

Key Developments in Access and Privacy

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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

2019 North
Ontario
Connections
Summit, Sudbury

October 30, 2019

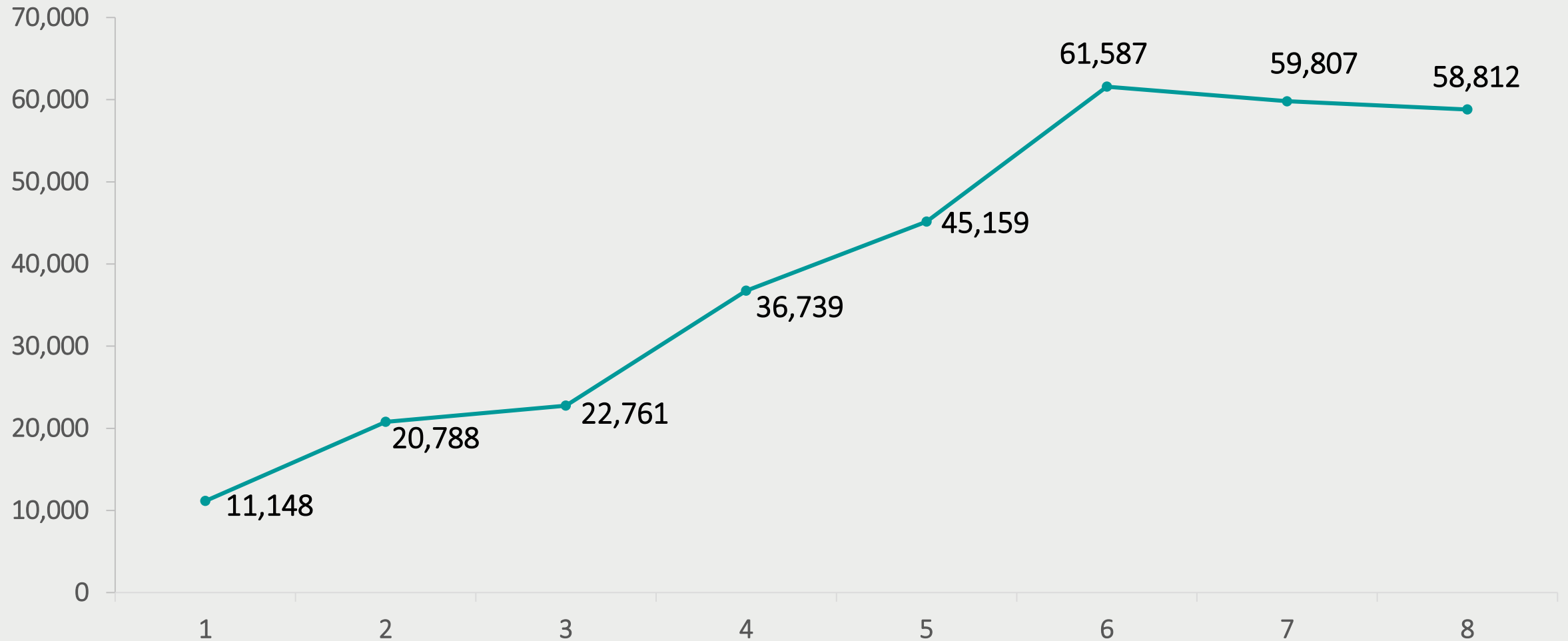
IPC's Mandate

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
 - 300 provincial institutions
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
 - 1,200 municipal organizations
- *Personal Health Information Protection Act (PHIPA)*
 - Individuals/organizations delivering health care
- *Child, Youth and Family Services Act* (January 1, 2020)

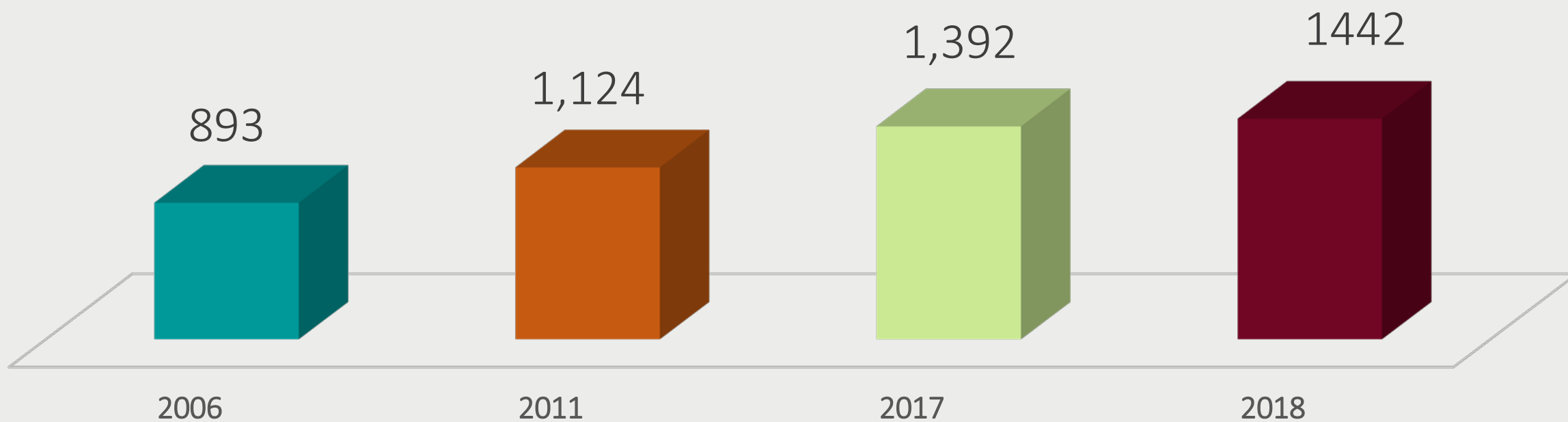


ACCESS

Access requests

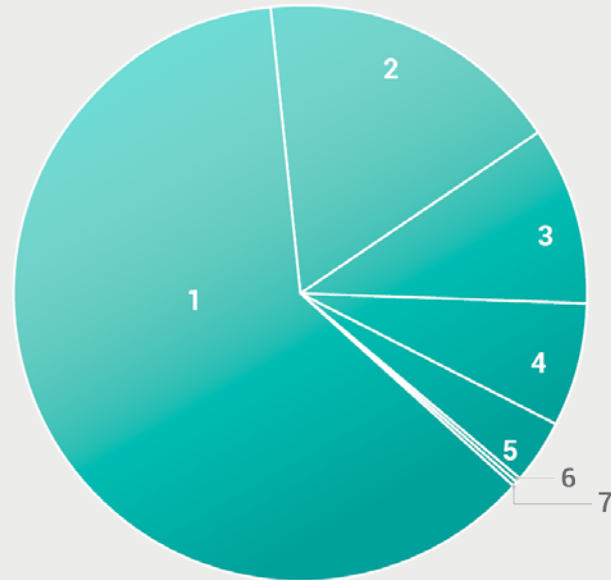


Appeals to IPC



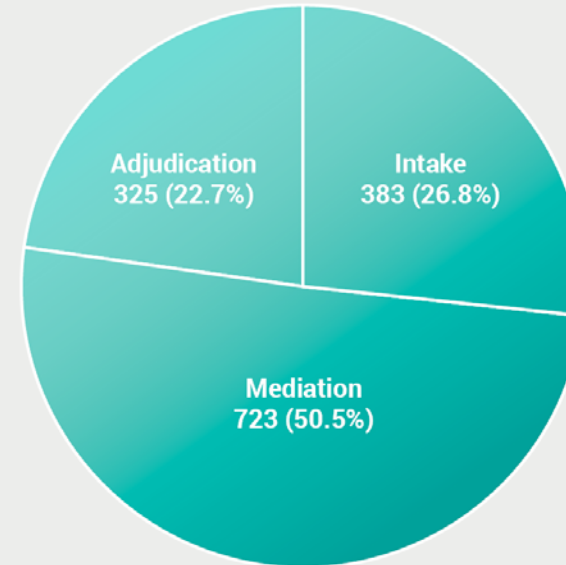
Appeals for 2018

OUTCOME OF APPEALS



- 1. Mediated in full: 885 (61.8%)
- 2. Order/Decision issued: 245 (17.1%)
- 3. Screened out: 142 (9.9%)
- 4. Withdrawn: 100 (7.0%)
- 5. Abandoned: 55 (3.8%)
- 6. Dismissed without inquiry/
review: 2 (0.1%)
- 7. Dismissed without order/
decision: 2 (0.1%)

APPEALS CLOSED BY STAGE



Doctors' billings

- *Toronto Star* seeks top 100 OHIP billing physicians (2008-2012)
- Ministry discloses \$ amounts, withholds names under privacy exemption
- IPC orders disclosure – OHIP billings “business” **not personal**
- even if exempt, **public interest override** applies!
- OMA seeks judicial review at ON Divisional Court – dismissed
- OMA appeals – ONCA upholds IPC

An individual's gross professional or business income is not a reliable indicator of the individual's actual personal finances or income [not PI]

Doctors' billings

- SCC denies OMA leave to appeal (March 2019)
- IPC decision stands
 - sharing doctors' names falls in line with growing public expectation for [transparent government, accountability](#)
 - billings of other professionals/consultants not considered PI, and are accessible to public under Ontario's access legislation
 - Ontarians have a right to scrutinize government spending and decision-making; right to access government-held information is a [cornerstone of a healthy democracy](#)
 - individuals need to know what their government is doing to hold it accountable

GTA

They're Ontario's top-billing doctors, but for years their identities have been kept secret. Until now

By **May Warren** Staff Reporter

Theresa Boyle Health Reporter

Andrew Bailey Data Analyst

Thu., June 27, 2019 | 13 min. read



Premier's mandate letters

- journalist denied access to Premier Ford mandate letters to each minister
- based on cabinet records exemption
- IPC finds exemption does not apply; orders government to disclose
- IPC says letters reveal **outcome** of deliberations, but not deliberations themselves
- government now challenging in ON Divisional Court

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Toronto

Ford's senior officials hoped to keep mandate letters away from public view 'as long as possible'

CBC News plans to continue fight for marching orders to ministers as Ontario looks to keep them secret

CBC News · Posted: Aug 22, 2019 4:00 AM ET | Last Updated: August 22

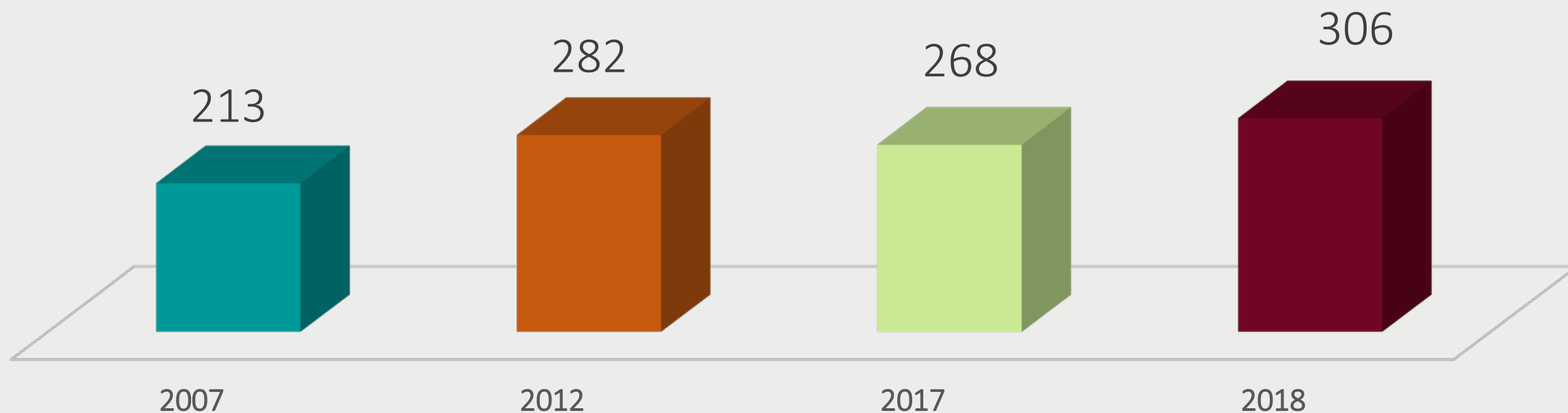


Premier Doug Ford's government has gone to court to fight an order to release mandate letters to his cabinet ministers. (Tijana Martin/The Canadian Press)



PRIVACY

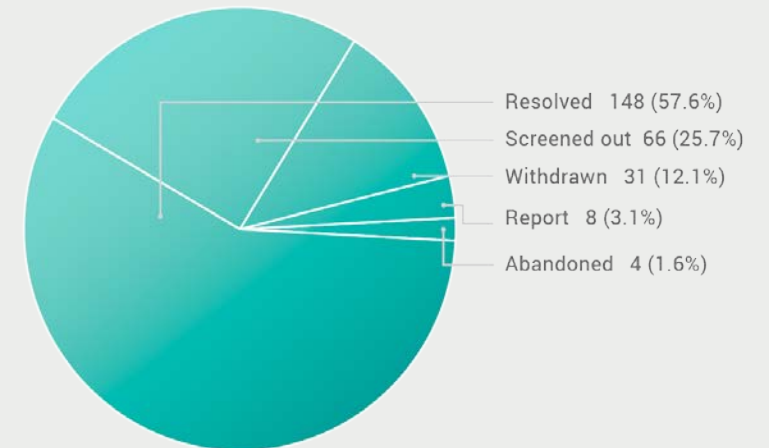
Privacy complaints per year



Privacy complaint process: early resolution

- most complaints resolved at **intake**
- all complaints received by IPC **registrar**
- registrar/intake analyst may attempt informal resolution
- complaint can be **dismissed** if:
 - clearly outside IPC jurisdiction
 - IPC satisfied with organization's response

PRIVACY COMPLAINTS CLOSED BY TYPE OF RESOLUTION



Privacy risks of smart cities

- privacy not barrier to smart cities, but they require strong **privacy protections**
- without adequate safeguards, excessive **personal information** may be collected, used, disclosed
- potential hazards:
 - tracking individuals as they go about their daily activities (**surveillance**)
 - use/disclosure for other purposes without consent (**function creep**)
 - security breaches (**cyberattacks**)



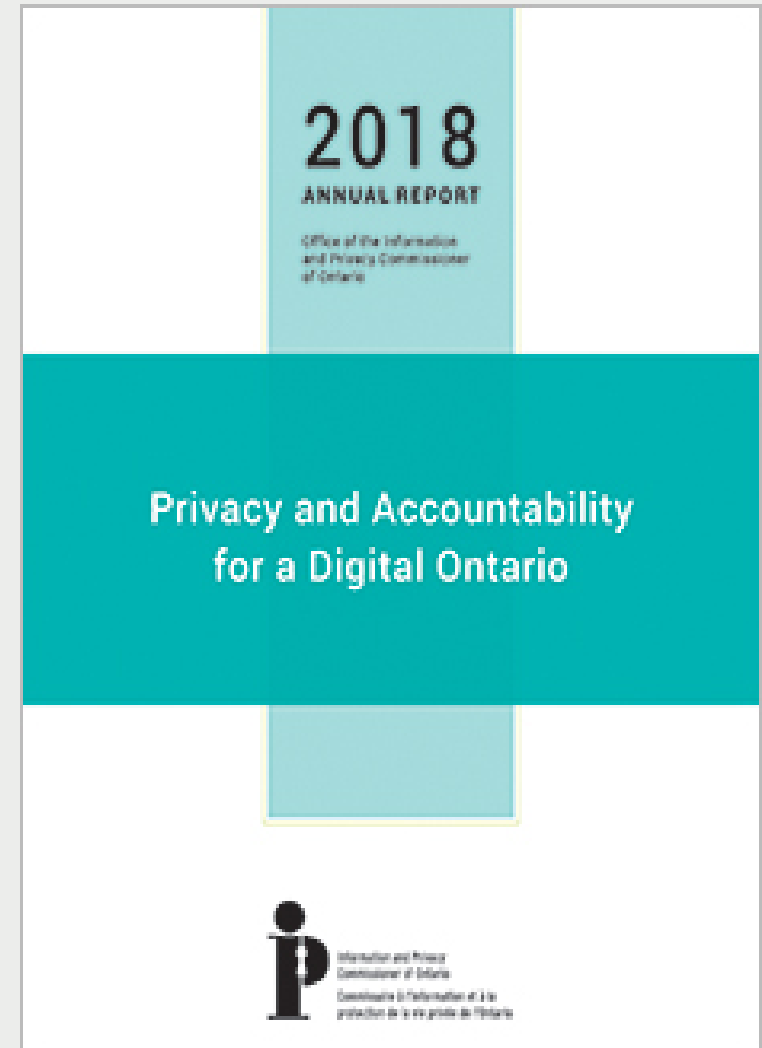
Keep in mind

- Smart City issue far more than Sidewalk Toronto
- these are **cities** (*MFIPPA!*)
- private sector must realize involvement with public sector changes the rules



Annual report recommendation

- *MFIPPA* is outdated in face of current digital technologies and practices
- government should lead comprehensive review of our privacy laws, **modernize** them to address risks inherent in smart city technologies
- areas of concern:
 - need for proper **oversight** and enforcement
 - address **public/private partnerships**
 - data trust?



Ransomware/cyber attacks on the rise

- hacker gained access to 8 Stratford servers that contained personal information
- city disconnected servers to contain the attack
- city returned to normal business operations about two weeks after



Philadelphia Model

- review of police sexual assault files to look for deficiencies and biases
- since implementation in Philadelphia 17 years ago, “unfounded rape” rate dropped to 4%
- U.S. national average 7%



Globe and Mail Series: *Unfounded*
Robyn Doolittle

MOU for Ontario police

- IPC worked with police, stakeholders to develop model Memorandum of Understanding & Confidentiality Agreement
- terms for review of sexual assault cases by police and external reviewers
- 2018, Ontario Association of Chiefs of Police endorsed this approach to sexual violence case review

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;

Privacy rules for political parties



- political parties collect large volumes of sensitive personal information to target voters
- increasingly sophisticated data practices raise new privacy and ethical concerns
- IPC calling for Ontario's political parties to be covered by privacy laws



RECENT DECISIONS AND RESOLUTIONS

Algoma Public Health

- **Order MO-3295** - Algoma Public Health (APH) received request for final report of 2015 KPMG forensic review
- Was there conflict of interest in appointment of APH's former interim CFO? Were any funds misappropriated or lost by APH?
- APH finds personal privacy exemption applies, but decides full report should still be disclosed on basis of **public interest override (first time ever!)**
- IPC upholds APH decision to disclose
- April 2019: Ontario Court of Appeal affirms APH/IPC decision

Public interest in salary information

- **Order MO-3684** - request to North Bay for records related to specific employment opportunity; 1 responsive record – an employment agreement – access denied
- city claims closed meeting, privacy exemptions
- IPC did not uphold city's decision
- agreement revealed results of closed meeting, but **did not contain deliberations**
- compelling **public interest** in disclosure of salary information
- privacy interests did not justify withholding

A streetcar named disclosure

- **Order MO-3827** - request to Toronto Transit Commissioner for records about delays in delivering streetcars
- TTC notified company, granted partial access
- on appeal, IPC finds some information exempt under 3P exemption, but ordered disclosed on [public interest grounds](#)
- TTC agrees (!)

Personal privacy and marijuana grow op

- **Order MO-3685** – Greater/Grand Sudbury Police received request for information about marijuana grow operations
- police disclose chart listing dates of seizures, number of plants, but withhold **property addresses** (privacy)
- **public interest** outweighs privacy; public scrutiny, consumer protection, promotion of public health and safety

Mediation success stories: compassionate disclosure

- police service received request for reports, photographs related to death of requester's sibling
- investigation into the death was ongoing, access denied
- investigation concluded during mediation, police issue revised decision granting partial access
- mediator notified several affected parties, obtained **consent** to disclose most of their PI, which police later disclosed
- requester viewed photographs with an officer
- requester then advised mediator she would not proceed further with appeal

Ministry of the Environment and Climate Change

- citizens group asked MOECC for records relating to concerns about wells near a quarry
- after notifying affected party, ministry granted partial access, denied access to some based partly on privacy; group appeals
- **quarry owner** also appealed, objecting to ministry's decision to grant partial access
- through mediation, quarry owner **consents** to disclosure of all records, also invited citizens group to view quarry site and ask questions

The background is a solid teal color. On the left side, there is a large, semi-transparent green speech bubble graphic that points towards the bottom right. The text "PRIVACY COMPLAINTS" is centered horizontally and partially overlaps the speech bubble.

PRIVACY COMPLAINTS

School photos

- **Privacy Complaint MC16-5** – complaint from parent about a school board’s picture-taking program because students’ PI shared with photographer
- **Findings:**
 - collection/use of students’ photographs for education-related purposes permissible
 - however, use of photos for ID cards in association with Canadian Centre for Child Protection goes beyond original purpose
- **Recommendations:**
 - parents/guardians can:
 - **opt out** of receiving marketing from photographers and ID card program
 - request the photographer **destroy** their children’s PI, so long as no interference with board’s administrative requirements

Casino Rama investigation

- November 2016, OLG reports to IPC that [Casino Rama Resort](#) target of [cyberattack](#)
- IPC investigates breach, and whether reasonable security measures in place to protect Casino Rama customers' PI
- investigation reveals weaknesses in cybersecurity practices – particularly with response to [suspicious activity](#)
- OLG/Casino Rama has since taken steps to address gaps, IPC satisfied
- institutions should plan for cyberattacks by having appropriate measures in place to secure their systems, ensure early detection

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