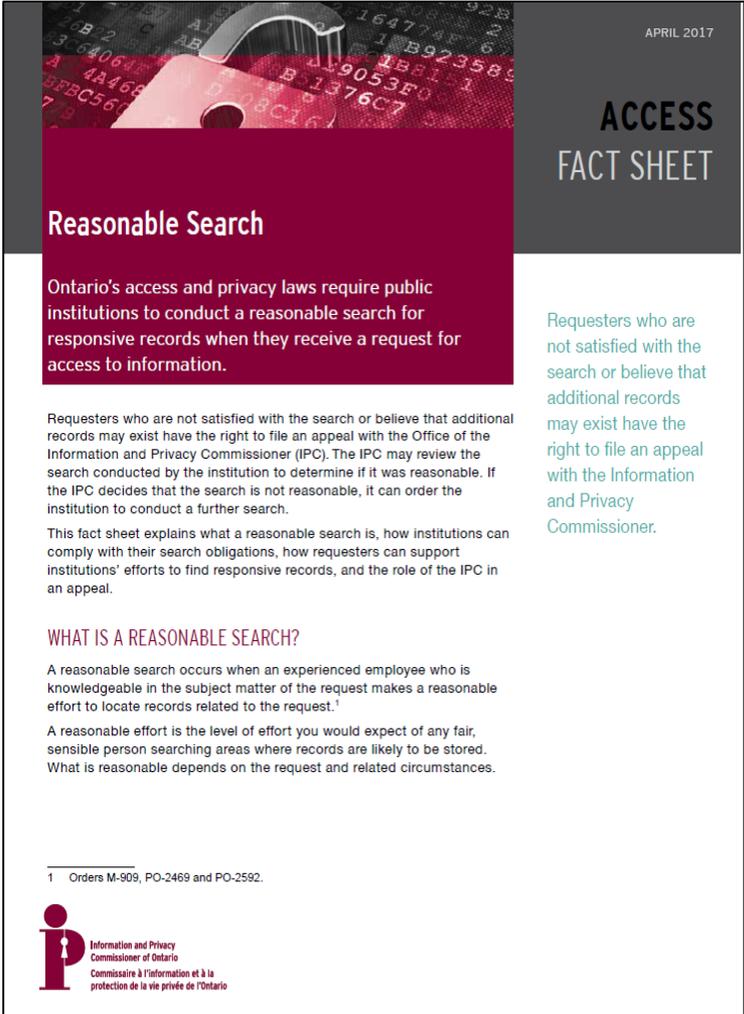
June 2016



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Reasonable Search

- Institutions are obligated to conduct a reasonable search for records
- Fact sheet outlines considerations when conducting a reasonable search
- Explains your obligations in clarifying requests, ensuring search is comprehensive and addressing all file formats
- Describes how to document the search



APRIL 2017

ACCESS FACT SHEET

Reasonable Search

Ontario's access and privacy laws require public institutions to conduct a reasonable search for responsive records when they receive a request for access to information.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Office of the Information and Privacy Commissioner (IPC). The IPC may review the search conducted by the institution to determine if it was reasonable. If the IPC decides that the search is not reasonable, it can order the institution to conduct a further search.

This fact sheet explains what a reasonable search is, how institutions can comply with their search obligations, how requesters can support institutions' efforts to find responsive records, and the role of the IPC in an appeal.

Requesters who are not satisfied with the search or believe that additional records may exist have the right to file an appeal with the Information and Privacy Commissioner.

WHAT IS A REASONABLE SEARCH?

A reasonable search occurs when an experienced employee who is knowledgeable in the subject matter of the request makes a reasonable effort to locate records related to the request.¹

A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

¹ Orders M-909, PO-2469 and PO-2592.

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Frivolous and Vexatious Requests

- Section 10(1)(b) creates an exception to the right of access where the institution is of the opinion on reasonable grounds that the request for access is **frivolous** or **vexatious**



Frivolous and Vexatious Requests *(Cont'd)*

- Section 5.1 of Regulation 460 states that a request is frivolous or vexatious if the request is:
 - part of a pattern of conduct that amounts to an **abuse of the right of access**,
 - part of a pattern of conduct that would **interfere with the operations of the institution**,
 - made in **bad faith**, or
 - made for a **purpose other than to obtain access**



What makes a request frivolous or vexatious?

- IPC considerations:
 - number of requests by the same person
 - excessively broad or identical to previous requests
 - aimed at creating a nuisance or to “harass” the government or burden the system
 - timing of the requests
 - behaviour of the requester



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Solicitor-Client Privilege

- Increasingly, institutions have been unwilling to provide documents to the IPC where S/C privilege exemption claimed
- 2016 – Supreme Court of Canada found Alberta’s access law was not clear enough for Alberta IPC to compel production of records where S/C privilege claimed
- Recent Sask. Court considered different statutory language and conclude that Sask. access law permitted the review of S/C privileged records
- Ontario Legislature should amend access laws to reconfirm:
 - that the IPC can compel production of records claimed to be privileged, including S/C privilege
 - that providing records to the IPC does not constitute a waiver of S/C privilege



Public Interest Override

- **Divisional Court of Ontario** hearing this month concerning Order [PO-3617](#) compelling the release of names of top 100 OHIP billers
- Ministry of Health and Long-Term Care denied reporter's request to access the names and specialties of the top billers, claiming invasion of personal privacy
- IPC adjudicator found information to be in the public interest, *"...the concept of transparency, and in particular, the closely related goal of accountability, requires the identification of parties who receive substantial payments from the public purse."*



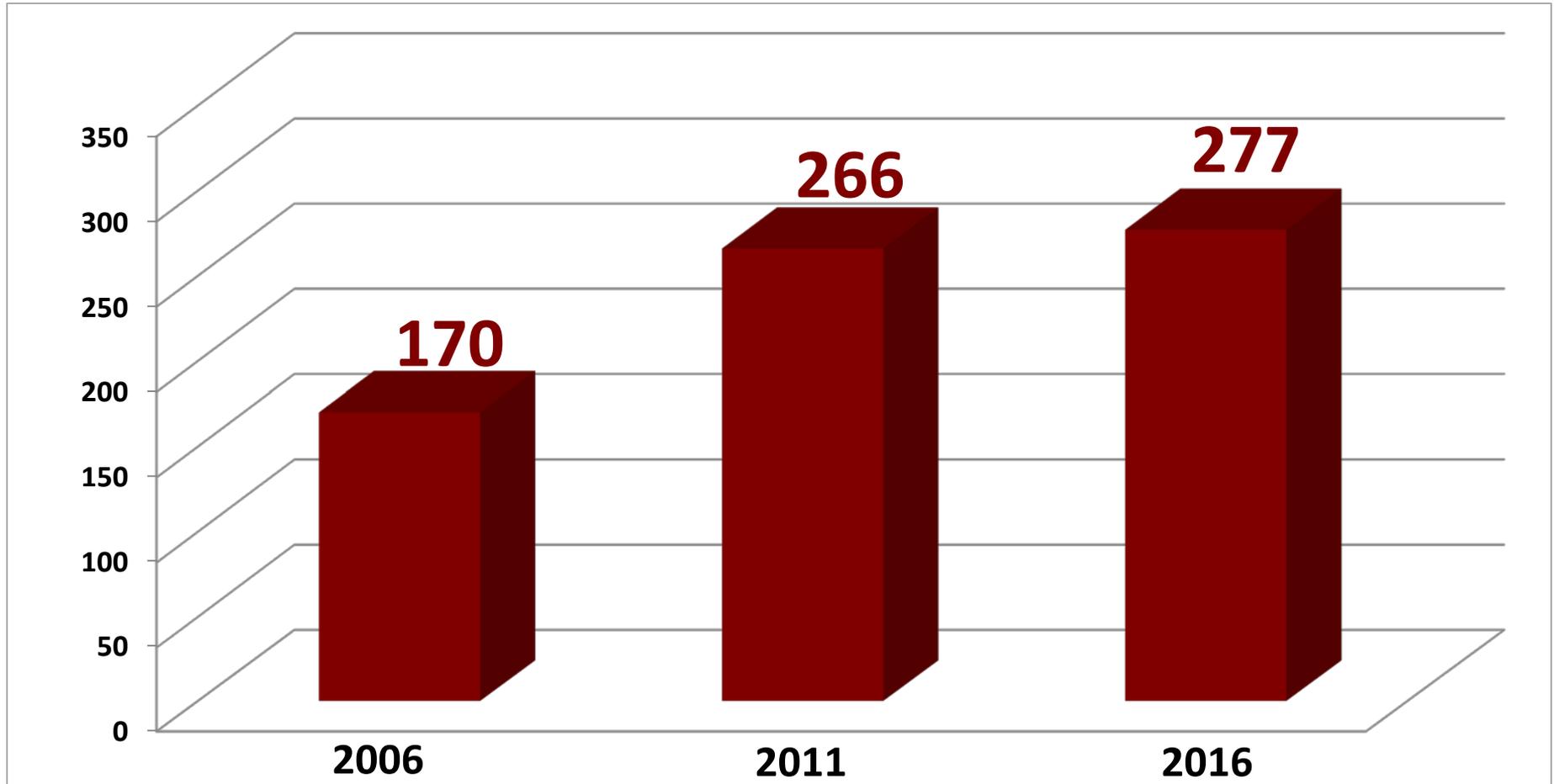
PRIVACY



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Total Privacy Complaints Opened Per Year

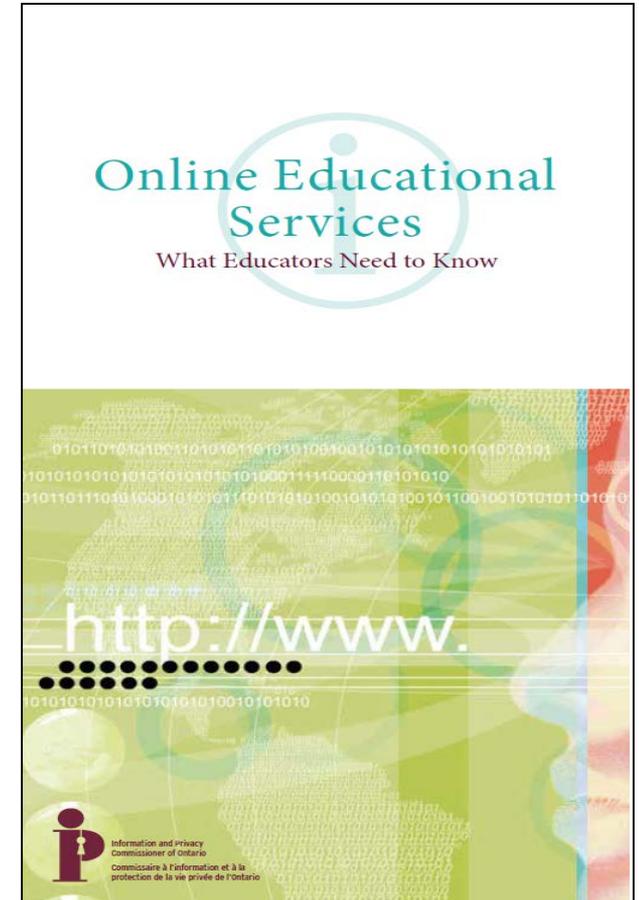


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Online Educational Services

- Educators use online educational services for learning, communication, evaluation
- While innovative and inexpensive, they could risk privacy of students
- School boards must ensure online services are compliant with privacy laws
- IPC and Ontario Association of School Business Officials (OASBO) created fact sheet about privacy risks of online educational services



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GPEN 2017 Privacy Sweep

- **May 2017** – IPC collaboration with Office of the Privacy Commissioner of Canada to evaluate privacy considerations of over 30 online educational services. We look at:
 - what personal information is collected
 - how it is used and disclosed
 - if users have control over their personal information
- Part of a larger, annual “Privacy Sweep” carried out by privacy enforcement authorities around the world looking at various online services
- Coordinated by the [Global Privacy Enforcement Network](#)
- Results to be published in the fall



International Working Group on Digital Education

- International data protection authorities convened in 2014 to develop a competency framework for teachers and students on digital and privacy education
- Framework identifies the requirements for digital and privacy literacy such as online privacy, safety and security
- IPC has participated since the group first convened, providing input on various drafts of the framework and developing elementary and high school lessons plans to support education about privacy



Resolution for Framework on Privacy Education

- **October 2016** – IPC co-sponsored [Resolution for the Adoption of an International Competency Framework on Privacy Education](#) at the 38th International Conference of Data Protection and Privacy Commissioners. The resolution:
 - introduces the framework
 - raises awareness for the need to include privacy education in school curriculums around the world
 - a significant step toward making privacy education for children and youth a standard practice



Fall Workshop

- IPC will be co-sponsoring workshop on “Privacy Implications in the Networked Classroom”
- To take place at “Bring IT Together” conference of OASBO
- Audience to be academics, teachers, school officials and “ed tech” representatives.



Globe and Mail Series: 'Unfounded'



UNFOUNDED

WHY POLICE DISMISS 1 IN 5 SEXUAL ASSAULT CLAIMS AS BASELESS



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The Philadelphia Model

- Annual meeting of advocates and representatives from the Women's Law Project who search through police sexual assault files – alongside high-ranking officers – to look for deficiencies and biases
- Now in its 17th year
- Since it was implemented, the 'unfounded rape' rate has dropped to four per cent, in contrast with the national average of seven per cent



Working with Police on an Ontario-based Philadelphia Model

- Describe the purposes of the program
- Identify external partners with the experience to assist with the review of sexual assault files and appoint them agents of the service
- Ensure external reviewers have been subject to a background check and signed an oath of confidentiality
- Provide external reviewers with privacy and confidentiality training
- Determine which classes of case files will be reviewed



Working with Police on an Ontario-based Philadelphia Model *(Cont'd)*

- Require external reviewers to see names of principals so they can recuse themselves if known to them outside of a professional context
- Permit external reviewers to review complete closed files, including the personal information they contain, subject only to redactions or restrictions required by law
- Ensure reviews take place at police facilities and no identifying information is copied, retained or removed by agents



Interview with Globe and Mail

May 31, 2017

“It is my view that external review of sexual-assault case files can make an important contribution to improving the investigation of sexual assault complaints while complying with privacy requirements, including through the use of agreements, oaths of confidentiality and privacy and confidentiality training.”

~ Brian Beamish, Commissioner



BIG DATA



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The Big Data Challenge

- Big data arises in an era where:
 - information technology is widespread
 - types of data and analytics are complex
 - uses of personal information are less discrete and less determinate
- Striking the right balance between data use and the protection of privacy is challenging
- *How can we ensure data protection while enabling the personal and societal benefits that come from the use of big data?*



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Privacy Risks of Big Data

- Use of poorly selected data sets that:
 - lack information/are incomplete
 - contain incorrect or outdated information
 - disproportionately represent certain populations
- Incorporation of implicit or explicit biases
- Generation of pseudo-scientific insights that assume correlation equals causation
- Lack of knowledge/transparency regarding the inner “logic” of the system
- If not designed properly, can result in uses of PI that may be unexpected, invasive and discriminatory



IPC Fact Sheet on Big Data for the Public

- Helps the public understand what big data is, and how it can impact their privacy
- Discusses key issues, such as:
 - proportionality
 - accuracy of results
 - bias in data sets
 - individual rights



The image shows the cover of a fact sheet titled "Big Data and Your Privacy Rights". The top right corner indicates the date "JANUARY 2017". The title "PRIVACY FACT SHEET" is prominently displayed in a dark grey box. Below the title, the main heading "Big Data and Your Privacy Rights" is set against a teal background. The text on the cover describes how new tools for combining and analyzing information have made it possible for researchers to uncover hidden patterns and connections in large data sets. It also mentions that while private sector companies often use big data analyses for marketing and product development, public organizations are attracted to it as a way to improve policy and program development. The cover also includes a brief overview of the Information and Privacy Commissioner of Ontario (IPC) and its role in overseeing privacy laws. At the bottom left, the IPC logo is visible, and at the bottom right, the full name of the commissioner is provided in both English and French.

JANUARY 2017

PRIVACY FACT SHEET

Big Data and Your Privacy Rights

New tools for combining and analyzing information have made it possible for researchers to uncover hidden patterns and connections in large data sets that would have previously been unknown. Collectively, these large data sets and the analytical tools and practices used to identify trends are known as 'big data.' While private sector companies often use big data analyses to support marketing and product development, public organizations are attracted to it as a way to improve policy and program development and ensure it is supported by better evidence.

Big data has the potential to provide governments with greater insights into the quality and effectiveness of services and programs such as healthcare, social services, public safety and transportation. However, it also raises concerns regarding privacy and the protection of individuals' personal information.

The Office of the Information and Privacy Commissioner of Ontario (IPC) is responsible for oversight of the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act*. Organizations governed by these acts, such as government ministries, municipalities, police services, health care providers and school boards, must comply with these acts when collecting, using and disclosing personal information.

This fact sheet has been developed to help members of the public understand what big data is, and how it can have an impact on an individual's privacy.

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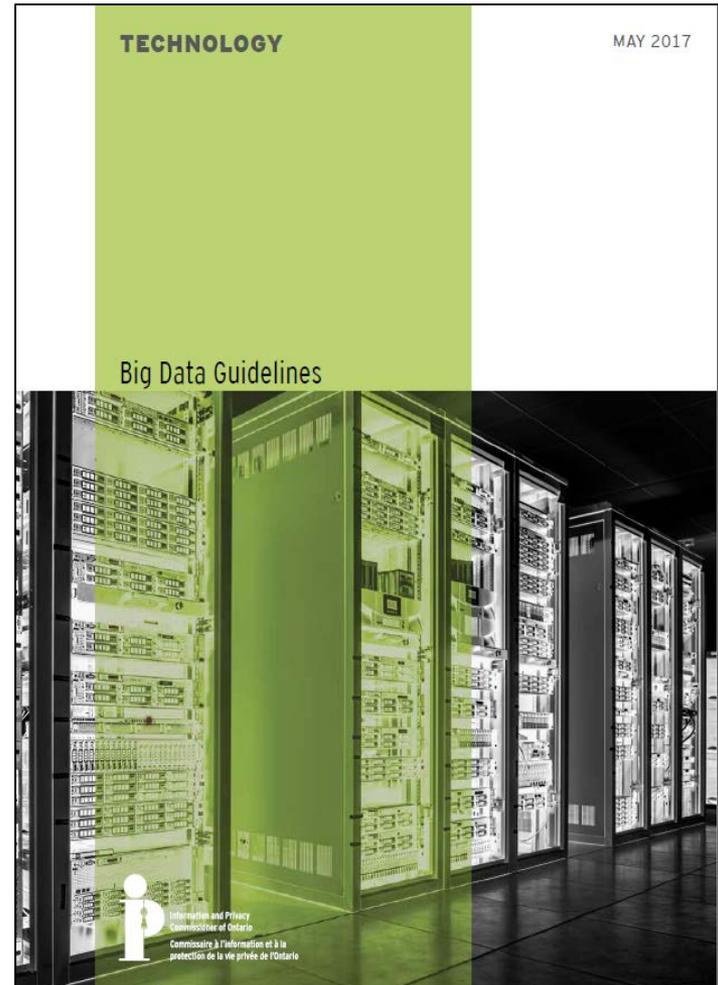


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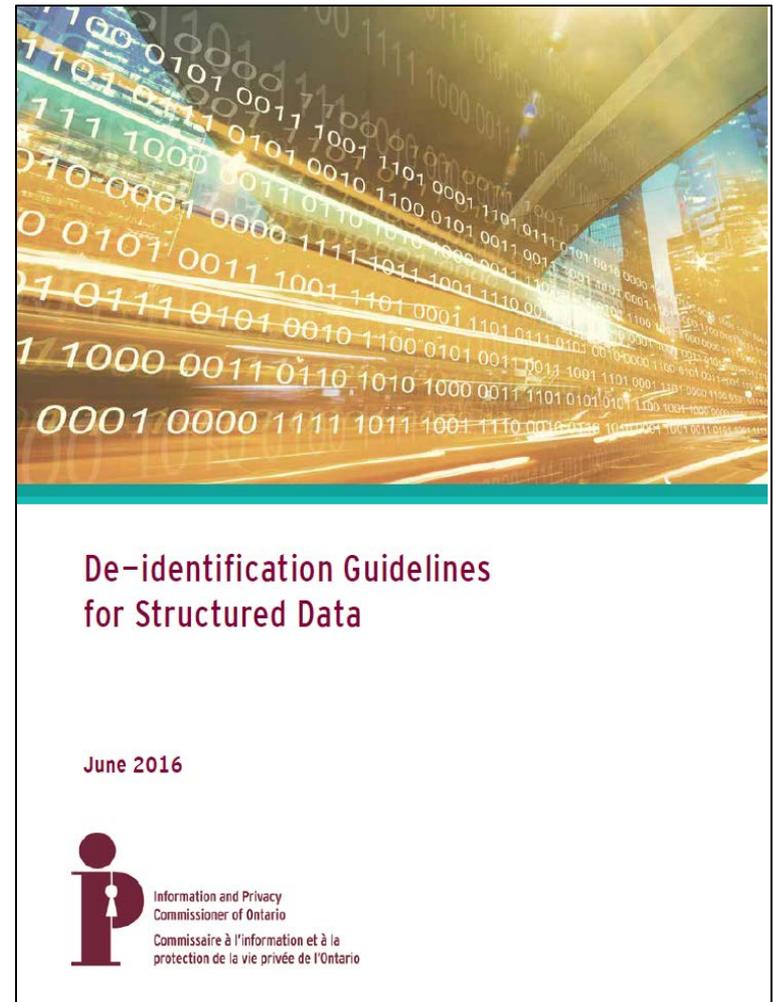
Big Data Guidelines

- Guidelines discuss key issues to consider when conducting big data projects
- Outlines the considerations at each stage of a big data project, including:
 - collection
 - integration
 - analysis
 - profiling



Guidance on De-identification

- De-identification – removal of personal information from a data set
- Key issues:
 - direct and indirect (or “quasi-”) identifiers
 - common techniques
 - disclosures for open data
 - re-identification attacks
- Privacy protections of *FIPPA* and *MFIPPA* do not apply to de-identified information



Data Integration: Recommendation for Reform of *FIPPA* and *MFIPPA*

- IPC recommends legislative changes that support greater data integration and information sharing in a privacy protective way
- Legislation should include effective governance, oversight and measures to prevent privacy risks, including:
 - additional investigation, order making and audit powers for the IPC
 - mandatory breach notification and reporting
 - requirements for privacy impact assessments
 - requirements for de-identification



Bill 114, *Anti-Racism Act (ARA)*

- Bill 114 requires government to develop and maintain an anti-racism strategy, including targets and indicators
- *ARA* requires public sector organizations to collect race-based PI and use anti-racism impact assessment framework to promote racial equity in program delivery
- The handling of race-based PI would be subject to data standards and other privacy requirements, to be developed in consultation with the IPC



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Bill 114, *Anti-Racism Act (ARA)* (Cont'd)

- Privacy protections include ongoing oversight by our office, notably:
 - authority to review the collection and use of PI by public sector organizations, and
 - order an organization to change or discontinue any PI handling practice that contravenes the *ARA*



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Bill 89, *Supporting Children, Youth and Families Act*

- March 2017, IPC submission to the Standing Committee focused on privacy issues: Ministry of Children and Youth Services must be subject to a greater degree of accountability and oversight than currently provided
 - legislation should be amended to strengthen privacy safeguards and narrow ministry's powers to collect, use and disclose PI to what is reasonably necessary
 - authority to share PI among government organizations and to disclose it to persons and entities that are not prescribed in the regulations must be removed from the legislation



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LEGISLATION



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New and Proposed Legislation

- Changes to *Municipal Act* and *City of Toronto Act*
- *Medical Assistance in Dying Statute Law Amendment Act*
- *Supporting Children, Youth and Families Act*
- *Health Information Protection Act* (mandatory reporting)



RESOURCES



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Find out about privacy rights

LEARN MORE



Go to forms



Request records



File an appeal



Make a complaint



Search IPC Decisions



Contact the IPC

What's New

New Big Data Guidelines

Media Centre

Health Record Snooping Case
Prosecuted in Goderich

IPC webinar series

Watch our webinar on Understanding
Exemptions in FIPPA and MFIPPA

@ipcinforprivacy

Our #BigData Guidelines are available! 27m
Please share and RT.
<https://t.co/zyQ3aTOQ05>
<https://t.co/L4f27PRTwm>

Learn what #FOI requesters can do to 5h
support the search for records
<https://t.co/kr0x3xnbnP>
<https://t.co/5cxaBwRg15>

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Recent Decisions

[View All Decisions](#)

MO-3426 2017-04-11	Information and Privacy Commissioner of Ontario The appellant submitted a request to the City of Toronto under the Municipal Freedom of Information and Protection of Privacy Act for records relating to any complaints received regarding his property. The city located responsive records and granted the appellant partial access to the records claiming that disclosure of most of the informa ... Read More
PO-3719 2017-04-07	
PO-3720 2017-04-07	
PO-3719-1 2017-04-06	

Guidance Documents

- Yes, You Can
- Thinking about Clouds
- Instant Messaging and Personal Email Accounts
- De-identification Guidelines for Structured Data
- Open Government (3)
- Guidance on the Use of Automated Licence Plate Recognition Technology by Police Services
- Improving Access and Privacy with Records and Information Management
- Online Educational Services



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IPC Fact Sheets

- Published to provide information in response to frequently asked questions about access, privacy and technology
- Series includes:
 - Reasonable Search
 - Councillors' Records
 - What is Personal Information?
 - Video Surveillance
 - Ransomware

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ACCESS FACT SHEET

Reasonable Search

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New Publications Coming Soon

- This summer and fall, the IPC will be issuing new publications focusing on:
 - breach notification guidelines regarding compliance with recent amendments to *PHIPA*
 - frivolous and vexatious access requests
 - access fees



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IPC Webinars

- New series on timely, in-demand topics about access to information and privacy issues
- First two presentations are now available on our website
 - [Situation Tables](#)
 - [Understanding Exemptions in *FIPPA* and *MFIPPA*](#)



Reaching Out to Ontario (ROTO)

- ROTO is an ongoing program where we visit cities across the province and host events to discuss the latest developments in access and privacy with stakeholders and the public
 - St. Catharines
 - Ottawa
 - Sault Ste. Marie
 - Kingston
 - London
 - Thunder Bay



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