

REACHING OUT
TO ONTARIO

Latest Developments at the IPC

Brian Beamish

Information and Privacy Commissioner
of Ontario

WINDSOR

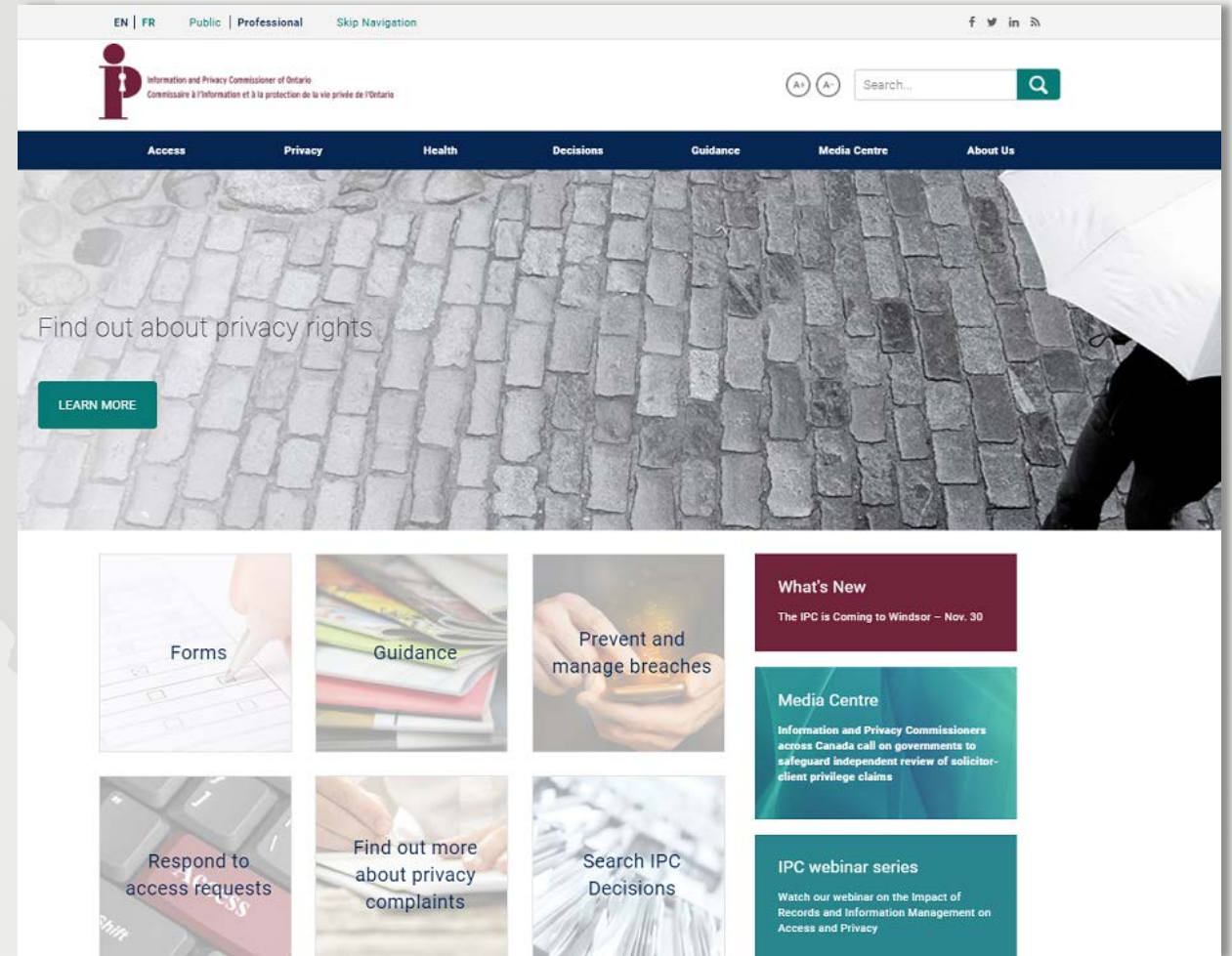
November 30, 2017



REACHING OUT TO ONTARIO

Our Office

- Commissioner appointed by, and reports to, the Legislative Assembly to ensure impartiality
- Provides independent review of government decisions and practices on access and privacy
- Oversees compliance for three access and privacy laws



IPC's Legislation

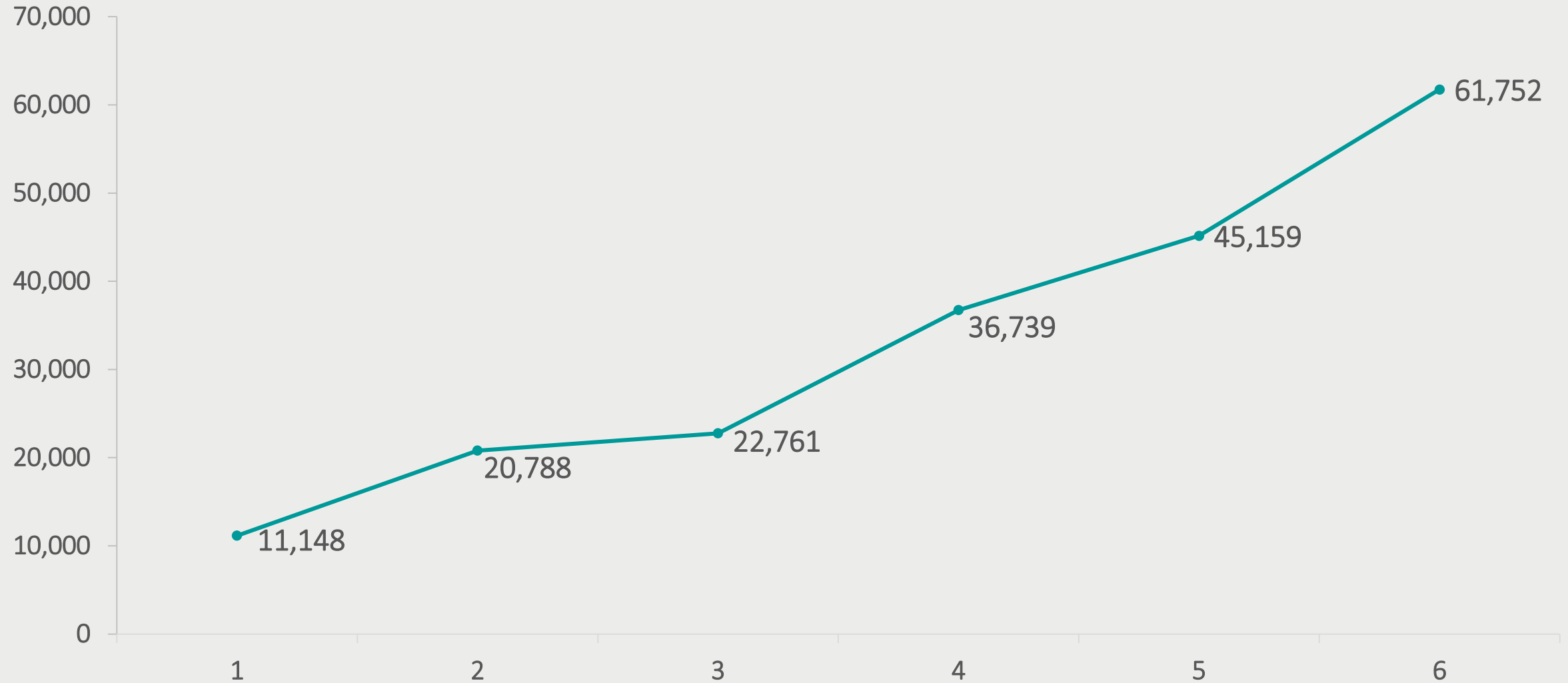
- *Freedom of Information and Protection of Privacy Act (FIPPA)*
 - over 300 provincial institutions such as ministries, provincial agencies, boards, commissions, community colleges and universities
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
 - over 1,200 organizations such as municipalities, police, school boards, conservation authorities, transit commissions
- *Personal Health Information Protection Act (PHIPA)*
 - individuals and organizations involved in delivery of health care services, including hospitals, pharmacies, laboratories, doctors, dentists and nurses

REACHING OUT
TO ONTARIO

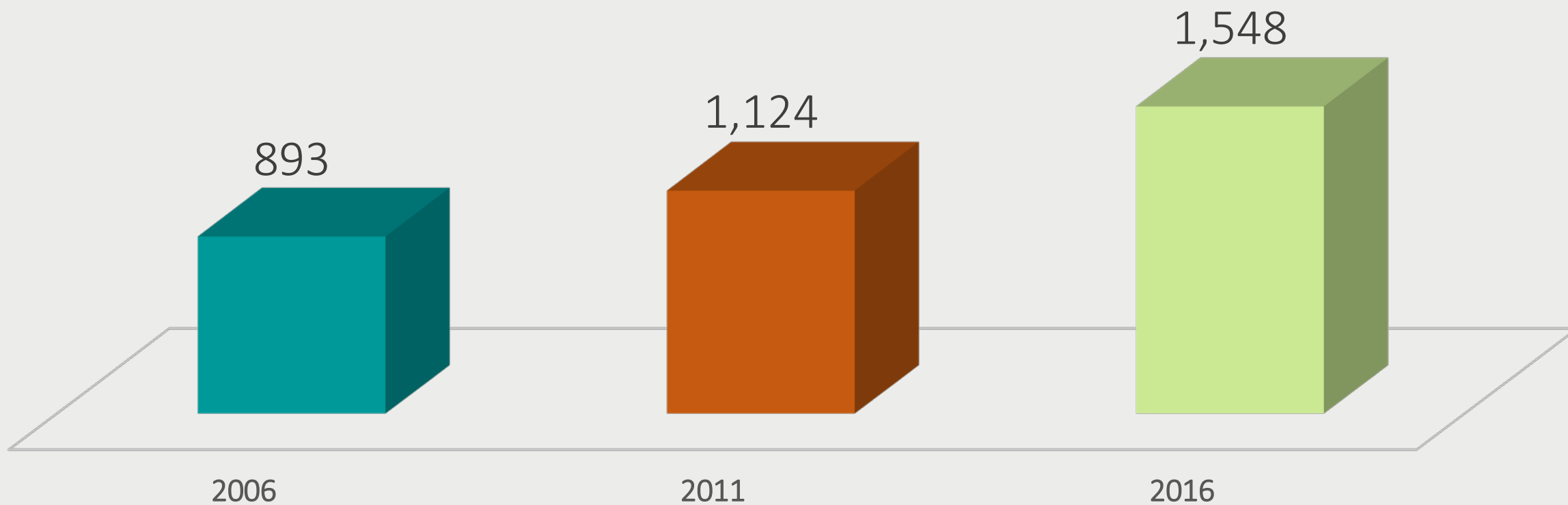
ACCESS



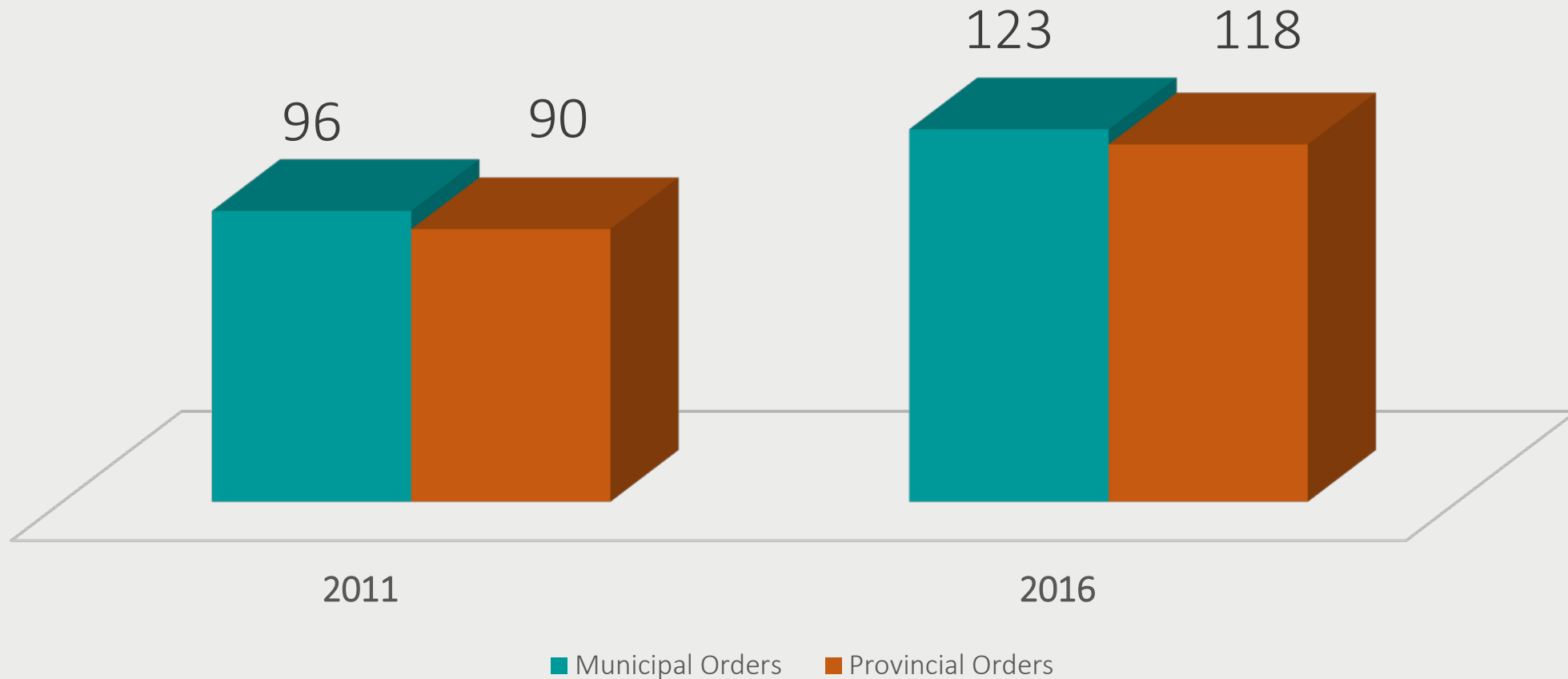
Access Requests per Year



Appeals Received per Year



Access to Information Orders



Mediation: Critical to Our Success

- Usually, 75 per cent of appeals and almost all privacy complaints are closed before adjudication/investigation
- Goal is to find a resolution which satisfies the needs of all involved
- Saves significant time and resources for all parties

Reasonable Search

- Institutions must conduct reasonable searches for records
- Considerations:
 - clarification of requests
 - review of files in all formats
 - documenting details of 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.

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

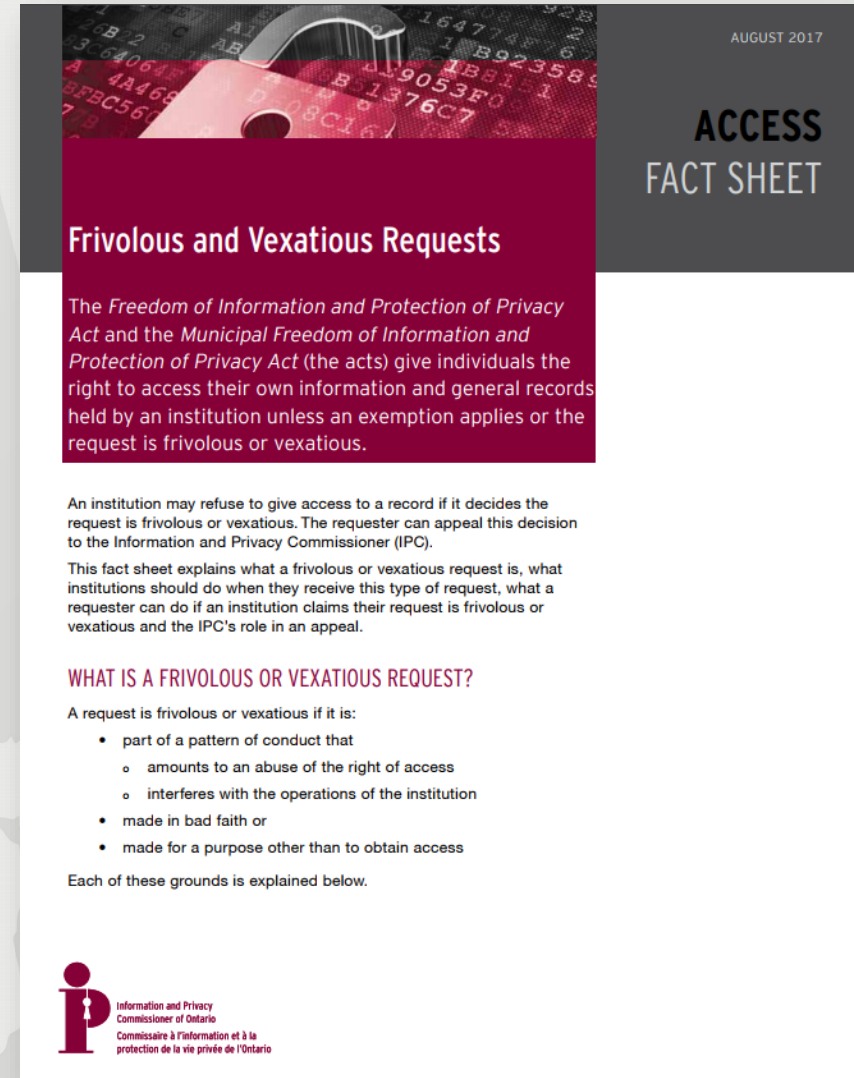
A reasonable effort is the level of effort you would expect of any fair, sensible person searching areas where records are likely to be stored. What is reasonable depends on the request and related circumstances.

¹ Orders M-909, PO-2469 and PO-2592.

Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Frivolous and Vexatious Requests

- What makes a request frivolous or vexatious?
 - abuses right of access:
 - excessive, broad, duplicative
 - pattern of conduct interfering with operations
 - ulterior motives



Instant Messaging and Personal Email Accounts

- Personal email accounts and instant messages may be subject to access and privacy laws
- Key issues:
 - are they being used to conduct government business?
 - search and retrieval
 - retention and preservation
 - privacy and security
- Best practice: prohibit use for government business



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

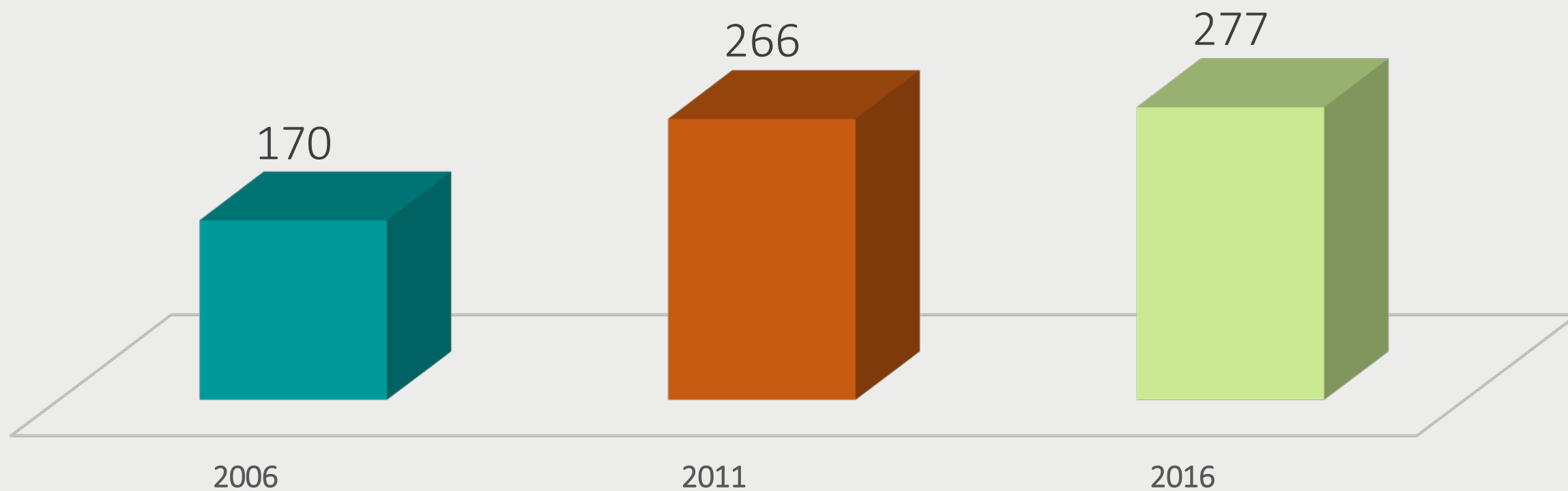
June 2016

REACHING OUT
TO ONTARIO

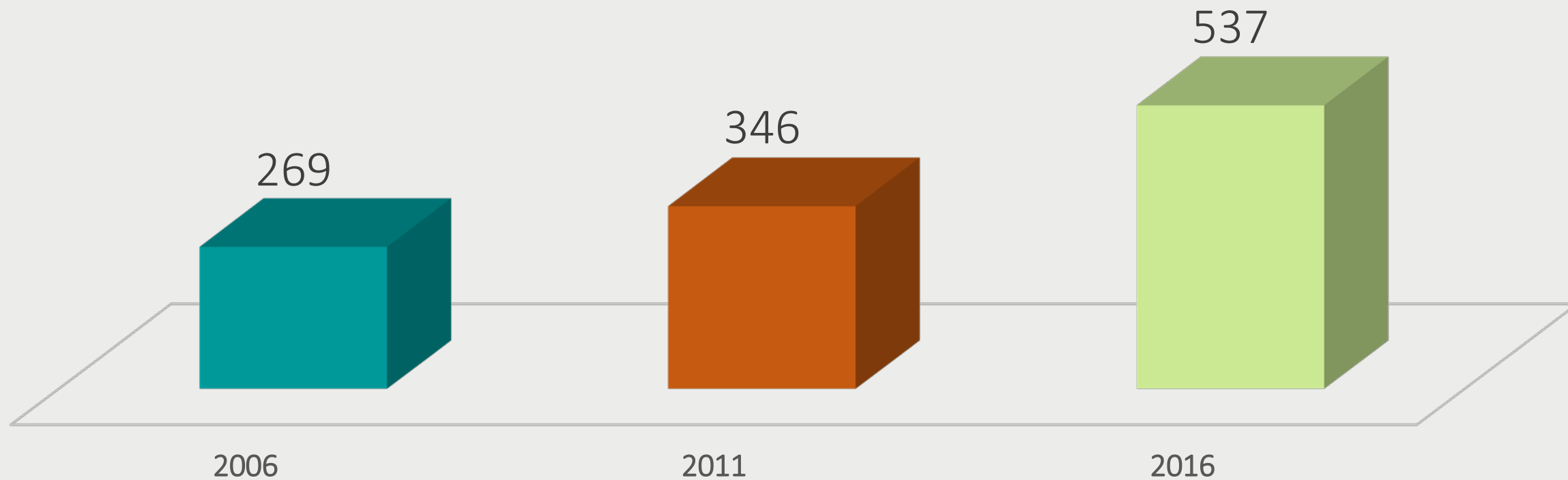
PRIVACY



Privacy Complaints Opened per Year



PHIPA Complaints Opened per Year



The Philadelphia Model

- Annual meeting of advocates and representatives from the Women's Law Project
- search through police sexual assault files — alongside high-ranking officers — to look for deficiencies and biases
- Since implementation in 17 years ago, the “unfounded rape” rate has dropped to four per cent, in contrast with the national average of seven per cent



Globe and Mail Series:
“Unfounded”

Working with Police on Ontario-based Philadelphia Model

- 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 background check, sign an oath of confidentiality and receive privacy and confidentiality training
- Require external reviewers to see names of principals so they can recuse themselves if needed
- Permit external reviewers to review complete closed files, 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

MOU for Use by Ontario Police

- IPC worked with police to develop a model Memorandum of Understanding and Confidentiality Agreement
- Sets the terms for the review of sexual assault cases by police and external reviewers
- Kingston Police are first to put into practice

MEMORANDUM OF UNDERSTANDING respecting the External Sexual Assault Case Review Program made this 1st day of November, 2017 (the "Effective Date").

BETWEEN:

SEXUAL ASSAULT CENTRE KINGSTON
(Hereinafter referred to as "SACK")

-AND-

PAMELA CROSS, BA, LLB
(Hereinafter referred to as "Pamela Cross")

-AND-

OTTAWA RAPE CRISIS CENTRE
(Hereinafter referred to as "ORCC")

COLLECTIVELY REFERRED TO AS THE "KINGSTON VAW ADVOCACY GROUPS"

-AND-

KINGSTON POLICE
(Hereinafter referred to as "Kingston Police")

COLLECTIVELY REFERRED TO AS THE "PARTIES"

WHEREAS the Kingston Police as a municipal police service are governed by the *Police Services Act*, R.S.O. 1990, c. P. 15 (PSA) and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 (MFIPPA);

WHEREAS, under section 1 of the PSA, police services shall be provided in accordance with principles, including the need for co-operation between the providers of police services and the communities they serve; the importance of respect for victims of crime and understanding of their needs; the need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society; and the need to ensure that police forces are representative of the communities they serve;

WHEREAS, under section 4(2) of the PSA, core police services include crime prevention, law enforcement, and providing assistance to victims of crime;

WHEREAS, under section 41(1) of the PSA, the duties of the Chief of the Kingston Police include ensuring that the Kingston Police provide community-oriented police services and that its members carry out their duties in a manner that reflects the needs of the community;

WHEREAS the duties and functions of the Kingston Police include investigating reports of sexual assault and supervising and monitoring those investigations, including for the purpose of identifying deficiencies, errors and anomalies in and improving the efficiency of individual sexual assault investigations and the sexual assault investigative process as a whole;

Mandatory PHIPA Breach Reporting

- As of October 1, 2017, health information custodians **must notify** IPC of certain privacy breaches
 - Use or disclosure without authorization
 - Stolen information
 - Further use or disclosure
 - Breaches occurring as part of a pattern
 - Breaches related to a disciplinary action against a college or non-college member
 - Significant breaches

SEPTEMBER 2017

Reporting a Privacy Breach to the Commissioner

GUIDELINES FOR THE HEALTH SECTOR

To strengthen the privacy protection of personal health information, the Ontario government has amended the *Personal Health Information Protection Act* (the act). Under section 12(3) of the act and its related regulation, custodians must notify the Information and Privacy Commissioner of Ontario (the Commissioner) about certain privacy breaches. This law takes effect **October 1, 2017**.

As a custodian, you must report breaches to the Commissioner in seven categories described in the regulation and summarized below. The categories are not mutually exclusive; more than one can apply to a single privacy breach. If at least one of the situations applies, you must report it. The following is a summary—for the complete wording of the regulation, see the appendix at the end of this document.

It is important to remember that even if you do not need to notify the Commissioner, you have a separate duty to notify individuals whose privacy has been breached under section 12(2) of the act.

SITUATIONS WHERE YOU MUST NOTIFY THE COMMISSIONER OF A PRIVACY BREACH

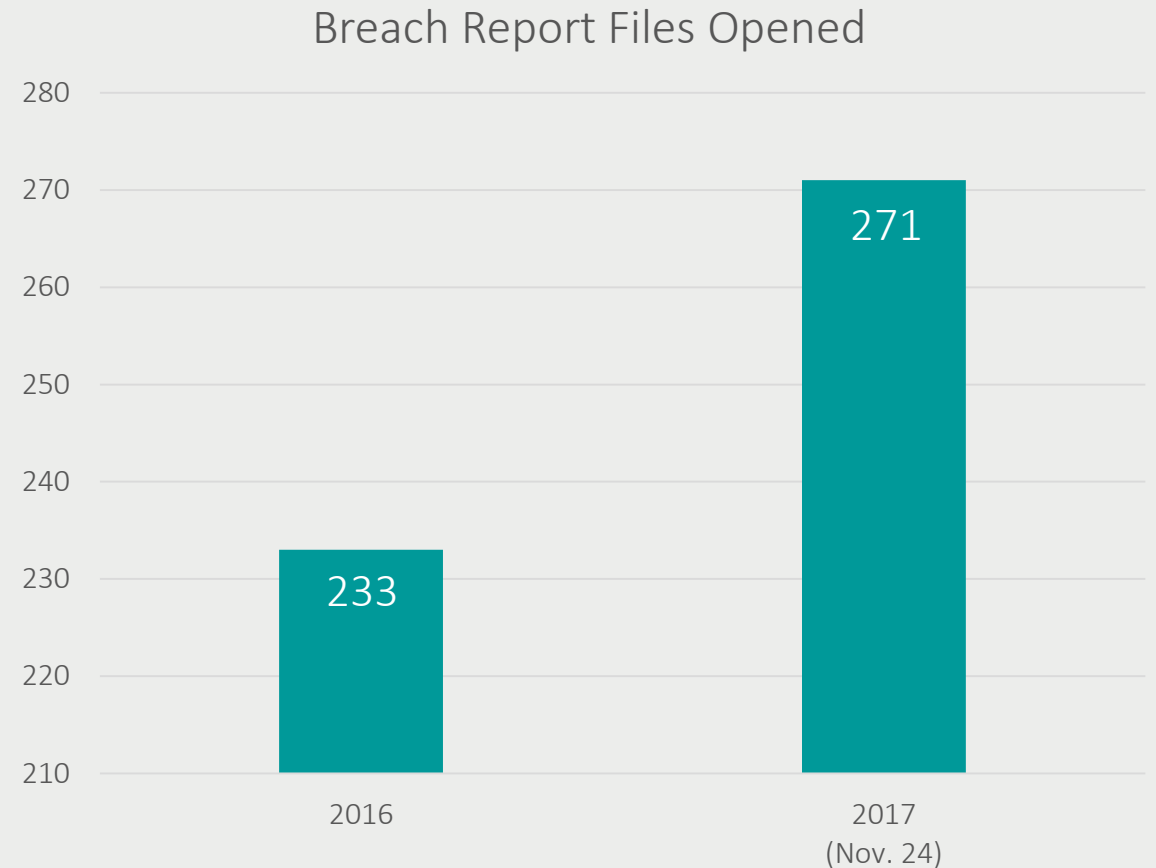
1. Use or disclosure without authority

This category covers situations where the person committing the breach knew or ought to have known that their actions are not permitted either by the act or the responsible custodian. An example would be where a

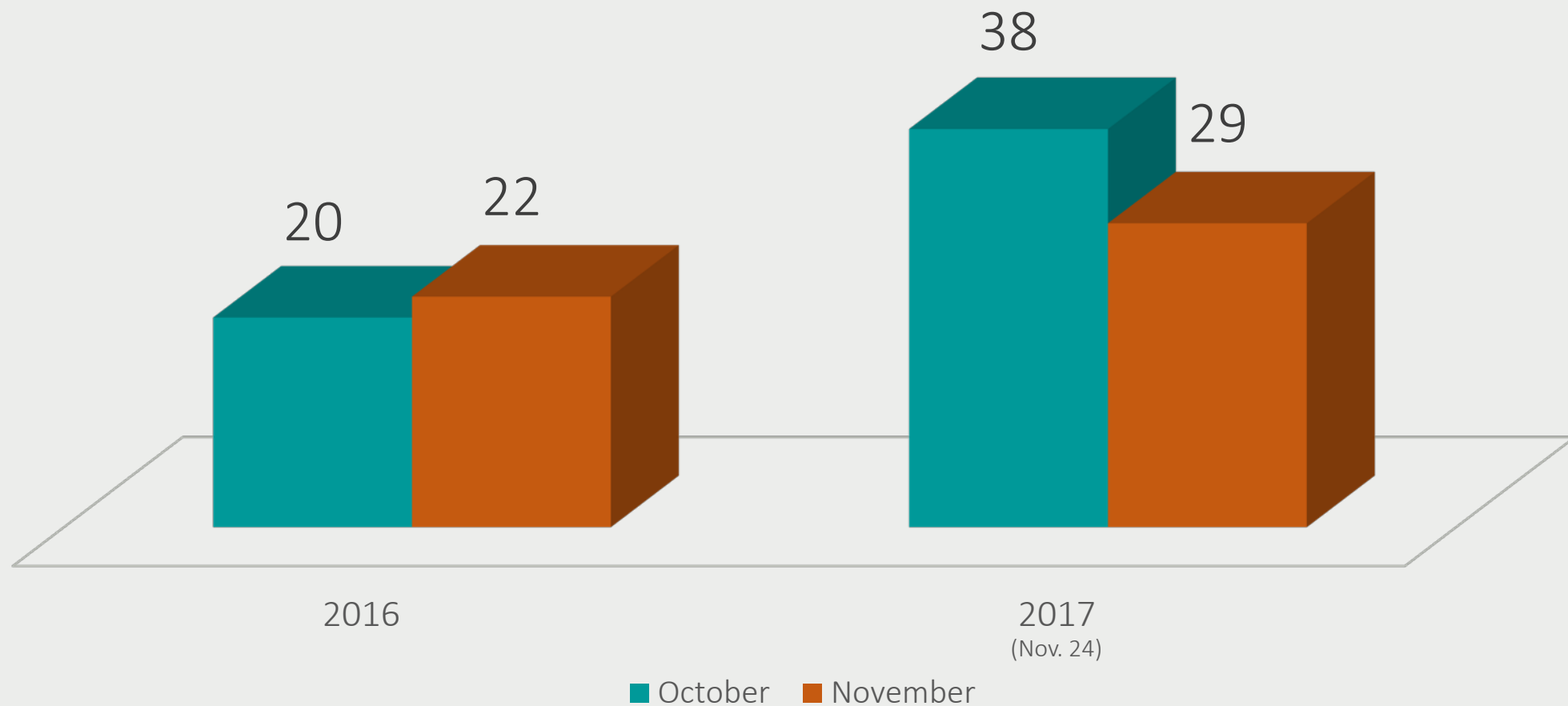
 Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Health Privacy Breach Statistics

- Out of the 271 reported breaches to date in 2017:
 - 43 were snooping incidents
 - 8 were ransomware/cyberattack
- Remaining 220 were related to:
 - lost or stolen PHI
 - misdirected information
 - records not properly secured
 - general collection, use and disclosure



Health Privacy Breach Report Files Opened



Recent PHIPA Prosecution

- Administrative support clerk in the emergency department of a GTA hospital
- Illegally accessed health records of 44 individuals, in some cases printing their personal health information
- October 2017 the clerk pled guilty and the court imposed a \$10,000 fine

Annual PHIPA Privacy Breach Statistics

- As of March 2019 health information custodians **must provide IPC** with an annual report on privacy breach statistics
- Volume of breaches from the previous year
- Number of incidents when personal information was:
 - stolen
 - lost
 - used without authority
 - disclosed without authority
- Reports submitted online through IPC's statistics tracking website

NOVEMBER 2017

Annual Reporting of Privacy Breach Statistics to the Commissioner


REQUIREMENTS FOR THE HEALTH SECTOR

Starting in March 2019 health information custodians will be required to provide the Commissioner with an annual report on privacy breaches occurring during the previous calendar year.

This requirement is found in section 6.4 of Ontario Regulation 329/04 made under the *Personal Health Information Protection Act, 2004*, as follows:

- (1) On or before March 1, in each year starting in 2019, a health information custodian shall provide the Commissioner with a report setting out the number of times in the previous calendar year that each of the following occurred:
 1. Personal health information in the custodian's custody or control was stolen.
 2. Personal health information in the custodian's custody or control was lost.
 3. Personal health information in the custodian's custody or control was used without authority.
 4. Personal health information in the custodian's custody or control was disclosed without authority.
- (2) The report shall be transmitted to the Commissioner by the electronic means and format determined by the Commissioner.

For custodians to prepare for this reporting requirement, they must start tracking their privacy breach statistics as of January 1, 2018. The following is the information the IPC will require in the annual report.



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Online Educational Services

- School boards must ensure online educational services do not put privacy of students and families at risk
- IPC partnership with Ontario Association of School Business Officials to provide guidance to educators
- Workshop at Bring IT Together Conference “Privacy Implications in the Networked Classroom”

The image displays three overlapping promotional materials related to online educational services and privacy. The top flyer, titled "Online Educational Services: What Educators Need to Know," features a large lowercase "i" icon in a circle. The middle flyer, titled "Think Before You CLICK," has a green background with a large orange button that says "I accept all terms and conditions" and a hand cursor icon pointing at it. Below the button, it asks, "Could the online education tool you are using expose your students and school to privacy risks?" and says "TALK TO YOUR PRINCIPAL". The bottom banner is for the "BRING IT TOGETHER" conference, with the logo "BIT" and the text "Ontario's Premier Educational Technology Conference | November 8-10, 2017". Logos for the Information and Privacy Commissioner of Ontario and the Ontario Association of School Business Officials (OASBO) are also visible.

REACHING OUT
TO ONTARIO

2017 GPEN Privacy Sweep

- Collaboration with the Office of the Privacy Commissioner of Canada
- Review of educational applications for children and youth
- Part of a larger annual privacy sweep coordinated by the Global Privacy Enforcement Network



2017 GPEN Report

Lessons Learned:

- Privacy policies and terms of service were often lengthy, challenging to understand
- Collection and disclosure of student personal information could occur via mobile apps, social login, and browser tracking cookies
- Two-thirds of online services did not have a clear policy on deleting dormant or inactive accounts

2017 GPEN Sweep Report Online Educational Services



REACHING OUT
TO ONTARIO

DATA ANALYTICS



Data Analytics

- Data analytics have changed how we think about and use data
- New combinations of data may reveal hidden patterns and insights
- Data integration (sharing, linking and analyzing data) can enhance:
 - policy development
 - system planning
 - resource allocation
 - performance monitoring

Privacy Risks of Data Analytics

- Use of poorly selected data sets that:
 - lack information, are incomplete
 - contain incorrect or outdated information
 - disproportionately represent certain populations
- 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 the use of personal information in ways that are invasive, inaccurate or discriminatory

REACHING OUT TO ONTARIO

Public Education

- Helps individuals 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

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.

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.

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.

 Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

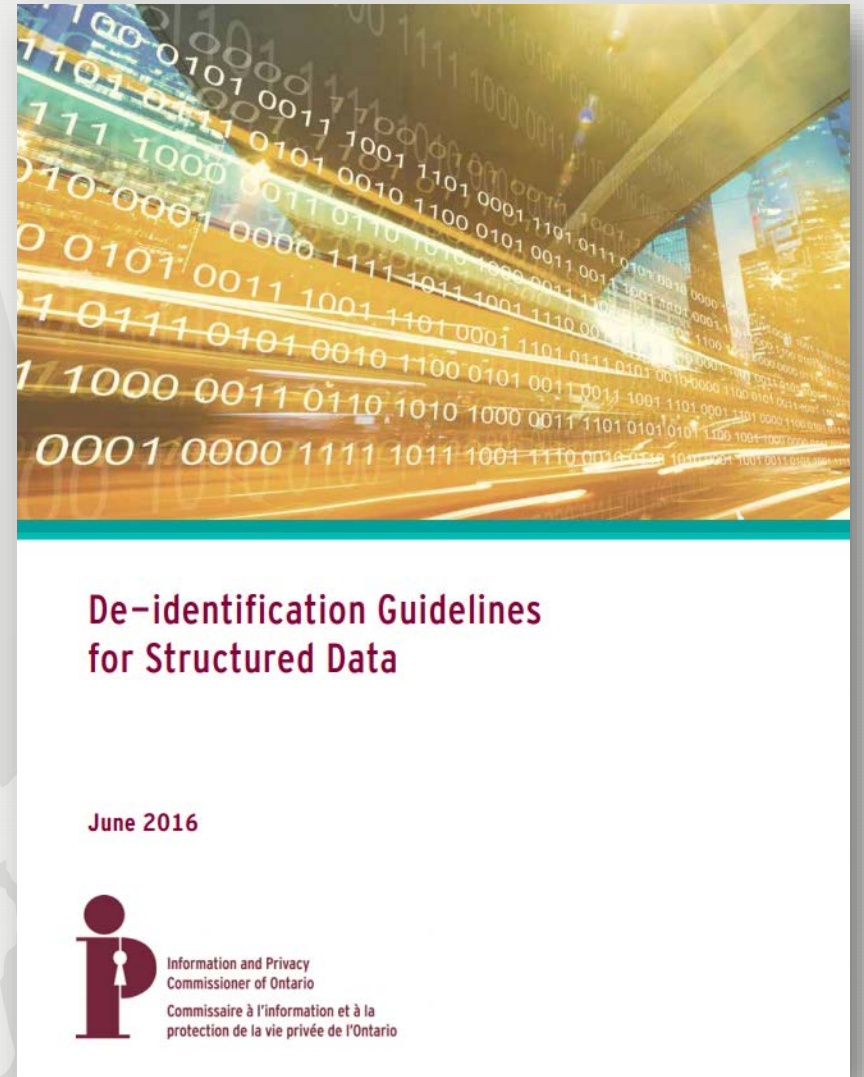
Big Data Guidelines

- Technical focus on big data project design
- Best practices in data:
 - collection
 - integration
 - analysis
 - profiling



De-Identification Guidelines

- Best practices for removing personal information from a record or data set
- Guidelines recognized at 39th International Conference of Data Protection and Privacy Commissioners
- Received the inaugural global privacy and data award for excellence in research



REACHING OUT
TO ONTARIO

LEGISLATION



Child, Youth and Family Services Act

- Sector to be subject to access and privacy rules
- Once proclaimed, service providers like children's aid societies will be required to:
 - get consent for the collection, use and disclosure of personal information
 - report serious privacy breaches to the IPC
- Individuals will have the right to access personal information records held by service providers and if required, request corrections

Child, Youth and Family Services Act

- The IPC is working with the Ministry of Children and Youth Services, the Provincial Advocate for Children and Youth, the child welfare sector and other sectors to support implementation
- Consultation and collaboration to inform guidance materials and public awareness efforts
 - supports tailored to young people and other specific groups (e.g., Indigenous communities)
 - tools, training and information for service providers and the public
 - dedicated phone line for CYFSA inquiries

REACHING OUT
TO ONTARIO

Police Services Act

- IPC recommendations to the Ministry of Community Safety and Correctional Services on its Strategy for a Safer Ontario, which includes a review of the *Police Services Act*
 - strong governance frameworks
 - province-wide standards
 - amendments to ensure transparency and accountability
 - engagement with our office and other key stakeholders

Information
and Privacy
Commissioner
of Ontario

Submission to the Ministry
of Community Safety
and Correctional Services
on its Strategy for
a Safer Ontario



Brian Beamish
Commissioner
April 29, 2016

Next – Panel Sessions

Session A: Key Developments in Access and Privacy (Katzman Room)

- Brian Beamish, Commissioner
- Sherry Liang, Assistant Commissioner

Session B: Protecting Personal Health Information (Oak Room)

- Manuela DiRe, Director of Legal Services
- Debra Grant, Director of Health Policy

REACHING OUT
TO ONTARIO

CONTACT US

Office of the 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

Media: media@ipc.on.ca/416-326-3965

