

# A Guide to Privacy and Access to Information in Ontario Schools

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Information and Privacy  
Commissioner of Ontario

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

OASBO Annual  
Conference

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# Agenda

Introduction to the IPC and Ontario's privacy and education laws

Collection of personal information

Use and disclosure of personal information

Access to information

Special topics

Technology and student privacy

Recent court decisions

# Office of the Information and Privacy Commissioner

Established in 1987, the Office of the Information and Privacy Commissioner of Ontario (IPC) oversees the province's access and privacy laws

**Brian Beamish** appointed by the Ontario Legislature

Reports to **Legislature**, not government or minister



# IPC Mandate

- *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
- **Expanded Mandate:**
  - *Child, Youth and Family Services Act*
  - *Anti-Racism Act*

# IPC Policy Department

Conduct **research** into matters affecting access and privacy

**Comment** on proposed legislation or government programs

Develop **guidance** to help institutions understand their legislative obligations

**Educate** public and stakeholders about access and privacy laws, rights and issues (e.g. research, publications, public speaking)



# Privacy in the Education Sector

## *The Municipal Freedom of Information and Protection of Privacy Act (MFIPPA):*

- sets out the rules that school boards and other municipal institutions must follow regarding access and privacy

## *The Education Act:*

- governs how education is delivered in Ontario's public schools
- contains provisions about access and privacy, including rules around information contained in the Ontario Student Record (OSR)

Other relevant legislation include:

- *Personal Health Information Protection Act (PHIPA)*
- *Child, Youth and Family Services Act (CYFSA)*
- *Occupational Health and Safety Act*

# Personal Information

*MFIPPA* defines personal information (PI) as **recorded information about an identifiable individual**

PI can be recorded in any **format**

School boards collect PI for the provision of educational and well being services to students as outlined in the *Education Act*

# The Ontario Student Record

OSR is an ongoing record of a student's progress through the Ontario school system

The OSR contains PI such as:

- biographical data, schools attended, parent names, special health information
- report cards
- Ontario Student Transcript
- special education records
- behaviour and discipline records
- with appropriate consent, copies of *PHIPA* reports, i.e. psych assessments, social works summaries etc.



# The OSR Legal Framework

	<i>EDUCATION ACT</i>	<i>MFIPPA</i>
PROTECTION OF PRIVACY	<ul style="list-style-type: none"> <li>all staff to preserve secrecy regarding contents</li> </ul>	<ul style="list-style-type: none"> <li>requires the protection of PI collected by the Board – reasonable measures</li> </ul>
COLLECTION	<ul style="list-style-type: none"> <li>administrative statute for Ontario Education</li> <li>permits collection to provide services as outlined in the Act</li> <li>duties of boards, principals and teachers</li> <li>requires principal to establish and maintain pupil records</li> </ul>	<ul style="list-style-type: none"> <li>necessary for the administration of a lawfully authorized activity</li> <li>expressly authorized by statute</li> </ul>
USE	<ul style="list-style-type: none"> <li>superintendent, principal, teachers and designated ECE for improvement of instruction and other education of the student (only teachers of the student)</li> </ul>	<ul style="list-style-type: none"> <li>staff who need the information in the performance of their duties on a limited need-to-know basis in keeping with <i>Education Act</i> requirements</li> </ul>
DISCLOSURE	<ul style="list-style-type: none"> <li>disclosure to a third party requires the written consent of the parent/guardian/adult student</li> <li>not admissible at trial or hearing without consent</li> <li>a judge may order it admitted</li> </ul>	<ul style="list-style-type: none"> <li>with consent</li> <li>to comply with a law</li> <li>law enforcement/investigative</li> <li>compelling circumstances affecting the health or safety of an individual</li> </ul>
ACCESS	<ul style="list-style-type: none"> <li>parent/guardian/student may examine pupil record until student is 18 or has removed from parental control (16 and 17 year old)</li> <li>over 18 required consent of the student</li> </ul>	<ul style="list-style-type: none"> <li>right of access to records containing one's PI</li> <li>a student of any age may access their PI</li> <li>access rights normally exercised by a parent or guardian of children under 16</li> </ul>

# Non-OSR Records

Information collected by the school boards that is not part of the OSR may include:

- permissions slips for field trips
- class lists
- records of marks for tests and assignments
- video surveillance footage of students
- honour roll status
- progressive discipline records, i.e. think sheets, etc.
- personal health files for support services, i.e. psychology, social work, speech and language

There may be some overlap between the nature of the information kept as part of the OSR and outside of it.

# Ontario Education Number (OEN)

The OEN is a unique identification number assigned to each student

Boards are allowed to collect, use and disclose PI for the purposes of assigning an OEN to a student

*Education Act* s. 266.3(3) sets out the rules for the collection, use and disclosure of the OEN which includes for purposes related to education administration, funding, planning or research



# Collection of Personal Information

# Collection

*MFIPPA* sets the following rules regarding the collection of PI:

- **authorized** by a law or statute
- used for the purposes of **law enforcement**
- necessary for the administration of a **lawfully authorized activity**



# Collection

## *Expressly authorized by law:*

- the *Education Act* requires principals to collect information for inclusion in a student's record
- information collected must be in accordance with the regulations and guidelines of the *Education Act*
- the Minister may also collect PI as prescribed in the *Education Act* (s. 8.1)

## *Necessary to the proper administration of a lawfully authorized activity:*

- even if the collection is not expressly authorized under the *Education Act*, if it is **necessary** in order to properly administer a lawfully **authorized activity**, then it is permissible

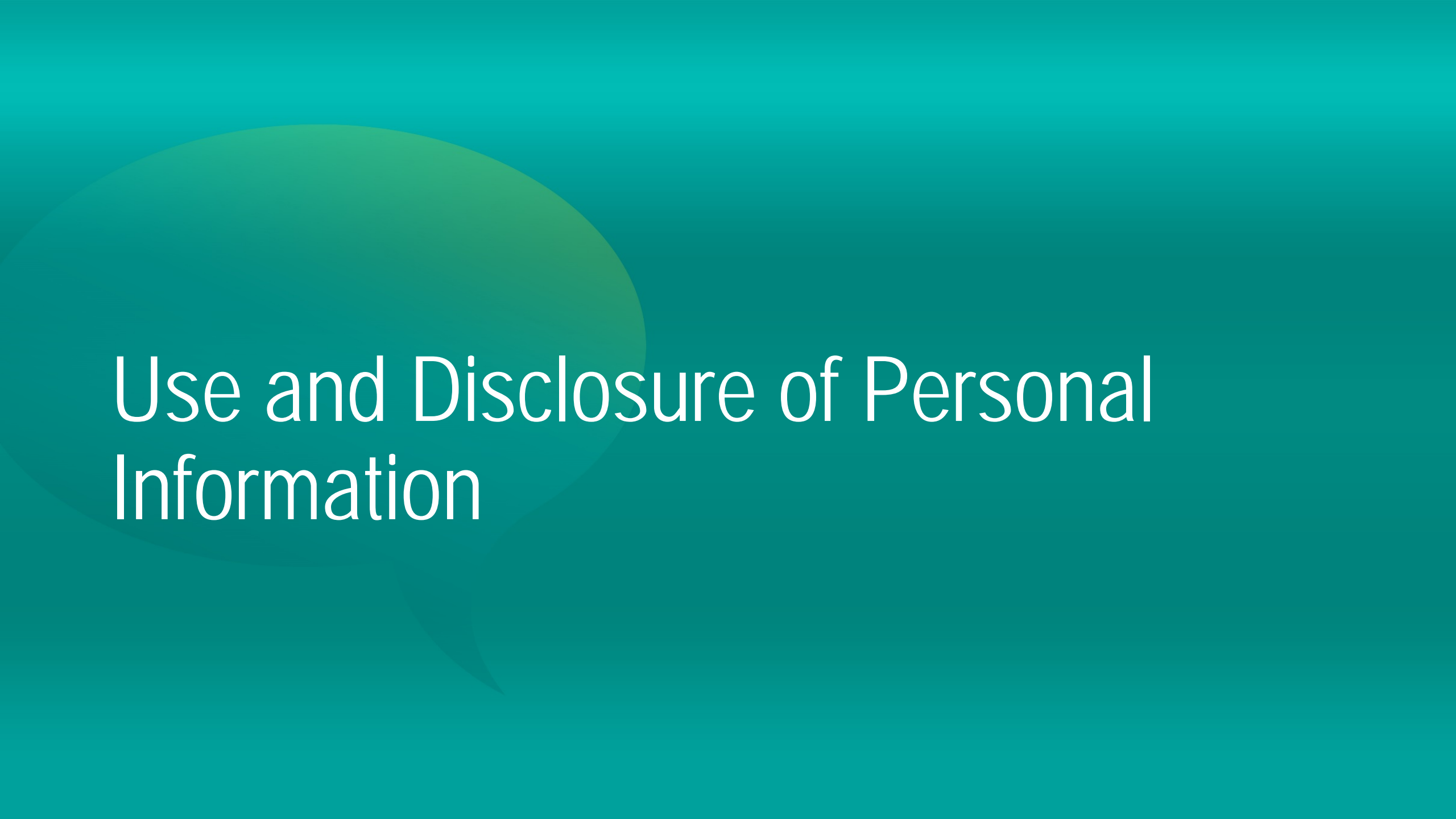
# Notice of Collection

Boards must provide a notice of collection and inform individuals of:

- the **legal authority** for the collection
- the **purposes** for which the PI will be used
- **contact information** of an officer or employee who can answers questions

Boards should make their information practices as transparent as possible, for example:

- notice statements on forms that collect PI
- student handbooks
- posting on school and/or board websites

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# Use and Disclosure of Personal Information

# Use

*MFIPPA* prohibits use of PI except:

- for the purpose for which it was collected, or for a **consistent purpose**
  - a consistent purpose is one which the parent or student would reasonably expect, such as using the information for the improvement of instruction of the student
- with **consent**
- for a purpose for which the information may be disclosed to the school

# Using the OSR

The *Education Act* sets out the circumstances in which principals and other designated staff may use the OSR:

- to improve instruction and other education of the student
- to respond to requests from students and parents to correct or remove information from the OSR
- to enable students and parents to examine the OSR
- for disciplinary proceedings
- to prepare reports required by the *Education Act*, or on request by a student's parents



# Disclosure

*MFIPPA* prohibits disclosure except:

- with **consent** e.g. posting on school websites, media or social media
- for the purpose for which it was obtained or for a **consistent purpose**
- to an officer, employee, consultant or agent of the institution who needs the information in the performance of their duties
- for the purpose of complying with a law (**mandatory disclosures**)
- in compelling circumstances affecting **health or safety**
- to a law enforcement agency in order **to aid in an investigation**
- where the student or his or her parents request access

# Privacy Complaint MC16-5

Complaint by a parent about **school photos**

## Conclusions/Findings:

- collection and use of students' photographs for education-related purposes is permissible
- disclosure to school photographer who offered photos for purchase was a consistent purpose – met reasonable expectation test because school photos have been part of school and family life for decades
- however, use of photos for ID cards in association with Canadian Centre for Child Protection did not comply with the act

IPC investigator **recommended** that parents/guardians:

- be provided with the opportunity to opt out of receiving marketing from photographers
- be provided with the opportunity to opt out of the identification card program
- be able to request the photographer destroy their children's personal information so long as it does not interfere with the Board's administrative requirements

# Mandatory Disclosure of Personal Information

Boards are required to disclose PI in some cases, such as:

- disclosure to a **medical officer of health** as required by the *Education Act*
- **notifying parents of harm** to a student as required by the *Education Act*
- disclosure to review officers to determine eligibility for payment under various acts
- to **report a child in need of protection** as required by the *Child, Youth, and Family Services Act*
- disclosing information to an employee about a potential danger to their health or safety as required by the *Occupational Health and Safety Act*
- if it is in the **public interest** to do so **and** the record reveals a **grave environmental, health or safety hazard** to the public

# Mandatory disclosure under the *OHSA*

- **Obligation to disclose:** to an employee about a **risk of workplace violence** from a person with a history of violent behavior if:
  - worker can be expected to encounter person in course of work and
  - risk is likely to expose worker to physical injury
- **Limits on disclosure:** don't disclose more PI than is **reasonably necessary** to protect the worker from physical injury
- **Reasonably necessary:** means **more than merely helpful**, an objective assessment, not based on one person's preferences or opinions

# Disclosure and the OSR

The OSR may not be disclosed to any other person without the written permission of the student or parent/guardian. There are some exceptions to this:

- where disclosure is required by the Ministry of Education or school board
- disclosures of certain limited information about students to a medical officer of health
- access by the student to their own record or by the parent/guardian
- where *MFIPPA* permits the disclosure



# Privacy Complaint Report MC11-73

Complaint against a school board **alleging improper disclosure** of a student's OSR to Human Rights Tribunal of Ontario

Parents of the student had brought a complaint to the tribunal against the school board

IPC finds disclosures to the tribunal complied with the tribunal's rules of procedure requiring parties to disclose documents on which they intend to rely during the hearing of the complaint

IPC concludes school board did not breach *MFIPPA* in disclosing records to the tribunal; disclosures in accordance with s. 51

*MFIPPA* does not limit **information available by law to party to litigation**

# Retaining and Safeguarding Personal Information

Boards are required to:

- retain PI for at least **1 year** after use
- define, document and put in place **reasonable measures** to protect records of PI from **inadvertent destruction or damage**
  - reasonable measures includes administrative, physical and technical safeguards
- take reasonable steps to **prevent unauthorized access**



# Access to Information

# *MFIPPA* Access Rules

With some exceptions, individuals have a right to access records in the **custody or under the control** of boards including:

- general records
- their own PI

# Access to General Records

Under *MFIPPA* any person has a right to access **general** records held by a school board, such as guidelines, policies, meeting minutes, emails etc.

There are **mandatory and discretionary** exemptions to the right of access, for example:

- if the record contains someone else's PI
- if the record contains solicitor-client privileged information
- if the record contains protected third party business information

Despite the exemptions to access, a board may choose to disclose the information if a **compelling public interest** in the disclosure of the record clearly outweighs the purpose of the exemption

Certain information is **excluded from access** under *MFIPPA* such as:

- information related to **labour relations and employment-related matters**

# Access to Your Personal Information

*MFIPPA* provides individuals a right to access records of their own PI, this includes OSR records and non-OSR records

A child of any age can access their own records

Parents/guardians who have lawful custody of the child may access records on the child's behalf

There are some exceptions where a board may refuse to grant access to PI, for example:

- where granting access to the information would be an **unjustified invasion of another individual's privacy**

# *Education Act* Access Rules

Every student has a right to examine their OSR

Until the student turns 18, parents/guardians also have a right to examine the OSR

Limited to parents/guardians with access rights to the child; no access to the child, no access to the OSR.

# Access Under the *Education Act*

Most students and parents/guardians are able to request information directly from the school

- students and parents/guardians can make a request to the principal to view the OSR
- requests can be made in writing or verbally
- there is no cost to examine the OSR
- *Education Act* does not have established timelines or an appeal process for requests



# Correcting Personal Information

School boards must take reasonable steps to ensure that PI in their records is **accurate** and up-to-date

If students or parents believe that the PI in the student's record is inaccurate, they have a right to request a **correction** under *MFIPPA* and the *Education Act*

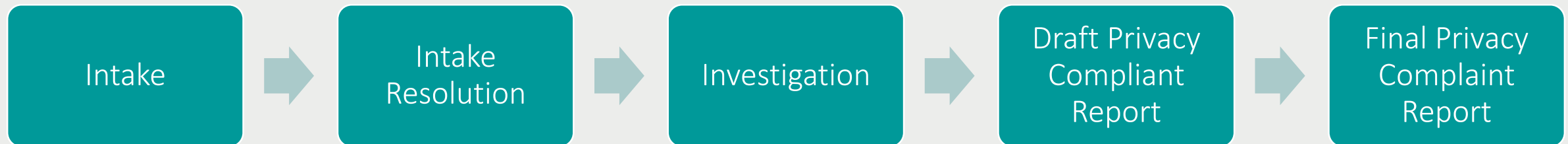
Under the *Education Act* the parent/guardian of the student may make a request to the principal to correct the PI contained in the OSR

Under *MFIPPA* parents/guardians of children under 16 can request a correction on the child's behalf

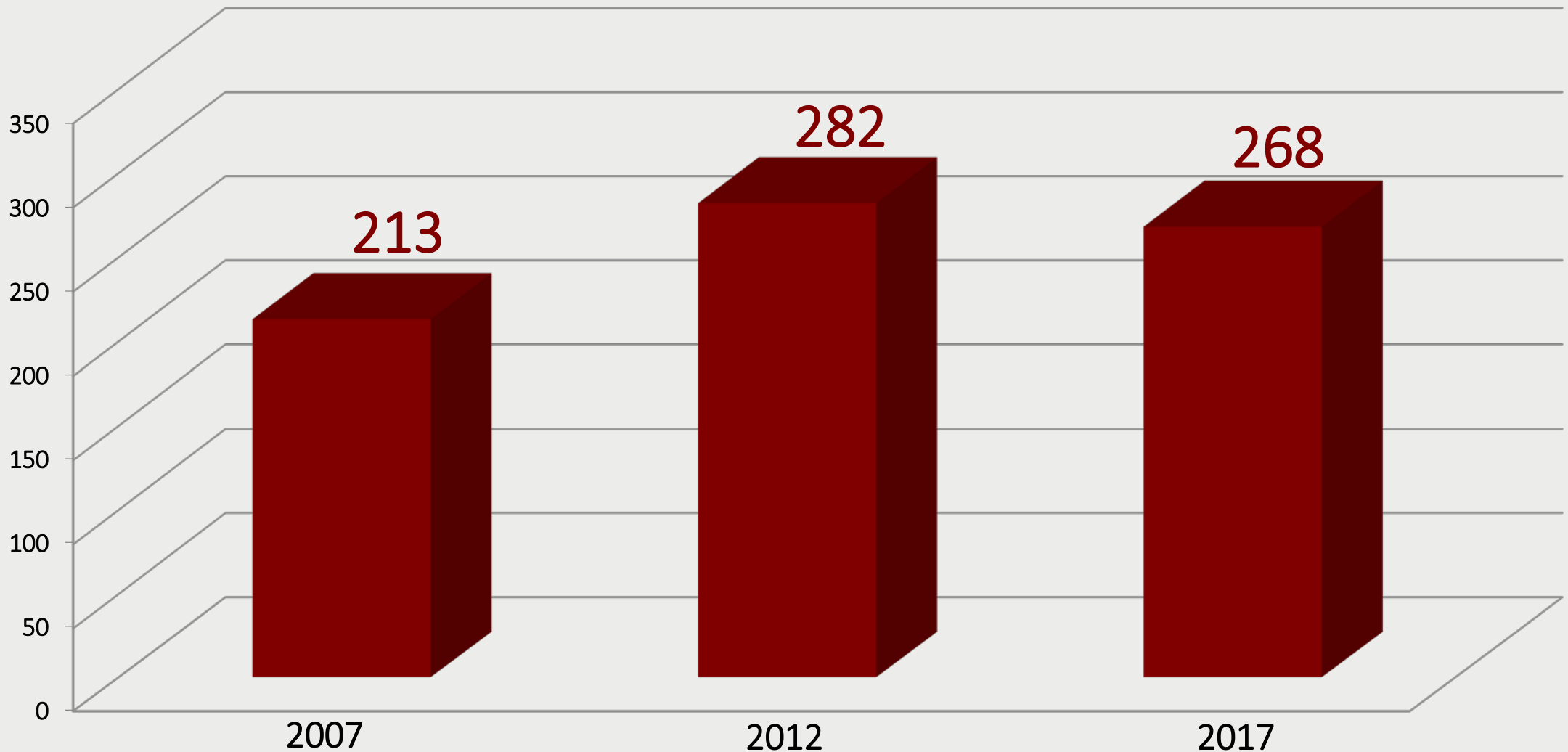
# IPC Privacy Complaint Process

If an individual feels that his or her PI has been collected, used or disclosed in **contravention** of privacy and access laws, he or she can file a complaint with the IPC

Filing a complaint, initiates the IPC's privacy complaint process



# Total Privacy Complaints Opened Per Year



# Appeals Under the *Education Act*

A parent/guardian/student may request correction of an OSR record under the *Education Act* in writing to the principal

If a principal refuses to make the correction, the parent/guardian/student may ask a Supervisory Officer to conduct a review

The Supervisory Officer may complete the review or refer it to the Minister of Education for a hearing



# Special Topics

# Disclosure of Personal Information to Police

Boards may disclose PI to a law enforcement agency in Canada in certain situations

Generally, information should only be disclosed to law enforcement when it is **required by law**, however there are two exceptions where boards may use their discretion to disclose:

- to aid a law enforcement investigation
- for health or safety reasons

# Disclosure of Personal Information to Police

When required by law:

- e.g. when the school board receives a court order for a search warrant or a production order
- the institution must comply with the court order

To aid a law enforcement investigation:

- when a request is received from a law enforcement authority without a court order, the school board must use its discretion and ensure that the **information requested is specific** and made for the purpose of a **specific law enforcement investigation**
- when a board has a reasonable basis to believe an offence may occur, it may disclose PI on its own initiative

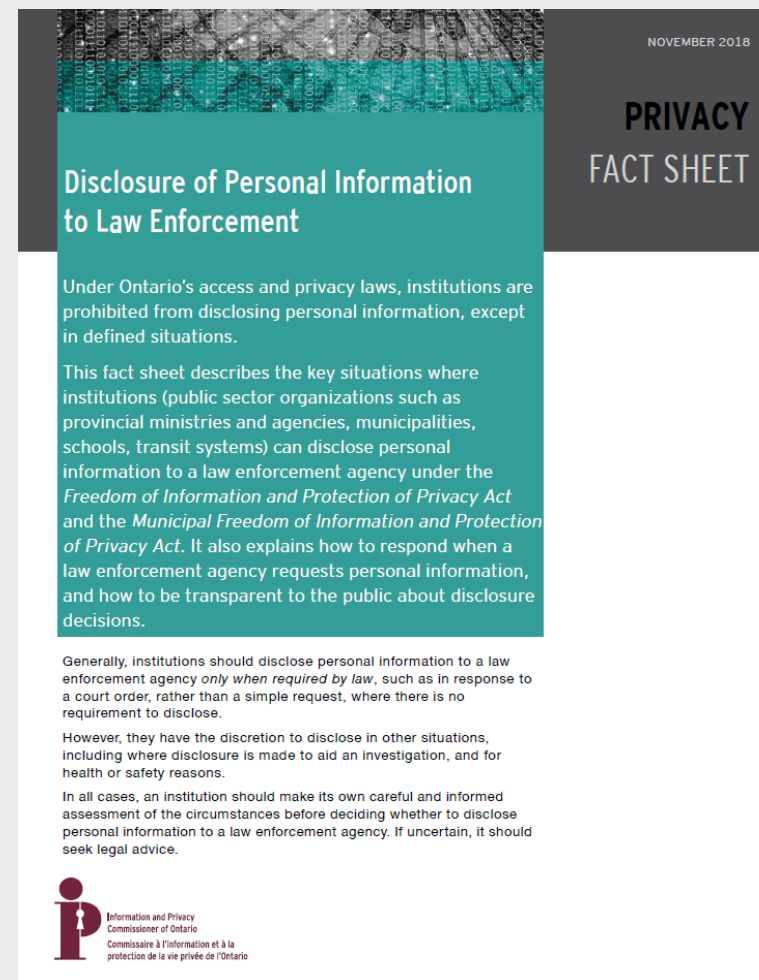
For health or safety reasons:

- in compelling circumstances affecting the health or safety of an individual

# Privacy Fact Sheet: Disclosure of Personal Information to Law Enforcement

Disclosing institutions should:

- **document** disclosure requests and court orders
- be **transparent** about their decisions
- develop and publish policies about disclosure practices



NOVEMBER 2018

## PRIVACY FACT SHEET

### Disclosure of Personal Information to Law Enforcement


Under Ontario's access and privacy laws, institutions are prohibited from disclosing personal information, except in defined situations.

This fact sheet describes the key situations where institutions (public sector organizations such as provincial ministries and agencies, municipalities, schools, transit systems) can disclose personal information to a law enforcement agency under the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act*. It also explains how to respond when a law enforcement agency requests personal information, and how to be transparent to the public about disclosure decisions.

Generally, institutions should disclose personal information to a law enforcement agency *only when required by law*, such as in response to a court order, rather than a simple request, where there is no requirement to disclose.

However, they have the discretion to disclose in other situations, including where disclosure is made to aid an investigation, and for health or safety reasons.

In all cases, an institution should make its own careful and informed assessment of the circumstances before deciding whether to disclose personal information to a law enforcement agency. If uncertain, it should seek legal advice.

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# Technology and Student Privacy

# Risks of Using Online Educational Tools

Under MFIPPA, boards are accountable for online educational services used in the classroom. They must ensure that these services do not improperly collect, use or disclose students' PI, for example:

- **Improper Collection:** Some online educational services collect and retain students' PI for their own non-educational purposes. They may also track and record students' online activities and interactions with others, and collect PI from indirect sources
- **Unauthorized Use:** Online educational services may evaluate students' behaviour and performance, and generate profiles to market learning tools or products directly to students and parents without their consent.
- **Unauthorized Disclosure:** Some online educational services sell students' PI to third parties that market other services and products directly to students and parents without their consent

# Risks of Using Online Educational Tools

Educators should only use online tools which have been **approved** by their school board and meet the standards of the board and *MFIPPA*

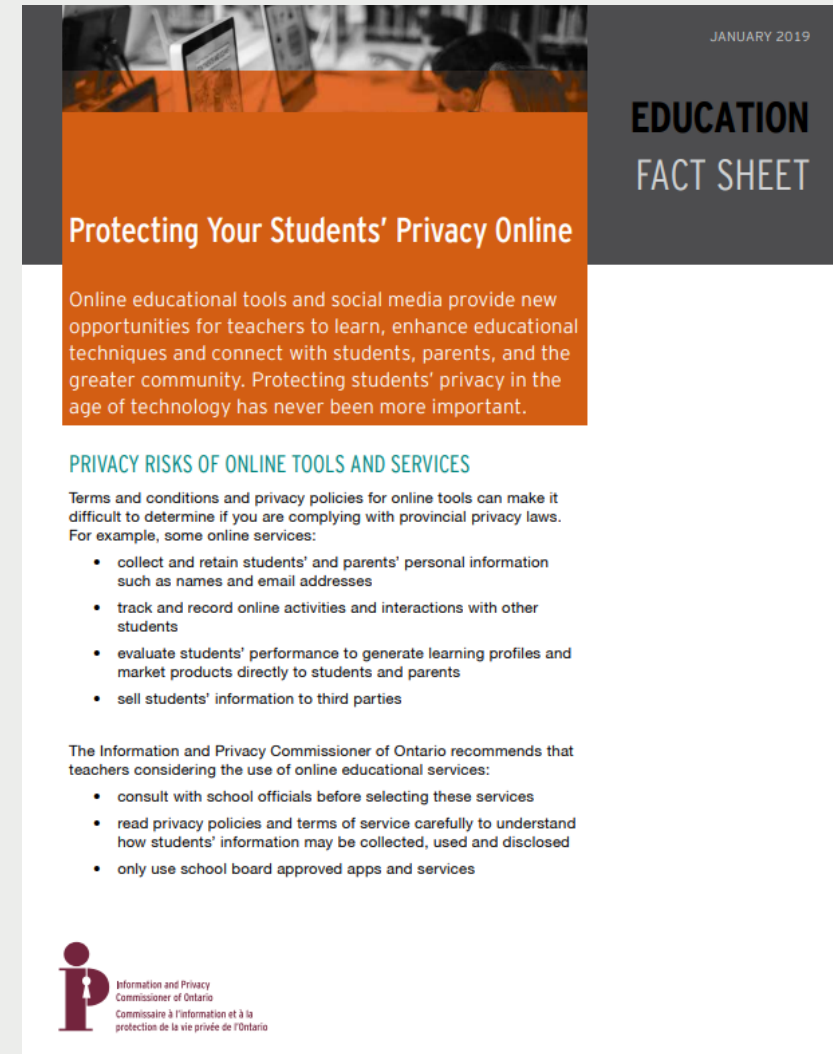
Using unapproved educational services could:

- result in a breach of students' and parents' privacy rights
- subject educators to disciplinary procedures
- expose the board to reputational risks

# Education Fact Sheet: Protecting Students' Privacy Online

Teachers considering the use of online educational services should:

- consult with school officials before using services
- read and understand the privacy policies and terms of service
- only use apps and services approved by the school board and ministry of education
- provide students with guidance on how to use the tools
- use services that do not require students to provide identifying information



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**EDUCATION  
FACT SHEET**

**Protecting Your Students' Privacy Online**

Online educational tools and social media provide new opportunities for teachers to learn, enhance educational techniques and connect with students, parents, and the greater community. Protecting students' privacy in the age of technology has never been more important.


**PRIVACY RISKS OF ONLINE TOOLS AND SERVICES**

Terms and conditions and privacy policies for online tools can make it difficult to determine if you are complying with provincial privacy laws. For example, some online services:

- collect and retain students' and parents' personal information such as names and email addresses
- track and record online activities and interactions with other students
- evaluate students' performance to generate learning profiles and market products directly to students and parents
- sell students' information to third parties

The Information and Privacy Commissioner of Ontario recommends that teachers considering the use of online educational services:

- consult with school officials before selecting these services
- read privacy policies and terms of service carefully to understand how students' information may be collected, used and disclosed
- only use school board approved apps and services

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# Consent and the Use of Technology

Consent is **not required** when **using and disclosing** PI through online educational tools, apps and services, if the use and disclosure is for instruction or an educational purpose or a purpose that is consistent

Consent is **required** when using or disclosing PI **for a secondary purpose** (a purpose that is not related to providing educational services)

**Recommendation:** Ensure that you have processes in place to assess tech tools, apps and services (PIAs) and be transparent about your practices

# School Bus Stop Arm Cameras - Key Features

Features of school bus stop arm camera systems may include:

- Exterior cameras
  - may record vehicles, pedestrians and driver
- Sound recording
  - may record driver and students
- Global Positioning System (GPS)
  - may record vehicle's location

Many capabilities are similar to video surveillance cameras



# School Bus Stop Arm Cameras - What's Unique?

School bus camera systems present **different privacy challenges** from traditional video surveillance systems:

- mobile devices pose additional challenges that impact on privacy
- notifying individuals who may be recorded can be challenging
- the amount of data captured and storage location may pose security related problems

# School Bus Cameras - Best Practices

Best practices for school boards implementing a school bus camera program include:

- consulting your board's **Freedom of Information and Privacy Coordinator** and the **public**
- conducting a **privacy impact assessment (PIA)**
- establishing **policies** and **procedures**
- establish a **privacy breach protocol**
- **training** employees
- **auditing** roles, responsibilities, and practices
- consulting with **our office**



# Regulatory Framework - Coming Soon

News Release

## Ontario Announces Measures to Increase School Bus Safety

### Stop Arm Cameras on School Buses

April 25, 2019 1:00 P.M. | [Ministry of Transportation](#)

TORONTO - Today, Jeff Yurek, Minister of Transportation was joined by Sam Oosterhoff, Parliamentary Assistant to the Minister of Education to announce new measures to give municipalities the tools they need to target drivers who threaten the safety of children crossing roads to their school or home.

The proposed regulations would allow for more efficient enforcement and prosecution by allowing evidence from these cameras to be used in court without the requirement of an additional witness.

"The safety of our most precious resource, our children, is our government's number one priority," said Minister Yurek. "We intend to create a [regulatory framework](#) that would allow for more efficient enforcement and prosecution to keep our children safer."

Ontario also plans to introduce legislation that, if passed, would allow municipalities to target drivers who threaten the safety of children on school buses with new, additional monetary penalties.



# Recent Court Decisions

# Reasonable Expectation of Privacy: Jarvis (SCC)

High school teacher charged with voyeurism

Used a pen camera to surreptitiously record face and cleavage of 27 female students in classrooms and other common areas

IPC intervened before Supreme Court of Canada on “reasonable expectation of privacy” in public spaces issue

Crown/IPC – students in common areas have **objective expectation of privacy**, including in areas with existing video cameras

Supreme Court of Canada ruled the teacher was guilty of voyeurism

The ruling reinforces the IPC’s position that individuals have an **expectation of privacy** even though they may be in a public or semi-public space

# Privacy and Public Interest Disclosures

Algoma Public Health received a request for access to a KPMG report into allegations of wrongdoing

APH granted access to information even though it contained **personal information of the CEO and CFO**

CEO appealed to the IPC

IPC Order **MO-3295** agreed with APH and ordered the report to be disclosed

Court of Appeal found that the IPC's Order **MO-3295** was reasonable

Affirmed IPC's conclusion that **compelling public interest** in allegations of wrongdoing outweighs the personal privacy of senior public officials

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Resources

# Guidance Materials

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## EDUCATION FACT SHEET

### Privacy and Access to Information in Ontario Schools: A Guide for Educators

#### INTRODUCTION

Public and separate school boards must follow various laws when dealing with students' personal information.


The Information and Privacy Commissioner of Ontario (IPC) oversees the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. This law sets out rules that schools and school boards must follow regarding the collection, retention, use, and disclosure of personal information.

#### RESPONSIBILITIES

Staff at all levels within Ontario's public and separate school system have a responsibility to ensure the personal information of students is secure and kept confidential.

Principals and school board officials are responsible for:

- complying with *MFIPPA*, the *Education Act*, and other laws related to the privacy of and access to students' personal information, along with relevant guidelines and policies
- collecting personal information only where permitted under the law
- implementing reasonable security measures to protect student personal information
- ensuring that staff are aware of and adequately trained in their responsibilities



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## EDUCATION FACT SHEET

### Privacy in the School

Ontario's privacy laws set rules for how schools collect, use and disclose students' personal information.

#### WHAT IS PERSONAL INFORMATION?

Personal information includes information that identifies a person, such as name, address, and phone number. Other examples include:


- School photos and videos
- Health information
- Student records

#### PRIVACY BREACHES

If a school does not comply with the law when they collect, use, disclose, retain or destroy personal information, privacy breaches can occur. Some examples of privacy breaches, and their causes, include:

- a lost or stolen flash drive containing student or staff information
- correspondence mailed or emailed to the wrong person
- disclosing information about a student without consent or without legal authority

Teachers are responsible for following privacy and other laws, professional standards, and school board policies when collecting, using or disclosing personal information.



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## EDUCATION FACT SHEET

### Your Child's Privacy in School

Ontario's information and privacy laws set the rules for how your child's personal information is collected, used and disclosed.

#### WHAT IS PERSONAL INFORMATION?

Personal information includes information that identifies a person, such as a name, address, and phone number. Other examples include:

- school photos, videos and other digital recordings
- health information
- student records

#### YOUR RIGHT TO PRIVACY

Ontario's public and separate schools are required by law to protect your child's personal information, and to follow strict rules when collecting, using and disclosing this information.


#### YOUR RIGHT TO ACCESS RECORDS

Under Ontario's access and privacy laws, students and parents are entitled to copies of the students' own records.

#### THE SCHOOL'S RESPONSIBILITIES

Ontario's public and separate schools are required to:



- notify you when they are collecting personal information, including the reason for the collection and who to contact with questions



JANUARY 2019

## EDUCATION

### A Guide to Privacy and Access to Information in Ontario Schools



# Our Open Door Policy

Any public institution or agency considering programs with privacy impacts can approach the IPC for advice

Together we can:

- acknowledge privacy concerns from the outset
- address challenges through collaboration





Questions?



# HOW TO CONTACT US

## Information and Privacy Commissioner of Ontario

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