

# Ontario's privacy protective Philadelphia model governance framework

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# The IPC/O and our Mandate

- **Impartial** officer appointed by, and reports to the Legislative Assembly of Ontario
- **Provides independent** review of government decisions and practices on access and privacy
- **Resolves** access to information appeals
- **Investigates** privacy complaints – public sector and health
- **Researches** access and privacy issues
- **Comments** on proposed government legislation and programs
- **Educates** the public on issues of access and privacy

# What is the purpose of access and privacy legislation ...

- Protect the **privacy** of individuals and promote **transparency and accountability** in government
- Public institutions:
  - may only collect, use and disclose personal information for specific lawful purposes
  - must provide access to government held information (subject to listed exceptions)
- Properly understood, access and privacy legislation helps **discipline** rather than prevent **the effective delivery of vital public services**



# What is Personal Information?

- Recorded information about an identifiable individual in any format

Paper and electronic records, photos, videos, maps, etc.

Examples: name, address, sex, age, identifying number or symbol assigned to an individual, personal views or opinions of or about the individual, medical, criminal or employment history, etc.

- Key questions:

Is it reasonable to expect that an individual can be identified from the information (either alone or by combining it with other information)?

Does the information reveal something of a personal nature about the individual?



## What is Personal Information?

October 2016

### INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (the acts) protect the privacy of personal information while providing individuals with a right of access to their own information.

In this fact sheet, we provide guidance about how the Information and Privacy Commissioner (IPC) interprets the term “personal information.”

### HOW IS PERSONAL INFORMATION DEFINED IN THE ACTS?

The acts define personal information as “recorded information about an identifiable individual,” and include a list of examples of personal information (see Appendix A for the full definition).

#### Recorded information

Information can be recorded in any format, such as paper records, electronic records, digital photographs, videos or maps.

#### About an identifiable individual

Information is about an identifiable individual if:

- it is about the individual in a personal capacity; that is, it reveals something of a personal nature about the individual, and
- it is reasonable to expect that an individual can be identified from the information (either alone or by combining it with other information)

The listed examples include a person’s name when combined with other information about them, such as their address, sex, age, education, or medical history. These examples are not exhaustive and many other kinds of information may still qualify as personal information.

# The Philadelphia Model

- Model developed in the City of Philadelphia after reports showed mischaracterization and miscoding of and inadequate investigations in thousands of sexual assault cases
- 2000 – the present: annual review of police sexual assault files by violence against women (VAW) experts
- Reviewers raise questions and provide feedback (e.g. re: deficiencies, biases)
- Has resulted in significant improvements to the documentation and investigation of sexual assaults



Globe and Mail 2017 Series: *Unfounded*  
Robyn Doolittle

# Purpose / scope of sexual assault external review program

- Police functions include:
  - Investigating reports of sexual assault
  - Supervising and monitoring those investigations
    - ... including for the purpose of *identifying deficiencies, errors and anomalies in and improving the effectiveness of individual sexual assault investigations and the investigation process as a whole*
- Primary purposes of sexual assault external review program: identify deficiencies, errors and anomalies in and improve the effectiveness of individual sexual assault investigations and the investigation process as a whole
- External reviewers access and use police records for these purposes
- Scope of the review program:
  - *In-depth review of closed investigation files* (can include cases where complainants are minors; exclude cases where suspect may be subject to *Youth Criminal Justice Act (YCJA)*)

# KEY ISSUE: can police implement the Philadelphia model in compliance with privacy legislation?

- **Key Q:** Are police permitted to disclose personal information to external reviewers?
- **Ontario:** Reviewer agencies appointed as agents. Agents need the records in the performance of their duties and disclosure is necessary and proper in the discharge of the institution's functions
- **MOU and confidentiality agreement** critical to privacy protection and governance
- **Other jurisdictions:** Look to applicable privacy legislation. Consult with your privacy commissioner.



# Ontario-based Philadelphia model governance framework

Cont'd

- IPC worked with police and VAW stakeholders to develop a model Memorandum of Understanding and Confidentiality Agreement
- Documents set terms for the review of sexual assault cases by VAW experts and other external reviewers
- Kingston Police were first to put into practice
- Framework adopted by a growing number of police services across Ontario
- Framework designed to help police comply with privacy requirements and best practices
- Reviewers appointed as agents of police to assist with performance of critical police functions

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;

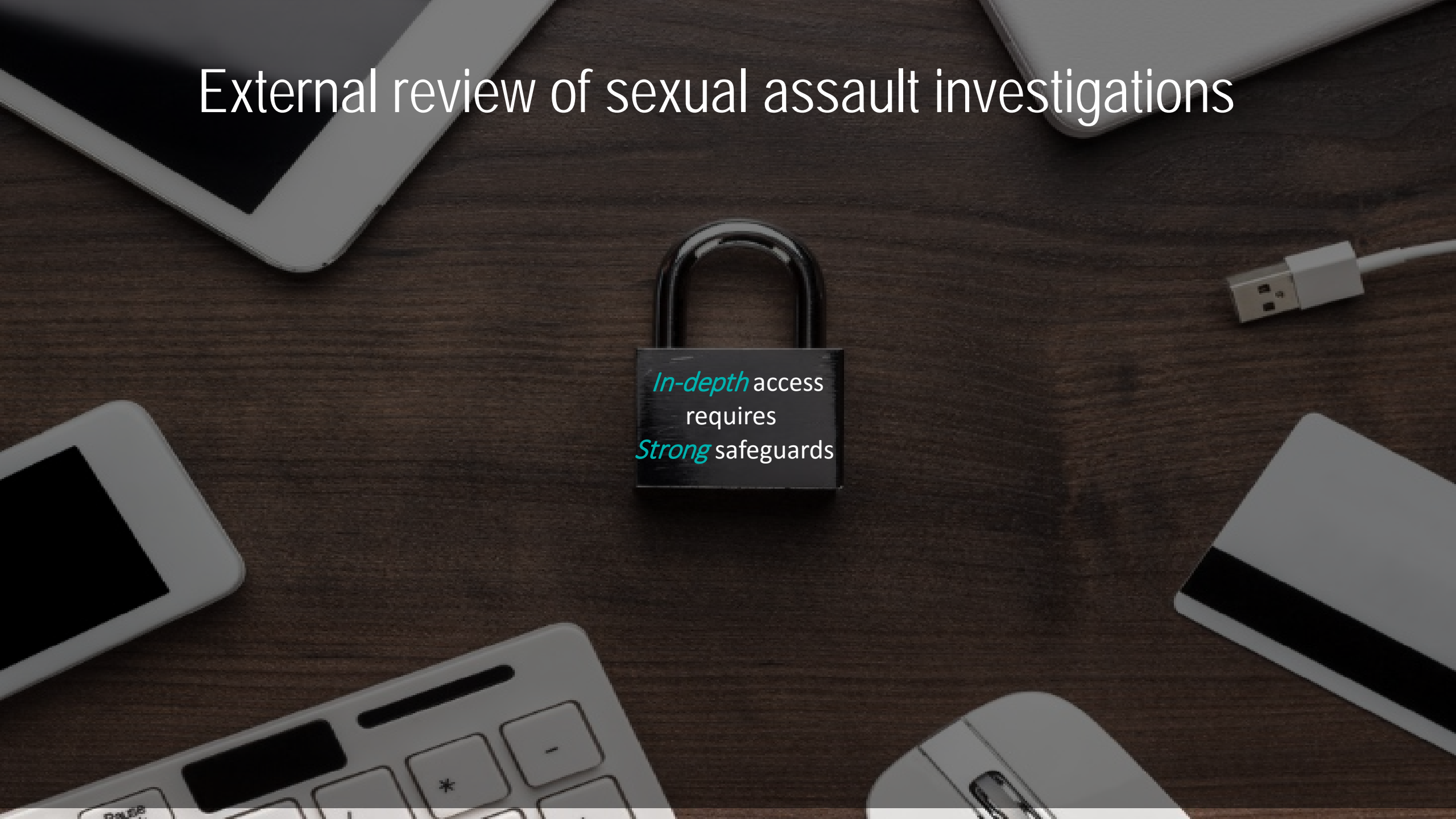
WHEREAS, under section 4(2) of the *PSA*, core police services include crime prevention, law enforcement, and providing assistance to victims of crime;

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;



# External review of sexual assault investigations



*In-depth* access  
requires  
*Strong* safeguards

# Governance framework

Cont'd

- Identify external partners with the expertise to assist with the review of closed sexual assault cases and appoint them agents of the service under an MOU
- Ensure individual reviewers submit to a background check, sign a confidentiality agreement and receive privacy and confidentiality training
- Permit reviewers to see the names of principals (victims, suspects) so they can recuse themselves as necessary
- Permit reviewers to review all or a random selection of *complete, unredacted* files, subject only to redactions or restrictions required by law (e.g. per *YCJA*)
- Ensure reviews take place at police facilities and no identifying information is copied, retained, or removed by the reviewers

# Framework addresses privacy and transparency

Cont'd

- Authority for police disclosure of personal information to reviewers not dependent on consent; grounded in alignment of agents' duties with police functions
- Permits reviewers to share some confidential information with their home organization, but only to the extent necessary to supervise the reviewer or assist in the fulfillment of the review committee's mandate
- Requires reviewers to promptly notify police of a privacy breach
- Promotes transparency and public confidence by permitting reviewers to share non-confidential information about the program with the community
  - Non-confidential information: fact that reviewers are participating in the program, information about how the program works, whether it is functioning as intended, whether it is accomplishing its purposes, and other classes of information as defined by the police in writing
- Police encouraged to issue annual public reports about the operation of their program



# Privacy and confidentiality training topics include:

- *What is confidential information?*
  - It is defined broadly and includes all *personal information*
- *What is non-confidential information?*
  - It is defined narrowly and may *not* include any personal information
- *What constitutes disclosure of confidential information?*
  - Any sharing of confidential information, including verbally, electronically or in writing, with anyone
- *Can reviewers disclose confidential information to anyone?*
  - *Only to other members of the review committee and members of the police service. Exceptions: (i) Reviewers may make a verbal disclosure to an individual at their home agency, but only where the disclosure is necessary to supervise the reviewer or assist in the fulfillment of the review committee's mandate and only to the extent necessary (e.g. re: significant related health & safety issue) and (ii) Disclosures required by law (e.g. the duty to report under the Child, Youth and Family Services Act)*
- *How do you prevent, recognize and respond to a privacy breach?*
  - *Steps to prevent privacy breaches include establishing privacy protective policies and procedures (including a privacy breach protocol) and providing training on those policies and procedures*
  - *Elements of a privacy breach protocol include: containment, notification, and review*
  - *The unauthorized disclosure of personal information is one example of a privacy breach*
  - *Reviewers should consult with police prior to sharing any information that is not clearly non-confidential and immediately notify the police of any apparent breach of confidentiality*

# CONTACT US

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