

# ***Transparency and Privacy in the Public Sector***

**Brian Beamish**  
**Commissioner**

***International Association of Privacy Professionals***  
***Dentons Canada LLP***  
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# The Three Acts

IPC oversees compliance with:

- *Freedom of Information and Protection of Privacy Act (**FIPPA**)*.
- *Municipal Freedom of Information and Protection of Privacy Act (**MFIPPA**)*.
- *Personal Health Information Protection Act (**PHIPA**)*.



# Institutions Under *FIPPA/MFIPPA*

## Provincial

- Health
- Education
- Policing/Administration of Justice
- Natural Resources
- Colleges and Universities
- Hospitals (not inc. patient health records)

## Municipal

- Municipalities
- Boards of health
- Police
- Public transit
- School boards
- Most other local boards



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# General Observations

- Balancing between privacy and access
- “P.I. or not P.I.” is no longer the only question
- Level of disclosure for the purpose of transparency greater than ever
- Expectations on public sector service delivery has increased



# *Transparency and Privacy on the Internet*



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# Publishing on the Internet

## Privacy Complaint Report MC13-67

- Complaint about a municipality's online publication of **personal information** collected as part of a minor variance application.
- IPC found publication of this information was **not in contravention** of *MFIPPA* - information was required to be made publicly available under the *Planning Act*.
- IPC recommended that City consider implementing privacy protective measures that obscure some personal information from search engines and automated agents.



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# Transparency, Privacy and the Internet: Municipal Balancing Acts



## Transparency, Privacy and the Internet: Municipal Balancing Acts



- Guide provides municipalities with **privacy protective policy, procedural** and **technical** options when publishing personal information online.
- Focuses on pi required to be published by legislation, but **may be applied** in any situation where municipalities make information available online.

# Risk Mitigation Strategies

## Transparent administration

- When information is received, be clear about:
  - How and why it will be published;
  - Laws and policies governing its collection, use, retention and disclosure;
  - Processes to redact personal information; and
  - Any tools employed to limit secondary and unrelated uses of the information.
  - Manage expectations





# Other Strategies

## Data minimization

- Request and store only as much personal information as is necessary.

## Redaction

- Remove unnecessary personal information before publishing; e.g. anonymize decisions



# Technology Options

- Limit search by:
  - Designating site content “off limits” to search engines, e.g., using robots exclusion protocol;
  - Preventing robots from accessing site contents, e.g., blocking robots, diverting robots, using JavaScript;
  - Verifying that the user is a human, e.g., CAPTCHAs, using images instead of text.



# Examples from Public Institutions Across Canada

- The **Canadian Human Rights Tribunal**, the **Social Security Tribunal** and the **Manitoba Labour Board** replace names with initials when they post decisions online.
- The **Canada Agricultural Review Tribunal** and the **Public Service Labour Relations and Employment Board** use sitemaps that exclude web pages and directories containing personal information, hiding that content from robots.



# Sometimes Publication is a good thing!



**Ontario** | [Ontario.ca](#) | [Français](#)

## TREASURY BOARD SECRETARIAT

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### Public Sector Salary Disclosure for 2014: Government of Ontario : Ministries

The information contained in these pages is a copy of the official documents of these organizations. Since the Public Sector Salary Disclosure Act does not specify the language in which these documents need to be prepared, the Treasury Board Secretariat publishes these documents in the original language in which they were prepared and presented to the Secretariat.

#### Disclosure for 2014 under the Public Sector Salary Disclosure Act, 1996 Government of Ontario : Ministries

This category includes all ministries.

#### Divulguation pour 2014 en vertu de la Loi de 1996 sur la divulgation des traitements dans le secteur public Gouvernement de l'Ontario : Ministères

Cette catégorie englobe tous les ministères.

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Employer / Employeur	Surname / Nom de famille	Given Name / Prénom	Position / Poste	Salary Paid / Traitement	Last Page Taxable Benefits / Avantages imposables
Aboriginal Affairs / Affaires autochtones	ALMOND	MARGOT	Director, Corporate Management / Directrice, gestion ministérielle	\$123,153.63	\$204.96
Aboriginal Affairs / Affaires autochtones	ANIOL	RICHARD	Senior Negotiator / Négociateur principal	\$102,860.59	\$173.98
Aboriginal Affairs / Affaires autochtones	BENNETT	PHYLLIS	Manager, Issues Management & Media Relations / Chef, gestions des questions d'intérêt et relations avec les médias	\$114,399.48	\$189.54
Aboriginal Affairs / Affaires autochtones	BIRD	ANNE	Team Lead / Chef d'équipe	\$103,033.91	\$176.37
Aboriginal Affairs / Affaires autochtones	BLISS	ROSE	Manager, Performance Measures & Data / Chef, mesures et données de rendement	\$102,045.84	\$175.66
Aboriginal Affairs / Affaires autochtones	CARR	DOUGLAS	Assistant Deputy Minister, Negotiations & Reconciliation / Sous-ministre adjoint, négociations et réconciliation	\$185,661.92	\$298.74



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# ***Public Sector Accountability and Bill 8***



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# Deleting Accountability

## Deleting Accountability: Records Management Practices of Political Staff

A Special Investigation Report

June 5, 2013



Information & Privacy Commissioner,  
Ontario, Canada

Ann Cavoukian, Ph.D.  
Commissioner

- IPC conducted an investigation into **deleted emails** and found that thousands of documents had been destroyed without authorization.
- Commissioner made a number of **recommendations** regarding appropriate records management practices.



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# Deleting Accountability

In addition to recommendations on record retention policies and staff training, the IPC also recommended amendments to *MFIPPA* and *FIPPA*:

1. Create legislative **duty to document** business actions and decisions and the reasons for them.
2. Require institutions to define, document and put into place **reasonable measures** to securely retain records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*.



# Deleting Accountability

3. Prohibit the **willful destruction** of records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*.
4. Make it an **offence** under *FIPPA* and *MFIPPA* for any person to willfully destroy records that are subject to, or may reasonably be subject to, an access request under *FIPPA* and *MFIPPA*.





# **Bill 8, *Public Sector and MPP* *Accountability and Transparency Act***

- Bill 8, the *Public Sector and MPP Accountability and Transparency Act, 2014*, came into effect January 1, 2016.
- Requires institutions to take **reasonable measures** to protect their records in accordance with recordkeeping requirements.
- Makes it an **offence** to alter, conceal or destroy a record with the intention of denying a right to access the record, with a penalty of up to \$5,000.



# Recordkeeping Amendments to FIPPA and MFIPPA Information Sheet

The Public Sector and MPP Accountability and Transparency Act, 2014 amended the Freedom of Information and Protection of Privacy Act (FIPPA) and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The FIPPA/MFIPPA amendments related to recordkeeping are contained in Schedule 6 of the Act.

Schedule 6 can be viewed at this link (Public Sector and MPP Accountability and Transparency Act)

## Is my organization covered by these amendments?

The amendments apply to all FIPPA/MFIPPA institutions. This includes (but is not limited to) all provincial government ministries, hospitals, colleges, universities, school boards, municipalities, and police services boards.

## What are my organization's responsibilities under these amendments?

The head of each organization subject to FIPPA and MFIPPA is required to ensure that reasonable measures are developed, documented and put into place to preserve the organization's records in accordance with any recordkeeping or records retention requirements, rules, or policies, that apply to the institution.

Recordkeeping rules may be established for an institution by policy, by-law or law.

## Appendix A

# Recordkeeping Practices Checklist

The Public Sector and MPP Accountability and Transparency Act, 2014  
Schedule 6

The checklist below is intended to be a reference and guidance tool for FIPPA/MFIPPA institutions when assessing their recordkeeping practices. It is recommended that institutions review this checklist with their legal counsel and recordkeeping staff when evaluating their institution's readiness with the recordkeeping amendments to FIPPA/MFIPPA.

1. Does your organization have recordkeeping, record retention rules and/or policies in place?  Yes  No
2. Are they regularly reviewed and updated?  Yes  No
3. Have those policies been updated to reflect the new recordkeeping amendments?  Yes  No
4. Are there records management procedures in place to implement the rules/policies described above?  Yes  No
5. Are they regularly reviewed?  Yes  No
6. Are there tools and processes in place to assess whether your organization is complying with the recordkeeping amendments to FIPPA/MFIPPA?  Yes  No
7. Are there record retention schedules that capture all records in your organization?  Yes  No
8. Do the record retention schedules cover all formats of records (paper, digital, scanned records, email, etc.)?  Yes  No



# *FIPPA* and *MFIPPA*: The Recordkeeping Amendments

- IPC prepared this paper to help institutions **understand their responsibilities** as well as develop and implement plans to address the new amendments.
- IPC strongly supports these amendments because they will bring increased **transparency and accountability** to Ontario's public institutions.



## *FIPPA* and *MFIPPA*: Bill 8 – The Recordkeeping Amendments

December 2015



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# Implementing Changes

- Where record keeping policies, procedures or legislated requirements **exist**:
  - **Policies are not enough** – reasonable measures must be taken to protect records in accordance with those requirements.
  - Objective standards for compliance may require ongoing and regular **training**, development of **training tools**, regular **reviews and audits** to ensure compliance and performance measurement.



# Implementing Changes

- Where policies or procedures **do not exist**:
  - **Retention policies and procedures** must be developed;
  - Institutions need to consider entire lifecycle of their records in order to protect them at all stages;
  - There is no one-size-fits-all solution;
  - Institution's **size, budget, volume and types of records** will affect what is reasonable.



# Opportunities

- Implementing information management best practices will facilitate compliance with Bill 8 changes, in addition to:
  - Improving **response times** and efficient use of resources in FOI requests;
  - Improving ability to **locate and preserve** an institution's most valuable resources;
  - Facilitating **Open Government** and proactive disclosure by making records accessible and protecting sensitive information.
  - **Reducing costs** by processing fewer FOI requests; saving time for searches; and requiring less storage.



# *Open Government*



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# Ontario's Open Government Initiative

- Open Government involves three pillars:
  - **Open Information** - proactive release of information about the operation of government to improve transparency and accountability, promote public debate.
  - **Open Data** - proactive publishing of data collected by government in free, accessible and machine-readable formats and encouraging its use by the public as well as within government.
  - **Open Dialogue** - proactive involvement of the public in planning and decision-making to ensure that the government understands and responds to public interests in a collaborative way.



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# Open Data Directive

- Last summer the Ontario government **sought input** into the development of Ontario's draft Open Data Directive.
- The final Directive was published in November 2015, and will take effect on **April 1, 2016**.
- ODD requires all government data to be made **public**, unless it is exempt for legal, security, confidentiality, privacy, or commercially sensitive reasons.



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# Two New Requirements Related to the IPC's Recommendations

- **Privacy Protection:** A privacy principle that makes it explicit that personal Information is not to be released as Open Data under the terms of the Open Government licence.
- **Procurement:** A mandatory requirement for vendors to agree that financial data of contracts are not considered commercially sensitive and may be released.



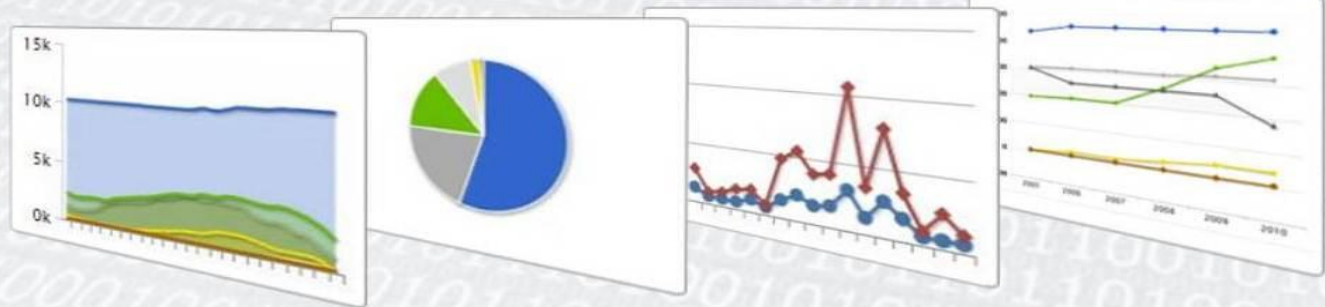
# Open Data Directive:

## Procurement and Contracts

### Section 1.1

- The Government of Ontario will obtain the right to publish procurement contract data as Open Data. Procurement contract data such as the winning bid for every contract awarded (e.g. vendor name, financial payment information) should be included and published in a timely manner, unless excluded from being made available as Open Data. Vendors shall agree that financial data of contracts are not considered commercially sensitive and may be released.*



 Open  
Data

## Ontario Open Data

**Ontario + Open Data** - we like the sound of that. We're hoping to unleash a new generation of winning ideas, services and applications.

[Browse or search through a collection of datasets](#)

### Three simple steps

We think we can jump-start success with three simple steps:

1. **Fine-tune our open data program** (we're working on it).
2. **Get advice:** tell us how you use data and what data is most useful to you.
3. **Make it simpler** for you to use data in the first place.

### Others also looked at

[Road Conditions](#)

[Service Centres](#)

[Planned Roadwork](#)

[Drinking Water "Where does my water come from?" Map data](#)



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# Open Cities Index

- Public Sector Digest ranked the Open Data programs of 34 Canadian municipalities:
  - Toronto #2
  - Ottawa #4
  - London #5
  - Windsor #8
  - Oakville #9



# IPC's Efforts

- IPC continues to work with governments to advance Open Government.
- Reaching out to institutions to learn from their experience (Guelph).
- Participate in a municipal-lead Open Government Community of Practice.
- Developing guidance papers to help all institutions to begin or expand their Open Government programs:
  - Focus on **smaller institutions**, including municipalities, school boards.
  - **Small steps** approach: IPC recognizes moving to open by default can be daunting task.
  - **Engaging institutions** to identify their needs, give advice on how to move forward.



# Open Government, Open Contracting



## Open Contracting: Proactive Disclosure Of Procurement Records

September 2015

- Proactive disclosure of procurement records will improve the **transparency of government spending** and reduce resources required to respond to access to information requests.
- This paper provides guidance on how to make procurement records publically available, while protecting sensitive **third party information** and **personal information**.

# Open Government, Open Contracting

- Make proactive disclosure **the default**;
  - Commitment of senior leadership is key.
- **Engage** your stakeholders regarding the design of your procurement process.
- Design your procurement with **limited exceptions**;
  - Understand how to deal with third party information and personal information.
- **Be transparent** about transparency;
  - Be upfront and clear when gathering information from third parties about your intentions to disclose.



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# *Coming Soon from the IPC*



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# Coming Soon from the IPC

- **Records Management** – A guide for records information management best practices.
- **PHIPA Email Guidelines** – Fact sheet about health information custodians communicating with each other and patients over email.
- **Cloud Computing** – Overview of the privacy implications associated with implementing this technology.
- **Automatic Licence-Plate Recognition (ALPR)** – Guidance for the use of ALPR systems by police services.



# How to Contact Us

**Information and Privacy Commissioner of Ontario**

**2 Bloor Street East, Suite 1400**

**Toronto, Ontario, Canada**

**M4W 1A8**

**Phone: (416) 326-3333 / 1-800-387-0073**

**Web: [www.ipc.on.ca](http://www.ipc.on.ca)**

**E-mail: [info@ipc.on.ca](mailto:info@ipc.on.ca)**



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