

**REACHING OUT
TO ONTARIO**

Ensuring Access to Information and Protecting Privacy

**Brian Beamish
Commissioner**

Reaching Out to Ontario
Queen's University, Kingston
May 4, 2016



Information and Privacy
Commissioner of Ontario

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

www.ipc.on.ca

Our Office

- The Information and Privacy Commissioner (IPC) provides an independent review of government decisions and practices concerning access and privacy.
- The Commissioner is appointed by and reports to the Legislative Assembly; and remains independent of the government of the day to ensure impartiality.

The Three Acts

- The 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**)*

Mission, Mandate & Values

- *MISSION*: We champion and uphold the public's right to know and right to privacy.
- *MANDATE*: We resolve access to information appeals and privacy complaints, review and approve information practices, conduct research and deliver education and guidance on access and privacy issues, and comment on proposed legislation, programs and practices.
- *VALUES*: Respect, Integrity, Fairness, Collaboration and Excellence.

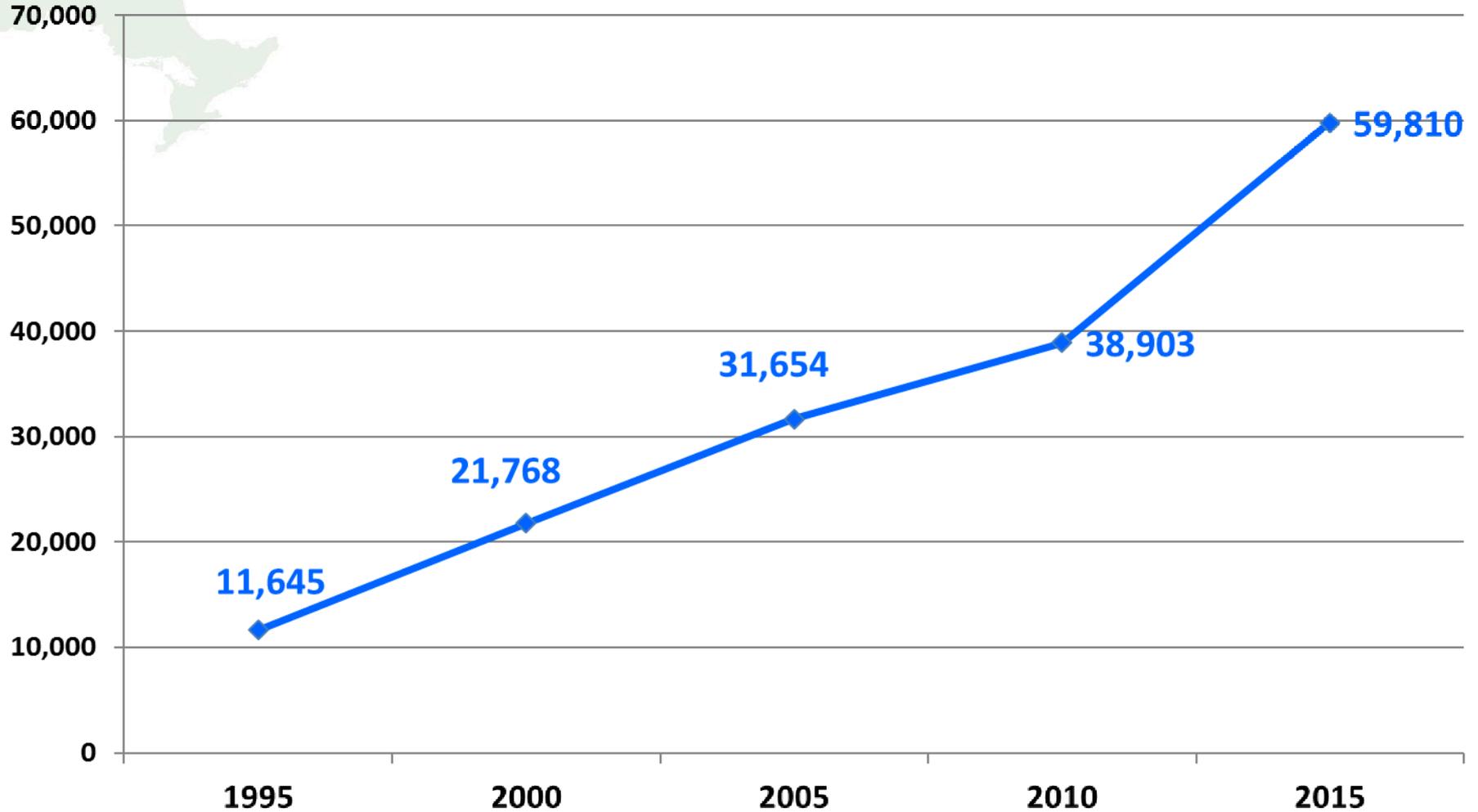
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ACCESS TO INFORMATION

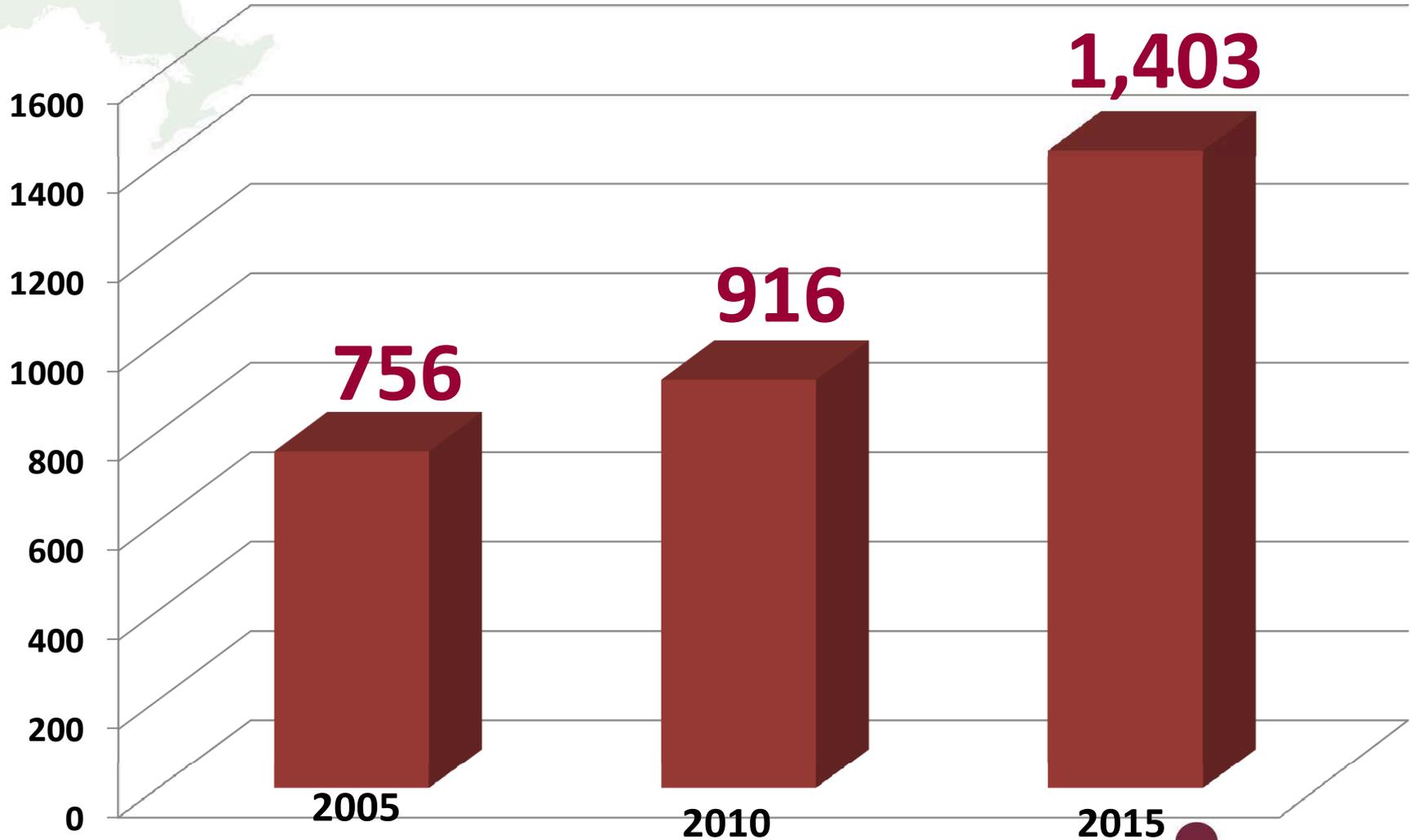


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Total Access Requests Per Year



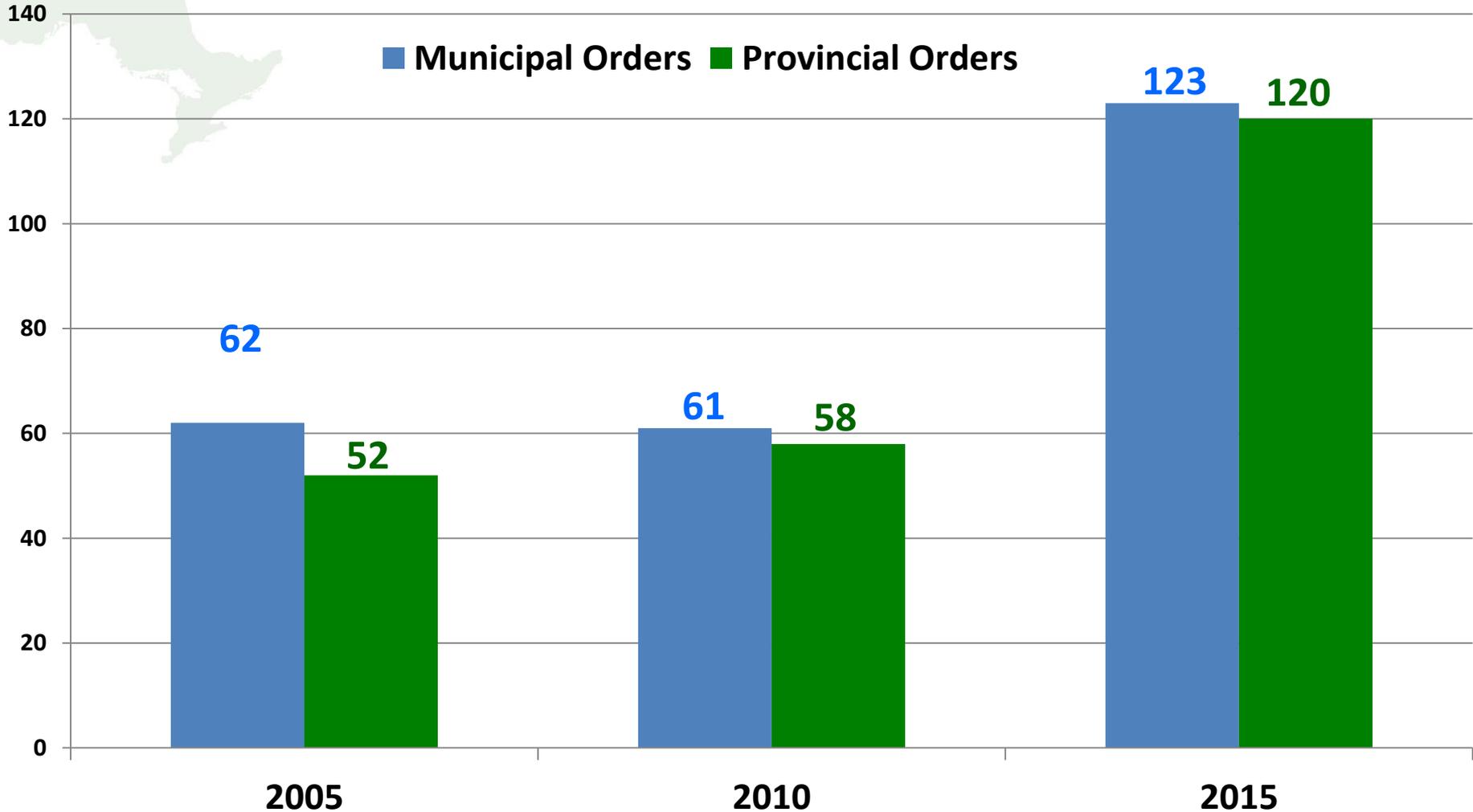
Total Appeals Received Per Year



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Total Orders Issued

■ Municipal Orders ■ Provincial Orders

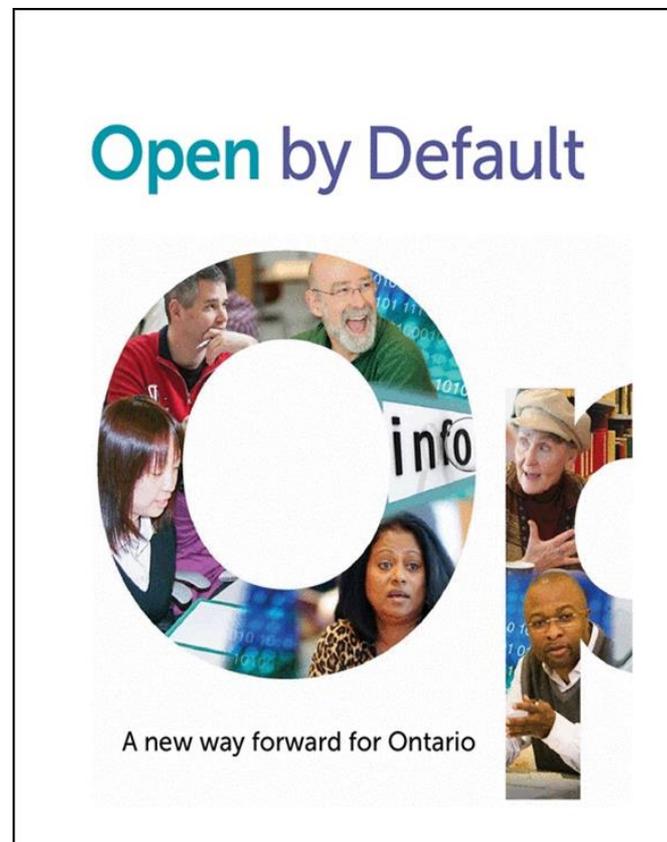


Mediation: Success Behind the Scenes

- Many appeals and privacy complaints are resolved through the work of our intake analysts and mediators.
- We strive to find a resolution which satisfies the needs of all involved.
- This saves significant time and resources for all parties.
- Vast majority of personal health information privacy complaints are brought to a resolution by our mediators.

Open Government

- Open Government supports and enables the right of access to information granted in *FIPPA* and *MFIPPA*.
- The IPC strongly supports open government initiatives and encourages all institutions to adopt an Open by Default approach.



Open Contracting and the IPC

- Since 1994, the IPC has been calling for greater transparency through routine and proactive disclosures:
 - Commissioner’s Recommendations (2005, 2006, 2013). In our Annual Reports, the IPC has consistently advocated for greater transparency around procurement.
 - Last November, the government completed the Open Data Directive which provided important direction for disclosure of procurement information.

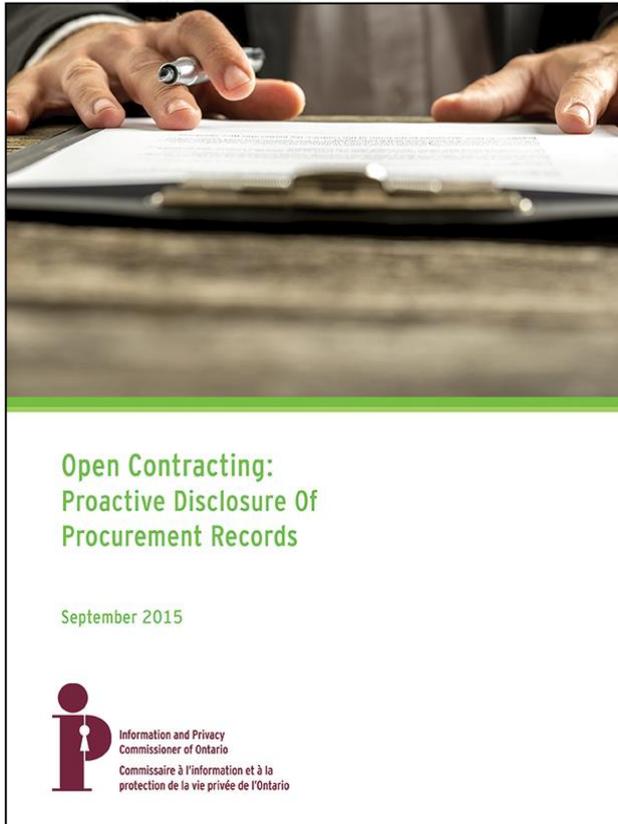
Why Open Contracting?

- Open contracting has a number of benefits:
 - Improved public confidence and trust,
 - Increased accountability on spending,
 - Increased fairness and competition in contracting,
 - Reduction in the number of access to information requests and appeals.

Open Data Directive: Procurement and Contracts

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 Contracting



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

Councillor Records

- Order MO-3281 instructed the city of Oshawa to issue an access decision about an email that a Councillor sent using her personal email account.
- The email's content was found to be in the city's control as it was directly related to a city matter.
- The determination of whether councillors' records are subject to *MFIPPA* depends largely on the context.

The Oshawa Express

"WELL WRITTEN. WELL READ." Oshawa's Community Newspaper

HOME NEWS LIFESTYLES SPORTS POLICE BRIEFS COLUMNISTS

BREAKING NEWS March 24, 2016 in Lifestyles: **Night with The Boss**

Home » News » Commissioner orders release of emails

Commissioner orders release of emails

Messages between councillor, lawyer to be made public; city can still file appeal

Posted on January 27, 2016 in News



The province's Information and Privacy Commissioner has ruled that email correspondence between Councillor Nancy Diamond and municipal lawyer George Rust-D'Eye be released. The two exchanged emails prior to Rust-D'eye being brought in by the city to investigate the findings in AG-13-09, the report by former auditor general Ron Foster detailing the purchase of 199 Wentworth St. E., now the city's consolidated operations depot.

By Joel Wittnebel/The Oshawa Express

For more than two years, Rob Vella has been at war.

It's not a battle fought with bullets and manpower, but one with paperwork, appeals and patience.

In 2013, the Oshawa resident filed a Freedom of Information request with city hall. Vella was looking to get his hands on a key piece of correspondence that, he figures, could shine a spotlight on the circumstances behind one of the most controversial decisions made by Oshawa councillors in recent memory; the hiring of municipal lawyer George Rust-D'Eye to look into the allegations made by former city auditor general Ron Foster in AG-13-09. In this report,



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New Fact Sheet Series

- Published to clarify confusion about records held by municipal councilors.
- Outlines when and how councilors' records are subject to access.
- This is the first in a new IPC series to help parties navigate the access to information process and understand our views.



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FOI Fact Sheet 1

The *Municipal Freedom of Information and Protection of Privacy Act* and Councilors' records

April 2016

INTRODUCTION

The Information and Privacy Commissioner of Ontario (IPC) sometimes decides appeals relating to requests for access to records created or held by municipal councilors. The *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* does not expressly refer to records of municipal councilors and, therefore, before a determination can be made on access to those records, the IPC must decide whether *MFIPPA* applies. In making this decision, the IPC examines the specific facts of each case in light of a number of principles.

The IPC has been calling for amendments to *MFIPPA* to clarify when it applies to these records, including in August 2015, when the IPC wrote to the Minister of Municipal Affairs and Housing setting out proposed amendments (this letter is available on the IPC's [website](#)).

In the absence of amendments, however, the IPC is issuing this fact sheet, which explains when and how councilors' records are subject to *MFIPPA*.

WHEN ARE COUNCILLORS' RECORDS SUBJECT TO *MFIPPA*?

Councilors' records are subject to *MFIPPA* where:

1. a councilor is acting as an officer or employee of the municipality, or performs a duty assigned by council, such that they might be considered part of the institution, or
2. the records are in the custody or control of the municipality.

WHEN IS A COUNCILLOR AN OFFICER OR EMPLOYEE OF A MUNICIPALITY?

A councilor is likely to have several roles, such as an individual constituent representative, a politician, or a head or member of a municipal committee or board, such as a transit corporation. Some of these roles may entail the councilor acting as an officer or employee, while others do not.



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Coming Soon: New Guidance

- This month, we will release a new guidance paper: *Instant Messaging and Non-Institutional Email Accounts: How to Meet Your Access and Privacy Obligations*
- It is designed to help Ontario's public institutions manage the use of instant messaging and non-institutional email accounts.
- Records pertaining to public business that are created, sent or received through these accounts are subject to Ontario's access laws.
- Institutions need to prohibit use or enact measures to ensure records are preserved.



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PRIVACY



Publishing on the Internet

Privacy Complaint Report MC13-67

- A complaint was received about a municipality's online publication of personal information collected as part of a minor variance application.
- The investigator found that the publication of this information was not in contravention of the *MFIPPA* because the published information was required to be made publicly available under the *Planning Act*.
- The investigator, however, recommended that the City consider implementing privacy protective measures that obscure this type of information from search engines and automated agents.

Publishing on the Internet

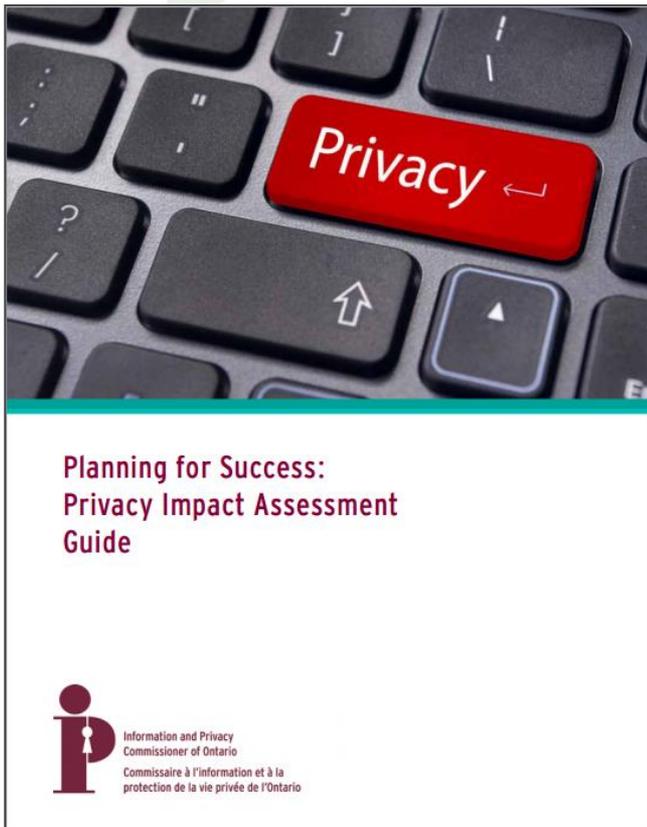


Transparency, Privacy and the Internet:
Municipal Balancing Acts



- This guide provides municipalities with privacy protective policy, procedural and technical options when publishing personal information online.
- The focus is primarily on personal information that is required by legislation to be published, but may be applied in any situation where municipalities make information available online.

Privacy Impact Assessment Guide



- PIAs are tools to identify privacy impacts and risk mitigation strategies
- PIAs are widely recognized as a best practice
- This guide provides institutions with step-by-step advice on how to conduct a Privacy Impact Assessment (PIA) from beginning to end.

Yes, You Can

- IPC collaborated with the Provincial Advocate for Children and Youth to develop this guide about privacy and Children's Aid Societies
- This guide dispels myths and explains that privacy legislation is not a barrier to sharing information about a child who may be at risk

YES,

YOU

CAN.

DISPELLING THE MYTHS ABOUT
SHARING INFORMATION WITH
CHILDREN'S AID SOCIETIES.

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Body Worn Cameras

- Body Worn Cameras (BWCs) present different challenges from CCTV and dashboard camera systems
- As mobile devices, they have the potential to capture information in various settings, including private places like residences, hospitals and places of worship
- BWCs viewed as important transparency and accountability tools
- Balance between transparency, accountability, law enforcement needs and right to privacy is imperative
- We put forward recommendations to Toronto Police Service on its pilot project and look forward to reviewing the results.

Governance Framework For BWCs

- A comprehensive framework should be in place to address privacy and security issues including:
 - When recording will be permitted, required, prohibited (e.g. on/off protocols)
 - The retention, use, disclosure and destruction of recordings
 - Privacy and security safeguards for cameras, servers, and other systems (e.g. encryption, role-based access, audit processes)
 - Responding to access requests (e.g. redaction)
 - Specific requirements regarding notifying individuals of the collection of their PI

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HEALTH



Unique Characteristics of Personal Health Information (PHI)

- Highly sensitive and personal in nature
- Must be shared seamlessly among a range of health care providers to deliver timely, efficient and effective health care to the individual
- Dual nature of PHI is recognized in *PHIPA* through concept of “*assumed implied consent*”

Why is the Protection of Privacy So Critical?

- The need to protect the privacy of individuals' PHI has never been greater given the:
 - Extreme sensitivity of PHI
 - Greater number of individuals involved in the delivery of health care to an individual
 - Increased portability of PHI
 - Emphasis on information technology and electronic exchanges of PHI

EHR Records under Bill 119

- In relation to the provincial electronic health record (EHR), the Bill:
- Sets out rules for collection, use and disclosure:
 - Establishes processes by which individuals can implement consent directives
 - Establishes processes by which individuals access their records of PHI

Bill 119 Summary

- The Bill proposes to:
 - Require privacy breaches to be reported to our office and to relevant regulatory colleges
 - Remove the requirement that prosecutions be started within six months of when the offence occurred
 - Double fines for offences from \$50,000 to \$100,000 for individuals and \$250,000 to \$500,000 for organizations

Updated Guidance: Frequently Asked Questions

- Updated information includes:
 - Questions on assumed implied consent and consent from children under 16.
 - Questions regarding the relationship between *PHIPA* and *FIPPA/MFIPPA*.
 - Notification requirements in the event of a breach.
 - Responsibilities with respect to accountability and openness.
 - Requirements in the event of a change of practice.
 - Emergency disclosure.
 - Obtaining health records of a deceased individual.
 - Storing, accessing and disclosing personal health information outside of Ontario.
 - Fees associated with a request to access health records.



Frequently Asked Questions *Personal Health Information Protection Act*

September 2015



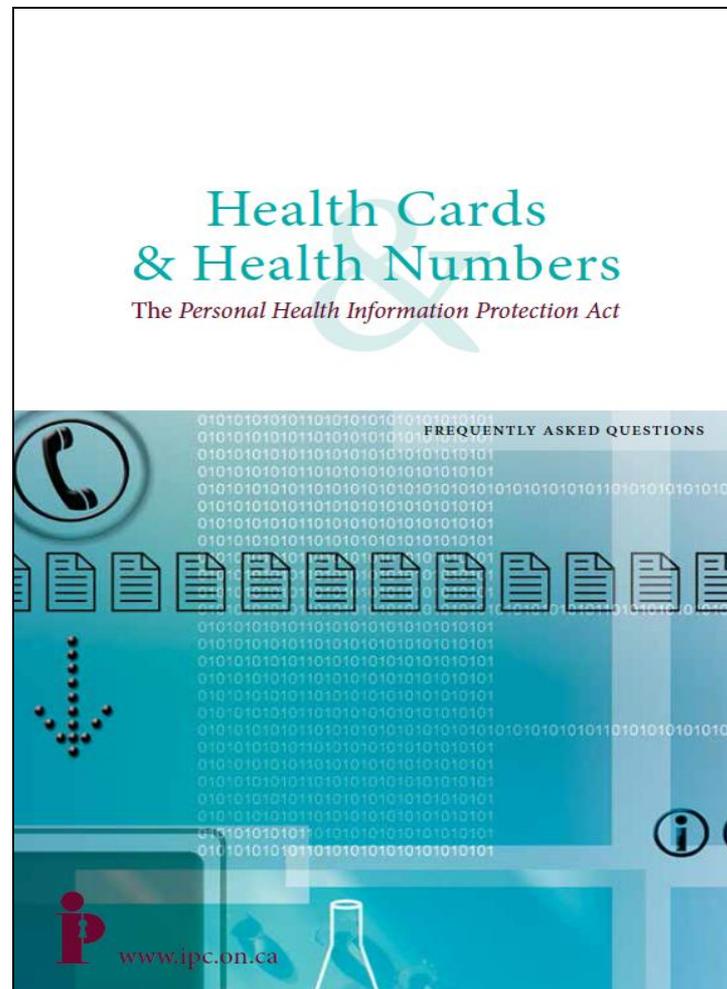
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Updated Guidance: Health Cards/Numbers

- This updated publication answers these questions:
 - Who may require individuals to provide their health cards?
 - Who may collect, use or disclose health numbers and under what circumstances?
 - Can health cards serve as proof of identification?
 - What should you consider before asking individuals to provide a health card or health number?

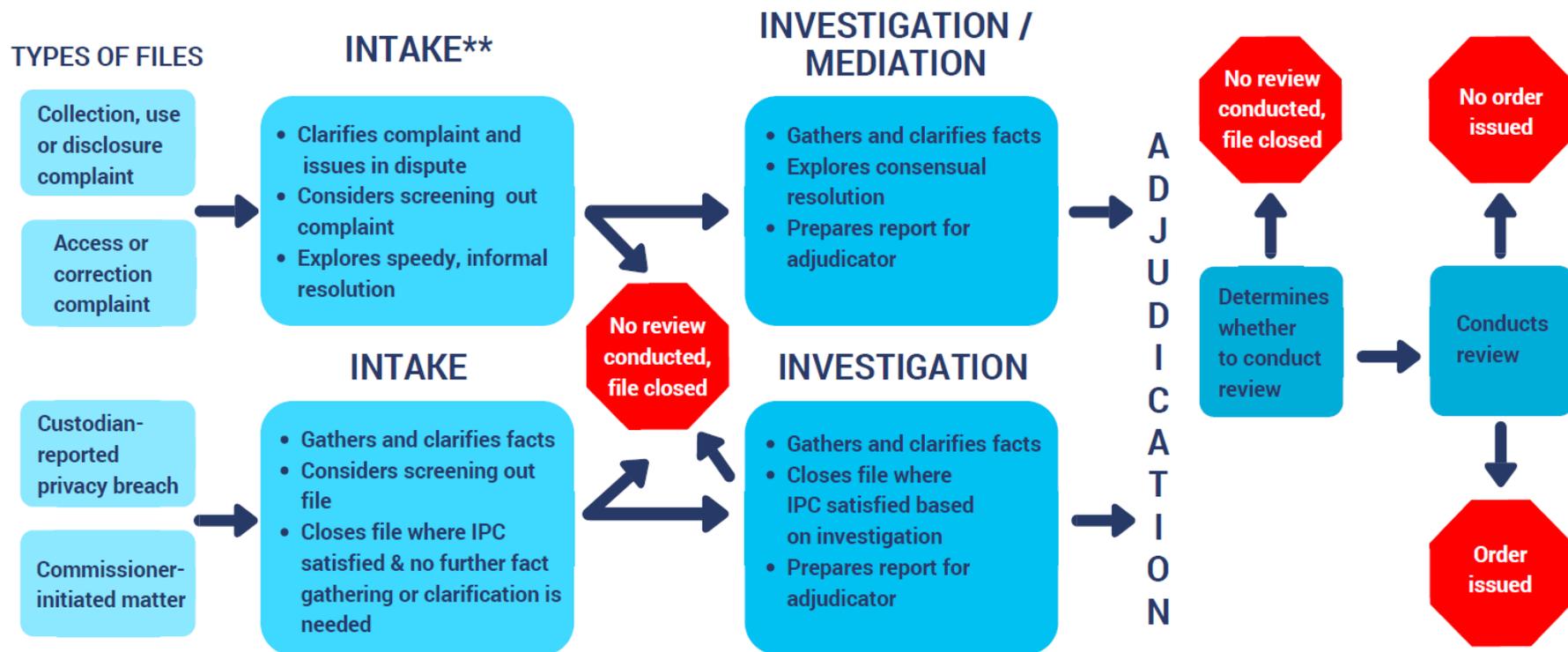


PHIPA Process Review

- 10+ years of experience handling *PHIPA* complaints.
- Volume of complaints will continue to increase with no expectation of increased resources.
- Are changes to our processes required for efficiency, fairness, consistency?
- Are IPC processes transparent enough to the public/custodians?
- Can we do a better job of providing precedents and guidance through our tribunal function?

Simplifying the *PHIPA* Process

PHIPA Pilot Project Process*



* The above process may be varied at the discretion of the IPC to achieve the fair, just and timely resolution of proceedings before the Commissioner or his delegates. Note specifically that urgent matters may be expedited to the adjudication stage.

** In addition to the general procedures outlined in the above flowchart, Intake also adjudicates time-sensitive complaints related to deemed refusals, failures to provide access and expedited access requests.

New *PHIPA* Processes

- As a result of these changes, the IPC will now be:
 - publishing an expanded range of *PHIPA* decisions;
 - clarifying the roles and responsibilities of the three stages of the tribunal processes: Intake; Investigation/Mediation; and Adjudication;
 - following similar processes for all types of complaints.

Panel Session Details

Concurrent panel sessions:

A. Topic: *Protecting personal health information in an electronic environment* (Room KHS 100)

Speakers:

- Manuela Di Re, Director of Legal Services and General Counsel
- Debra Grant, Director of Health Policy

B. Topic: *Key developments in access to information and privacy* (Room KHS 101)

Speakers:

- David Goodis, Assistant Commissioner, Policy and Corporate Services
- Sherry Liang, Assistant Commissioner, Tribunal Services

How to Contact Us

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