

How to Use Access to Information and Privacy Laws

David Goodis

Assistant Commissioner

Information and Privacy Commissioner of Ontario

Administrative Law Practice Basics

Law Society of Upper Canada

May 8, 2015



Information and Privacy
Commissioner of Ontario

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

Freedom of Information in Ontario

- *M/FIPPA* statutes grant a **right of access** to government records
 - Ontario ministries, agencies, municipalities, school boards, police, universities, hospitals
 - you can use legislation to obtain information relevant to an upcoming proceeding
 - *e.g.*, may even be used to obtain records held by administrative **tribunal** you will be appearing before



Freedom of Information in Ontario

- basic mechanics of request
 - make written request, pay \$5 fee
 - if unsure what relevant records institution holds, institution has **duty to assist** requester in formulating request
 - but requester also has duty to be reasonably **specific** in request, to enable institution to locate records
 - fees for access may apply *e.g.*, for locating, copying record
 - institution has **30 days** to respond



Freedom of Information in Ontario

- institution may rely on exemptions to withhold records, for example:
 - law enforcement
 - personal privacy
 - solicitor-client privilege
 - advice to government
 - Cabinet records
 - third party commercial information
- but **related litigation** not grounds for refusal



Freedom of Information in Ontario

- **appeal** to Commissioner
 - if unhappy with response, for example:
 - disagree with exemption or fee
 - institution fails to give timely response
 - institution says no records exist, or you say more exist
 - appeal in writing, pay appeal fee [\$10/\$25]
 - Commissioner employs mediators
 - investigate, mediate
 - vast majority of appeals **resolved** by mediation



Freedom of Information in Ontario

- **appeal** to Commissioner
 - if no settlement, Commissioner conducts **written inquiry**
 - using full range of **investigatory powers** [not *SPPA*]
 - power to enter premises, compel production of documents, compel testimony
 - generally, parties provide written submissions on facts and law
 - **fairness** achieved by sharing written submissions



Freedom of Information in Ontario

- Commissioner's **inquiry**
 - after considering submissions of all parties, Commissioner issues binding **order**
 - subject only to **judicial review** under *JRPA*
 - Commissioner's decisions generally reviewed by courts on standard of **reasonableness** [*Ontario v. IPC*, 2013 SCC 62]
 - Commissioner has **standing** as party in JR [*JRPA* s. 9(2)]
 - but court may limit scope of standing to ensure impartiality [*Children's Lawyer v. Goodis*, 2005 CanLII 11786 (ON CA)]



Federal Freedom of Information

- similar request process under federal *Access to Information Act*
 - can seek review by Information Commissioner of Canada
 - Commissioner has full range of investigatory powers, but can only make **recommendation** to government
 - Commissioner or requester may apply to **Federal Court** for hearing if unhappy with government response
 - FC can make binding order

