

Recent Developments in Access and Privacy in Ontario

Brian Beamish

Information and Privacy Commissioner
of Ontario



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

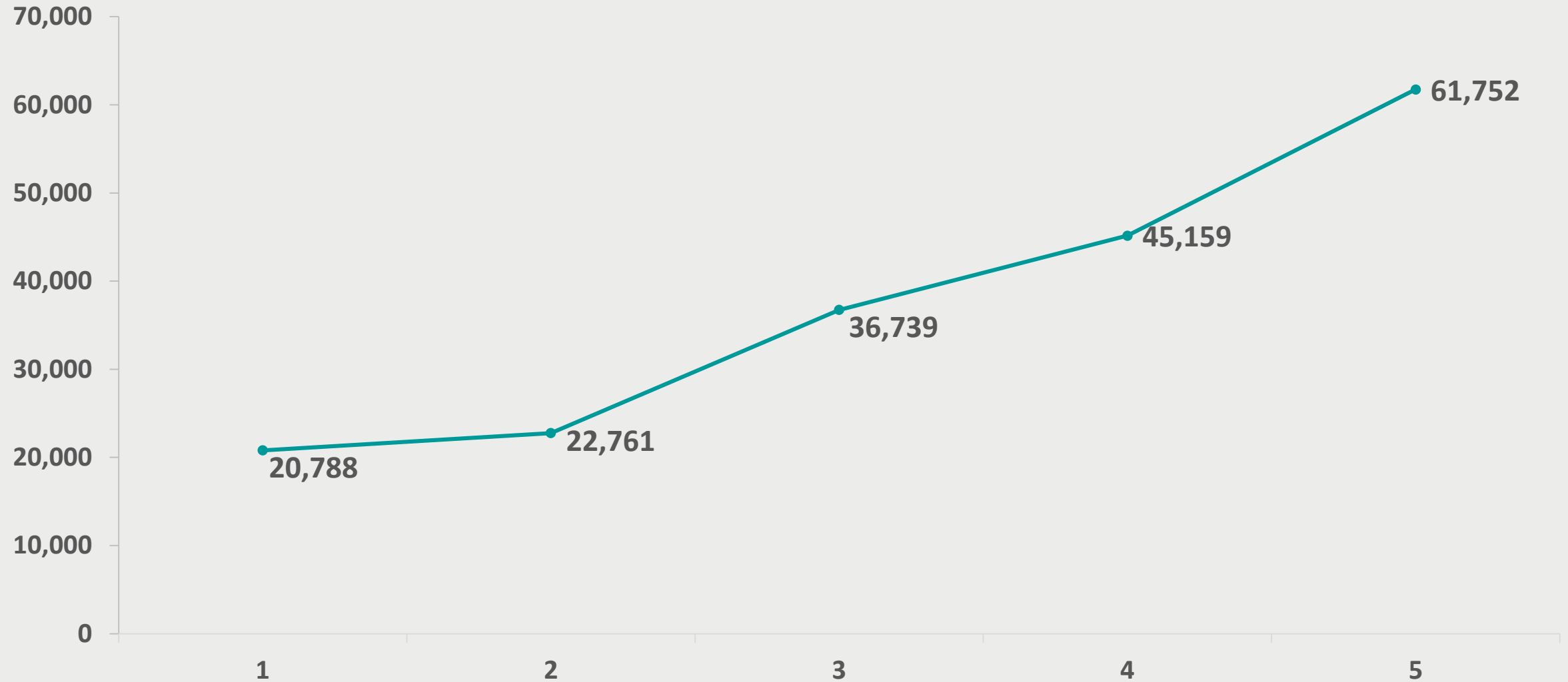
CANADIAN ACCESS
& PRIVACY
ASSOCIATION
CONFERENCE

November 27, 2017

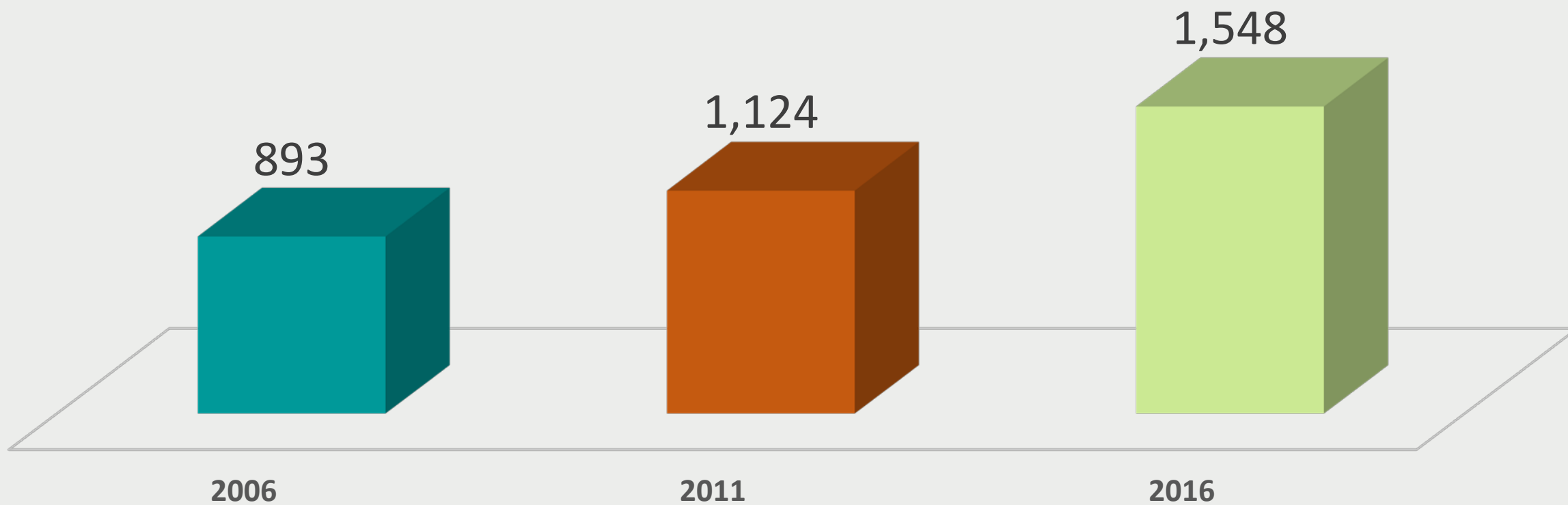
IPC's Legislation

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
 - Covers 300 provincial institutions
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
 - Covers 1,200 municipal organizations
- *Personal Health Information Protection Act (PHIPA)*
 - Covers individuals and organizations involved in the delivery of health care services

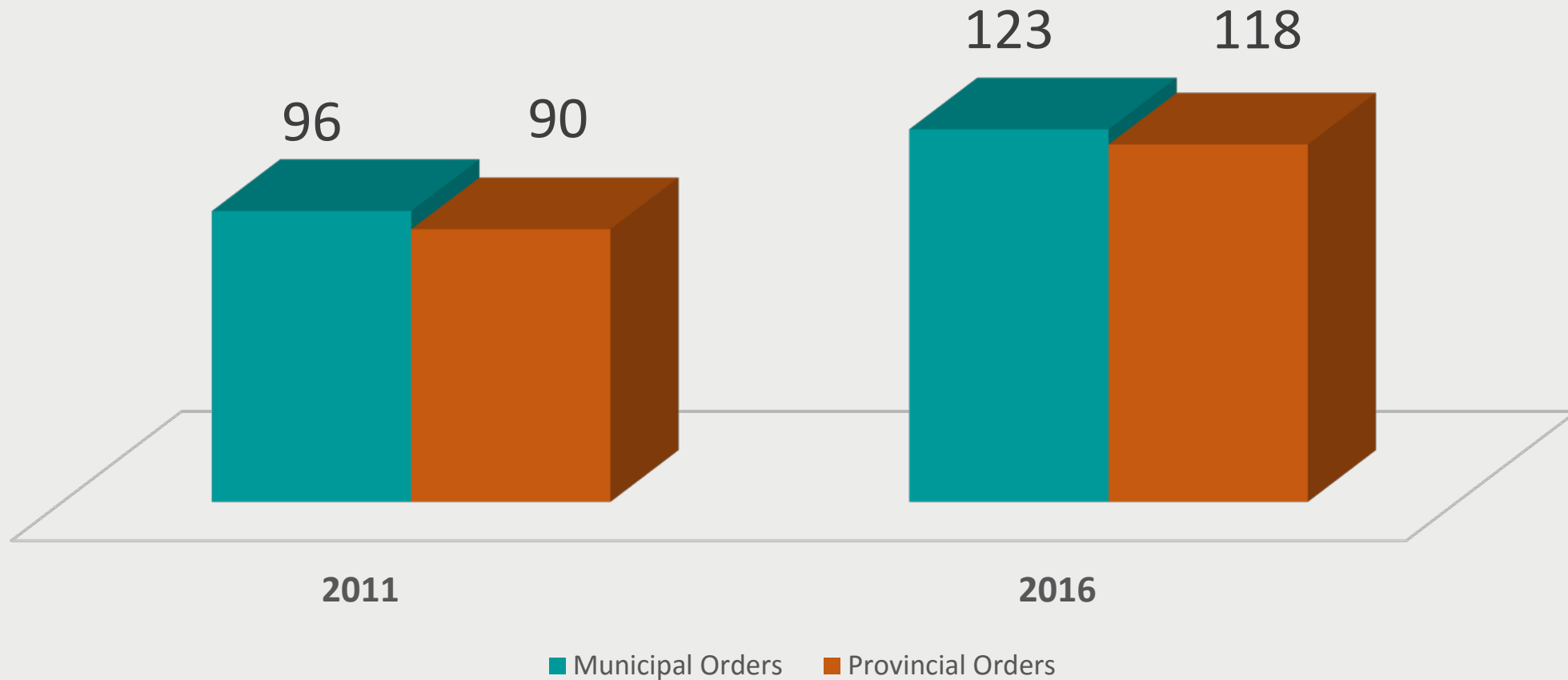
Access Requests per Year



Appeals Received per Year



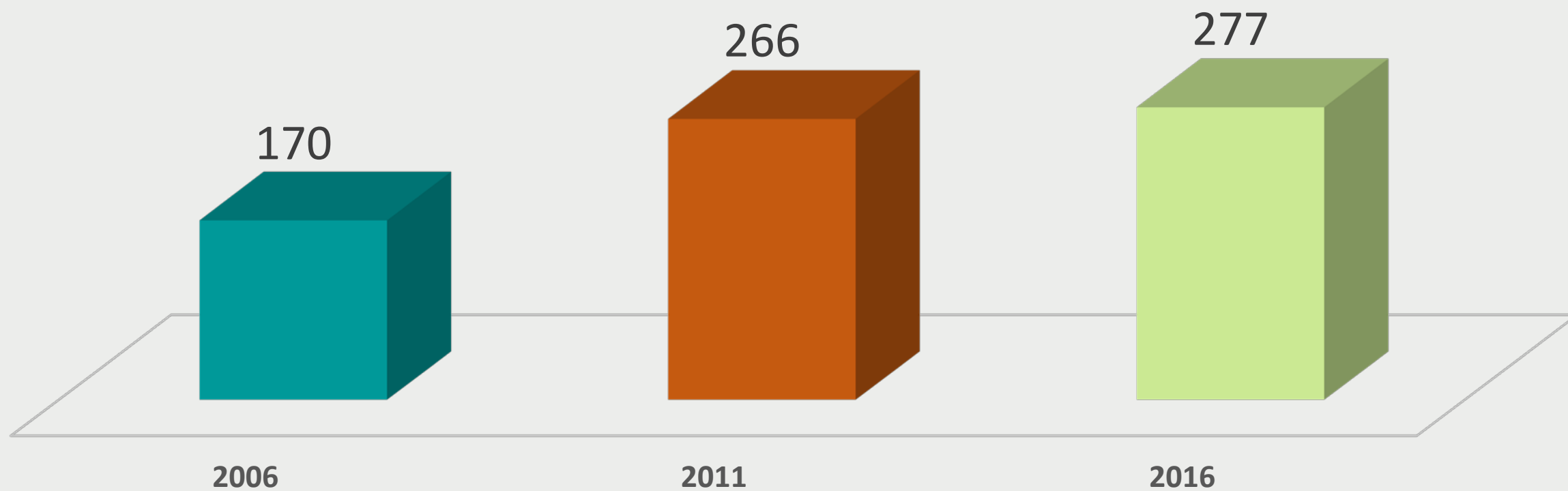
Access to Information Orders



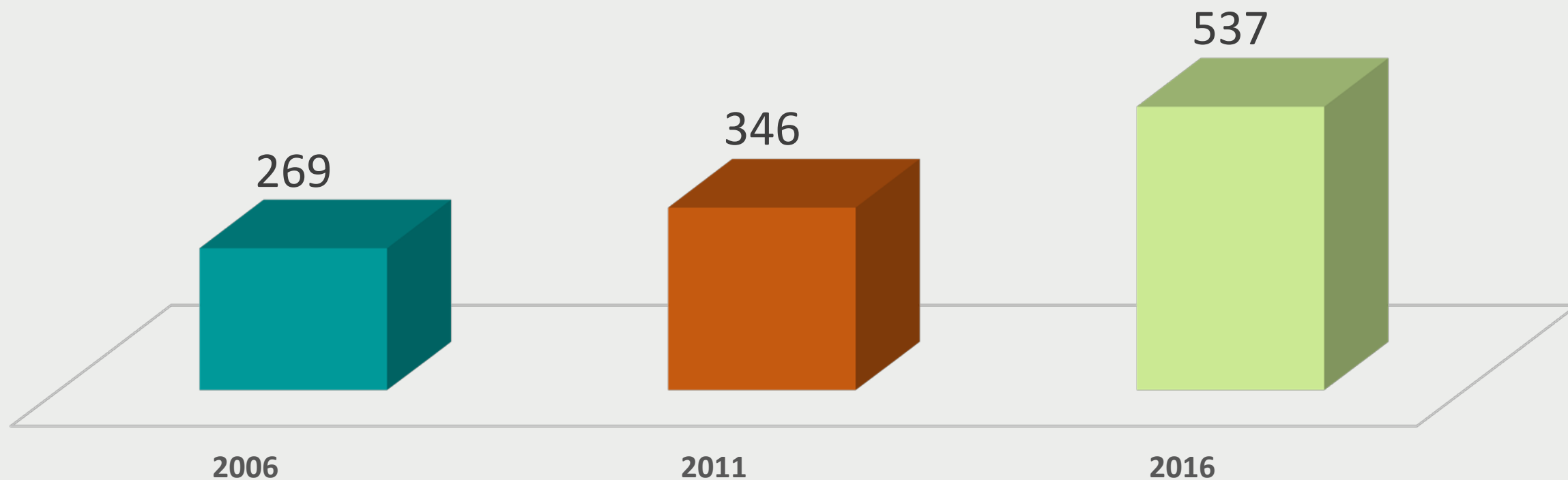
Mediation: Critical to Our Success

- 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

Privacy Complaints Opened per Year



PHIPA Complaints Opened per Year



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 following a breach
 - 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

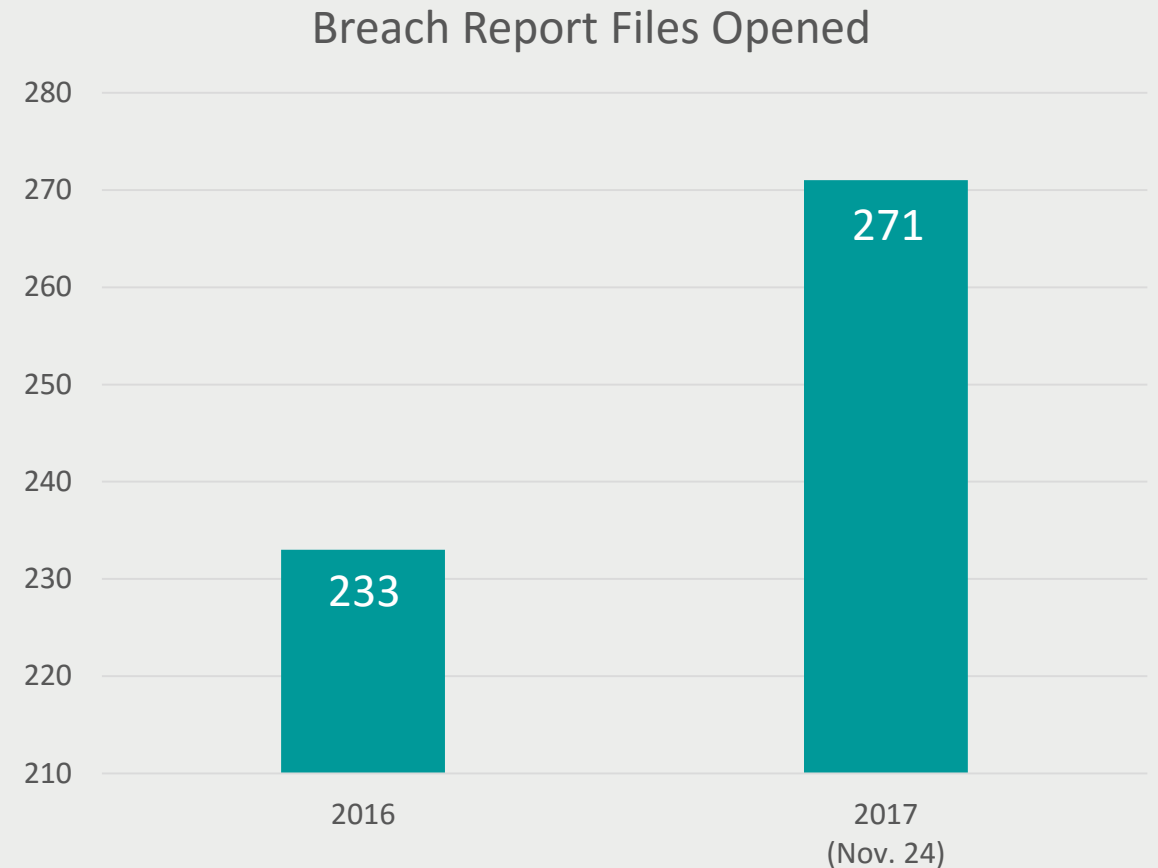
1. Use or disclosure without authority

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

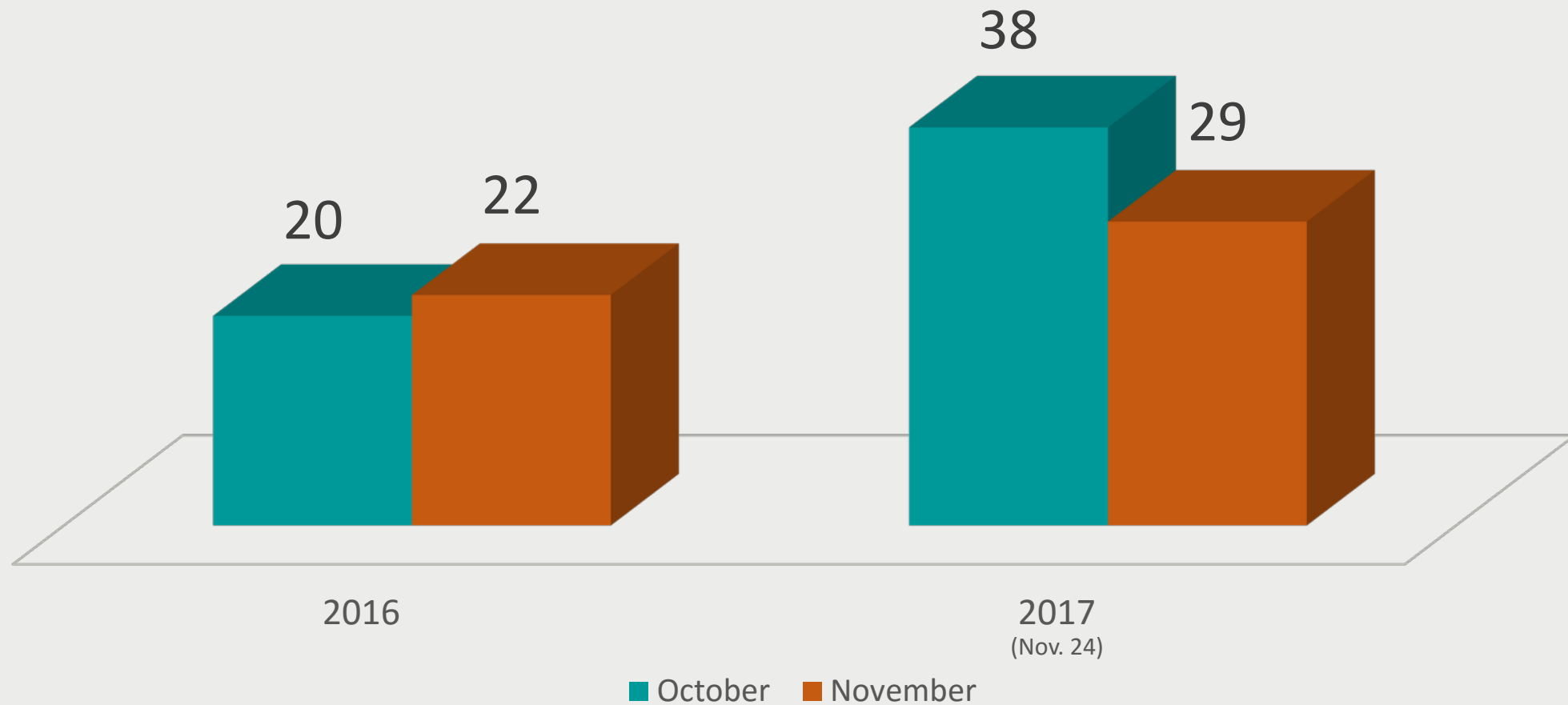
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Health Privacy Breach Statistics

- 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



Results of *PHIPA* Prosecutions

- North Bay case from 2011 dismissed for delay
- UHN case
 - two convictions; each individual fined \$2000
- Registration clerk in Kingston
 - 443 patients
 - Pled guilty; \$10,000 fine, \$2,500 victim surcharge
- Family health team in small community
 - Pled guilty; \$20,000 fine, \$5,000 victim surcharge
- Administrative support clerk
 - Pled guilty; \$10,000 fine

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

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



The Importance of Access to Information and Privacy to Canadian Democracy

“...for this democracy to function well in the complex context of the modern world, two rights must be safeguarded – the right to access to information and the right to privacy...”

Right Honourable Beverley McLachlin, P.C., Chief Justice of Canada



Balancing Transparency and Privacy

Privacy should not be a barrier to disclosure where the public interest requires transparency.

Public Interest

The public interest must be considered to ensure that privacy does not get in the way of the greater good.

Public Sector Expense Disclosures

- Sunshine List - publishing salary information for the highest paid public servants is important for accountability and transparency.
- Proactive, online disclosures of travel and hospitality expenses of senior public servants.



Emergency and Compassionate Situations

Personal information can be released in situations where it is necessary to protect the health or safety of an individual, or in compassionate circumstances, where disclosure is necessary to facilitate contact with loved ones.



Jurisdictional Attitudes Towards Public's Right to Know

American vs. Canadian expectations about public disclosure of politicians' health status



Jurisdictional Attitudes Towards Public's Right to Know

The background of the slide features two flags on poles against a light blue sky. On the left is the Canadian flag, and on the right is the United States flag. The flags are slightly faded and semi-transparent, allowing the text to be overlaid on them.

Sex Offender Registries

- American law favours disclosure of personal information of sex offenders
- Under Ontario's Christopher's Law, sex offenders must be registered, but this information is not publicly available
- IPC has ordered de-identified or aggregated information from sex offender registries disclosed



Privacy, what privacy?

“When top earners’ tax returns are published in Finland, they call it “national envy day.” In Sweden, one phone call will get you your lawmaker’s tax bill. Norwegians’ fascination with each others’ taxes has been labeled “financial porn.”

“Many Nordic tax records are a phone call away,” Reuters, April 12, 2016



Privacy - An Absolute?

The life and bloody death of Andrew Loku: Toronto police officer's face 'went white as a ghost' after shooting



RICHARD WARNICA | July 17, 2015 | Last Updated: Jul 19 2:06 PM ET
More from Richard Warnica



Andrew Loku

Special Investigations Unit

"... an overwhelming need for greater transparency in cases where the SIU decides not to lay a charge."

Honourable Michael H. Tulloch



Nadia Kajouji Case

Ontario's privacy law does not stand in the way of ensuring the health and safety of an individual.



Jeffrey Baldwin Inquest



Yes, you can share information with a Children's Aid Society to protect a child.

YES,

YOU

CAN.

**DISPELLING THE MYTHS ABOUT
SHARING INFORMATION WITH
CHILDREN'S AID SOCIETIES.**

Find out more at www.ipc.on.ca

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
- Since it was implemented 17 years ago, the “unfounded rape” rate has dropped to four per cent, in contrast with the national average of seven per cent



UNFOUNDED
**WHY POLICE DISMISS
1 IN 5 SEXUAL
ASSAULT CLAIMS AS
BASELESS**

Globe and Mail Series:
“Unfounded”

Working with Police on an 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 been subject to a background check, signed an oath of confidentiality and received 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
- Used to set the terms for the review of sexual assault cases by police and external reviewers
- Kingston Police are the 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;



Alberta Association of Chiefs of Police's Homicide Victims Policy

New rules work to strike an appropriate balance between protecting the privacy of homicide victims and the public's right to know.

Patients' Right to Know

“...an individual whose file has been inappropriately accessed has the right to know, not only the identity of the staff member who accessed their file, but the details of any disciplinary action taken, including the quantum of any penalty.”

IPC Order HO-010



Disclosures Supporting Transparency

- Ministry of Health and Long-Term Care – per-diem rates
- Chief of Police employment contracts
- University CEOs
- IPC publishes its expenses and service contracts online



OHIP Billings

"...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..."

IPC Order PO-3617

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.





Algoma Public Health

Growing understanding by institutions of the importance of the public interest override.

Where do we go from here?

- Ask “is this information that the public has a right to see?”
- Positive duties to disclose information should be written into acts
- Clarify and expand public interest override provision to a broader set of circumstances

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