

Latest News from the IPC

Brian Beamish **Commissioner**

Ontario Connections

Access, Records, Security & Records Management Conference

June 8, 2016



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Commissioner of Ontario

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

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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Recent IPC Highlights

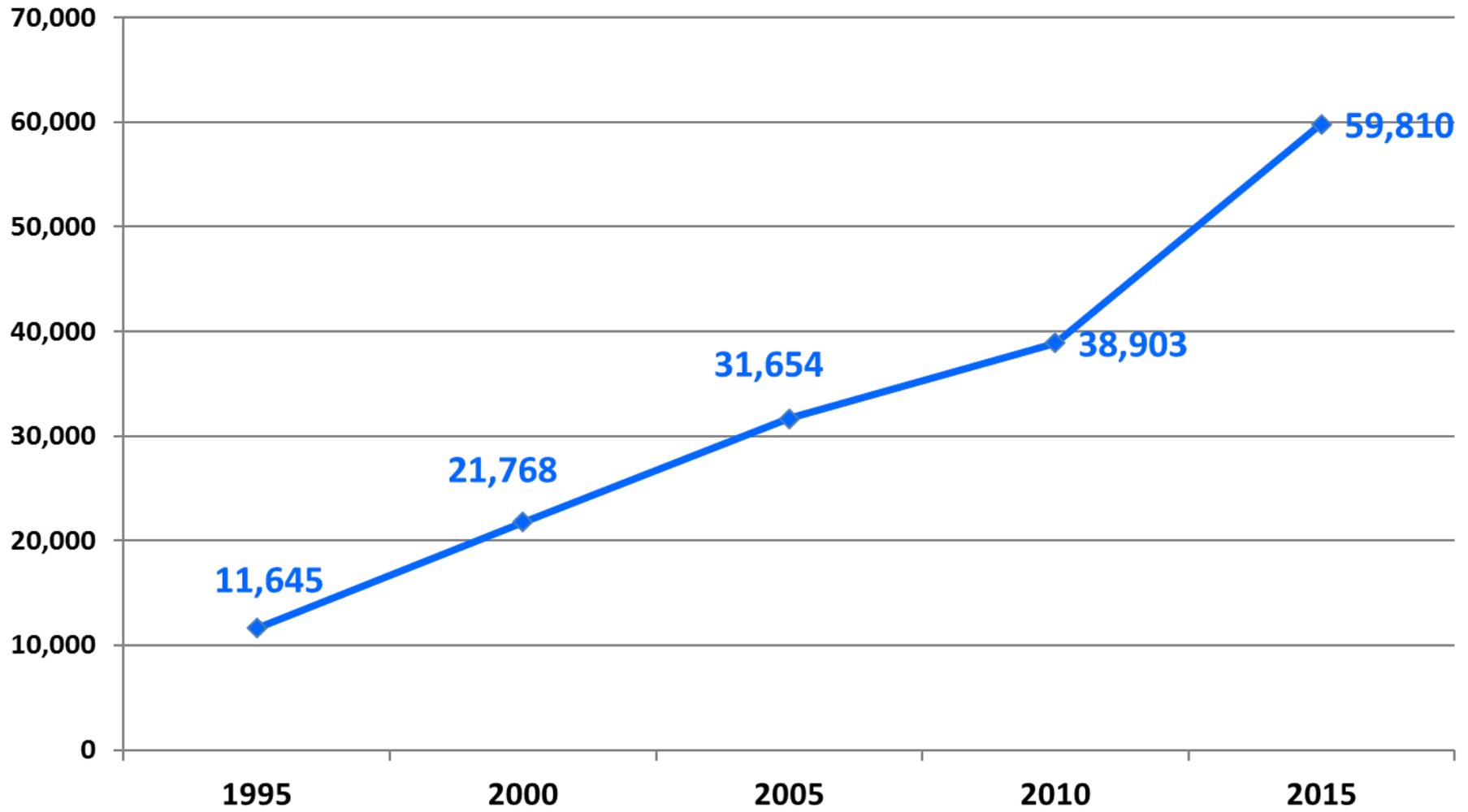
- Highlights:
 - Revitalized Reaching Out to Ontario program
 - Record number of consultations/working groups
 - Sharing the results of our work in practical guidance materials
 - Legislative consultations on Recordkeeping, Street Checks, ePHIPA, Ontario Retirement Pension Plan



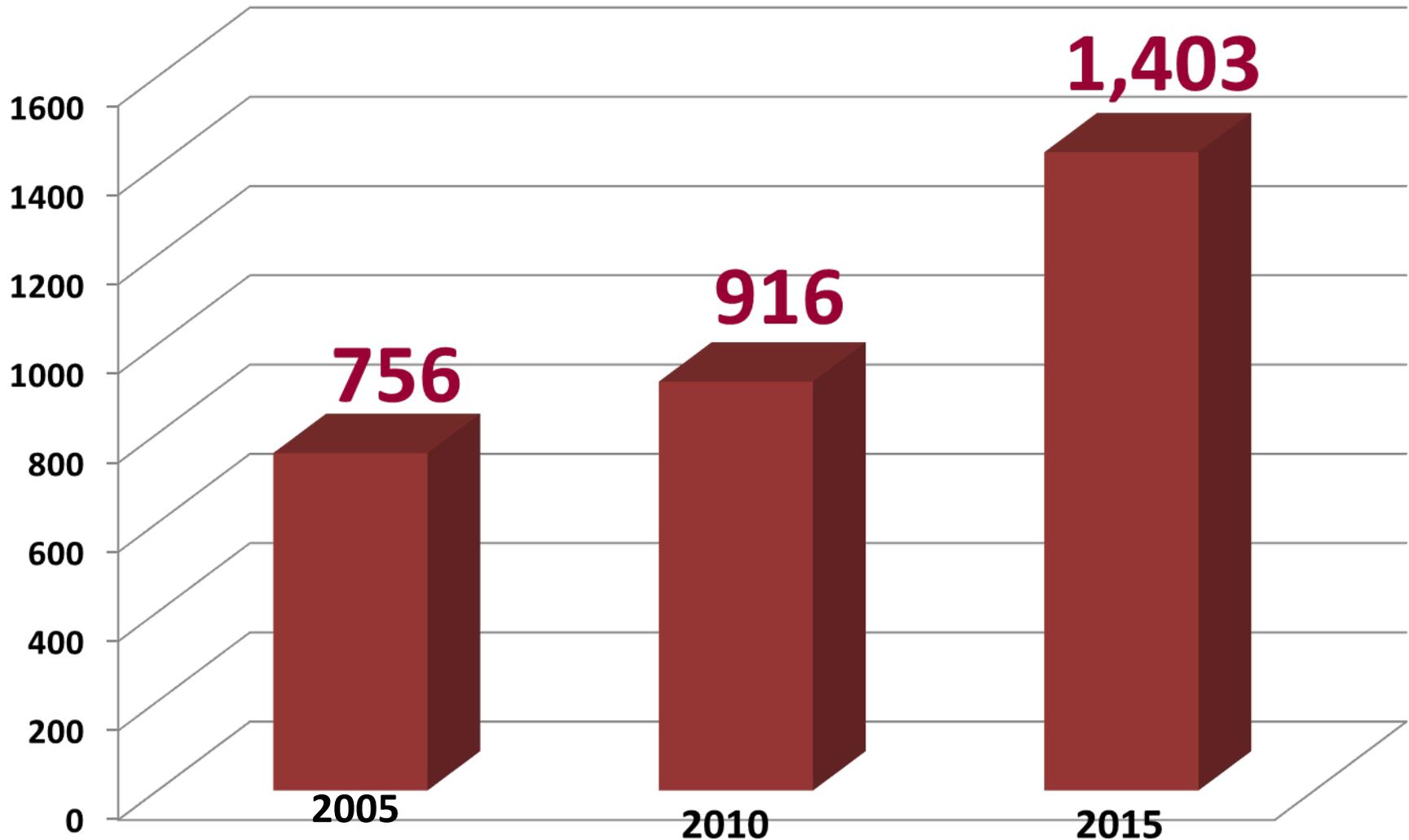
ACCESS



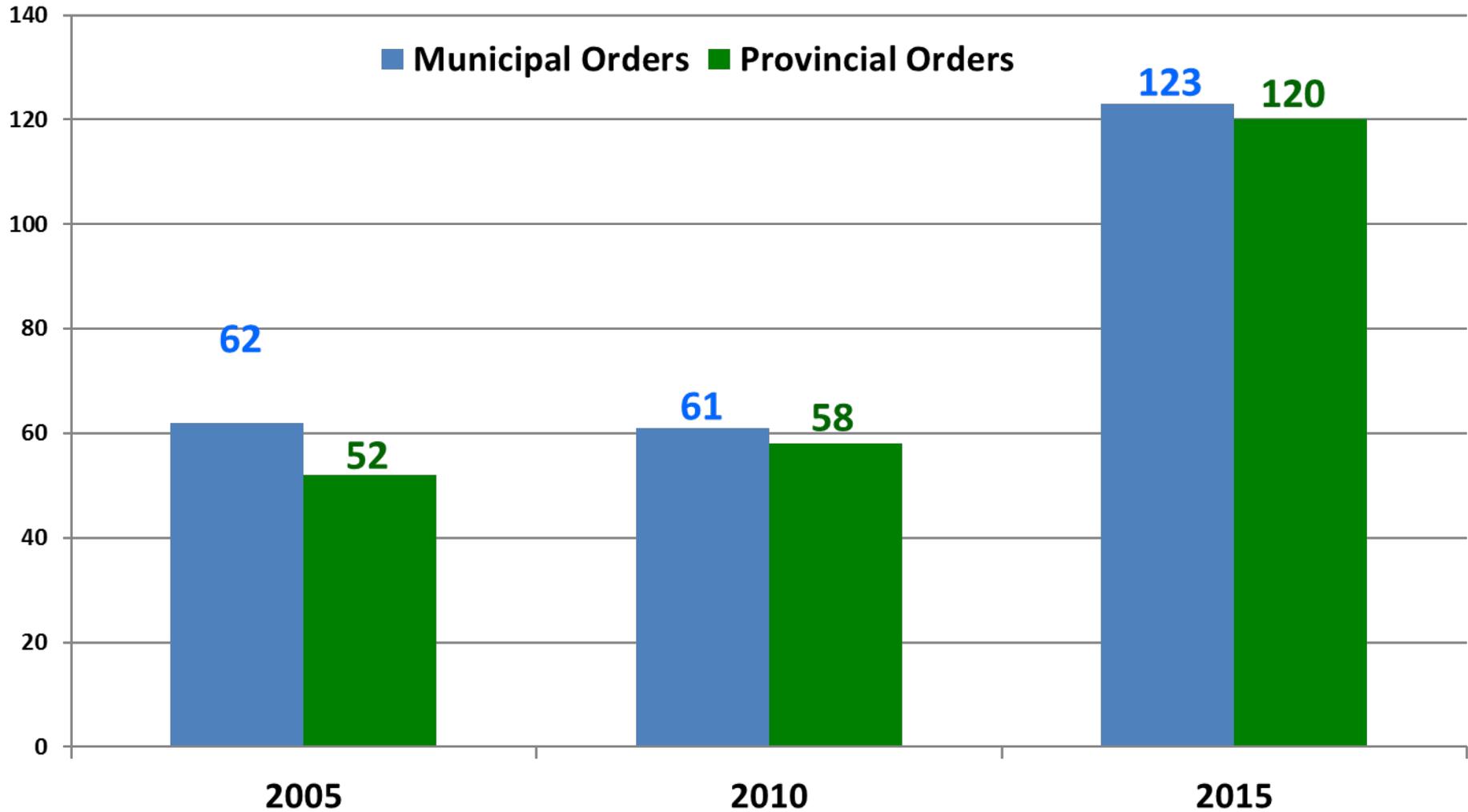
Total Access Requests Per Year



Total Appeals Received Per Year

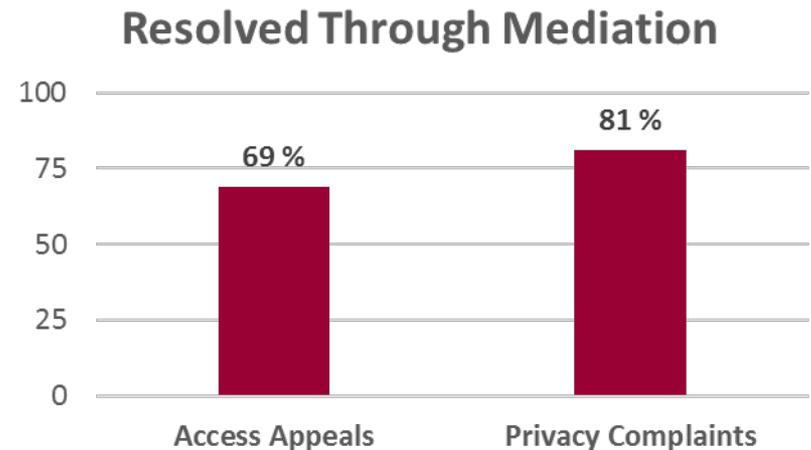


Total Orders Issued



Mediation: Success Behind the Scenes

- Many appeals and privacy complaints resolved through intake and mediation
- Goal is to find a resolution which satisfies all involved
- Mediation saves significant time and resources
- Vast majority of health privacy complaints resolved through mediators



Open Contracting

- High public interest in how government resources are used
- Procurement process must be transparent and open
- Benefits:
 - Improved public confidence and trust
 - Increased accountability on spending
 - Increased fairness and competition
 - Reduction in the number of access to information requests and appeals



Open Contracting and the IPC

- Contracts are not exempt—negotiated, not supplied
- IPC has called for greater transparency through routine and proactive disclosures in last three annual reports
- Multiple orders to disclose contracts in response to FOI requests for access
- Provided advice to Government of Ontario on disclosure of procurement information
- OPS Open Data Directive released in January 2016

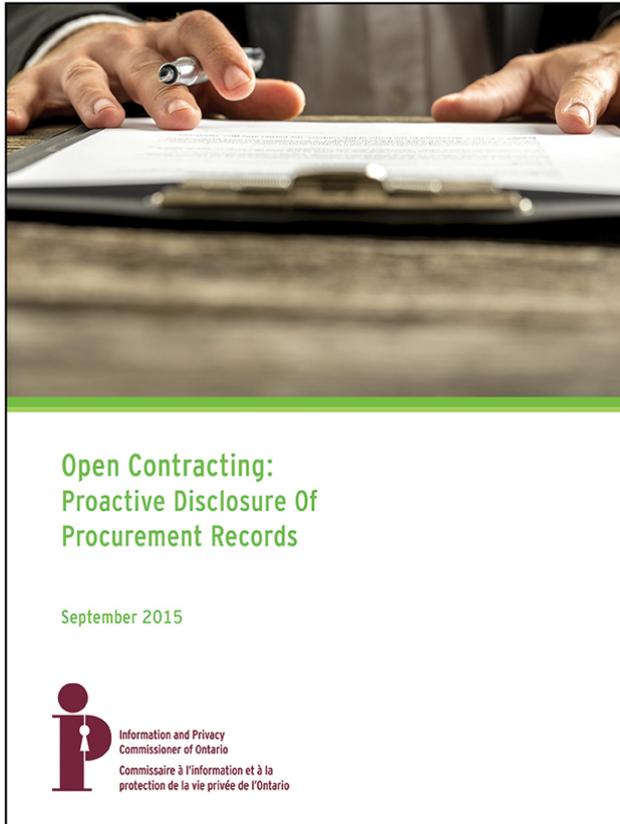


Open Data Directive: Procurement and Contracts

- All contracts between the Ontario government and its vendors must include provisions:
 - Giving the government and its vendors the right to publish contracts as open data
 - Requiring vendors to agree that financial data of contracts are not commercially sensitive and may be released
- Information for every contract awarded (e.g. vendor name, financial payment information) must be published in a timely manner



Open Contracting



- Improve transparency of government spending and reduce resources required to respond to access requests
- Guidance on how to make procurement records publically available
- Protecting sensitive third-party information and personal information (PI)

Proactive Disclosure Examples


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Proactive disclosure

Contracts

- Publications & resources
- Proactive disclosure
- Contracts**
- Expense reports
- Public proceedings of the Board
- Questions & answers

Listed below are copies of contracts between LAO, its various departments and external vendors. For more information on any of the contracts listed please contact us via info@lao.on.ca.

- [Employee contracts](#)
- [Vendor contracts](#)
 - [2015/16 contracts](#)
 - [2014/15 contracts](#)
 - [2013/14 contracts](#)
 - [2012/13 contracts](#)
 - [2011/12 contracts](#)

Employee contracts

Position	Name	Date	File
President and CEO	Robert W. Ward	June 26, 2006	

Vendor contracts

2015/16 contracts						
Reference number	Department	Name of vendor awarded contract	Date of contract	Contract details	Value	File
RFP2015-006	Policy & Strategic Research	Public Interest Strategy & Communications	Jan. 28, 2016	Public Legal Education and Information: Research and Analysis project	\$79,633.75	
RFP2015-012	Client Service Centre	Still Waters Consulting Inc.	Nov. 24, 2015	Information Management Consulting	\$57,915.33	
RFP2015-011	Corporate Services	Deloitte LLP	Sept. 4, 2015	Facilities and Space Strategy	\$47,779	
RFP2015-007	Provincial Case Management & Special Projects	HDR Corporation	Aug. 25, 2015	Analytics and Business Innovation Support	\$50,000	
RFP2015-006	Central Programming & Innovation	Pesce & Associates Inc.	July 16, 2015	Program Review of LAO's Harassment Prevention Policy and Program	\$16,950	
RFP2015-005	Strategic Technology and Innovation	Nielson Consulting Inc.	June 29, 2015	IVR Redesign	\$48,499.60	



Popular Search Jobs By

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City Hall » Accountability and transparency » Accountability framework » Disclosure of executed contracts » C

Contracts of significant public interest

As part of its commitment to accountability and transparency, on February 13, 2013, City Council adopted a policy to proactively disclose contract awards that have a value of \$100,000 or more and are of significant public interest.

If you are seeking information on any other contracts that would meet the description above, please contact the City Clerk and Solicitor Office at 613-580-2424 ext. 21215.

Contracts of significant public interest

Vendor	Date of Award	Value
Plasco Energy Group Inc. Plascoenergy Ottawa (1) Inc. Plasco Trail Road Inc.	December 14, 2011	\$204,000.00
Ottawa Sports and Entertainment Group - Lansdowne Partnership Plan	October 10, 2012	\$141,948,664.09 plus HST and a project management fee equal to 3% of the soft and hard costs of City's portion of the Parking Structure.
Rideau Transit Group General Partnership	December 19, 2012 (Council Approval) February 12, 2013 (Commercial and Financial Close)	Total investment during construction (including Highway 417 widening: \$2.0 billion) Total 35-year investment, including the maintenance term: \$4.4 billion



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Public Sector and MPP Accountability and Transparency Act, 2014

- Became law January 2016
- Institutions must implement reasonable measures to preserve records
- Offence to alter, conceal or destroy a record with intention of denying access
- Changes reflect most of IPC's recommendations from 2013 investigation report *Deleting Accountability: ("Gas Plants")*



Bill 8 Recordkeeping Amendments



FIPPA and MFIPPA: Bill 8 – The Recordkeeping Amendments

December 2015



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- What's new?
- Is my institution required to comply?
- What are records?
- What are the requirements?
- What are reasonable measures?
- Implementation strategies
- Information management strategies
- Duty to document



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Councillor Records

- Request for emails between a councillor and an individual who was hired by the city to investigate alleged wrongdoings of City of Oshawa staff
- The city denied access, claiming it did not have custody of the records because they came from a personal email account
- We ordered the information be released
- Records related to government business that are sent from a personal email account are subject to access laws

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

- Clarifies confusion about records held by municipal councillors
- When and how councillors' records are subject to access
- First in a new IPC series to help parties navigate the access to information process and understand IPC views



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FOI Fact Sheet 1

The *Municipal Freedom of Information and Protection of Privacy Act* and Councillors' 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 councillors. The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) does not expressly refer to records of municipal councillors 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 councillors' records are subject to MFIPPA.

WHEN ARE COUNCILLORS' RECORDS SUBJECT TO MFIPPA?

Councillors' records are subject to MFIPPA where:

1. a councillor 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 councillor 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 councillor acting as an officer or employee, while others do not.



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Personal Email/Instant Messaging

- New guidance: *Instant Messaging and Non-Institutional Email Accounts: How to Meet Your Access and Privacy Obligations*
- Designed to help manage the use of instant messaging and non-institutional email accounts

Personal email and instant messaging (such as BBM) are subject to freedom of information requests. We advise institutions to prohibit use or enact measures to ensure records are preserved



**Instant Messaging and
Personal Email Accounts:
Meeting Your Access and Privacy
Obligations**

June 2016

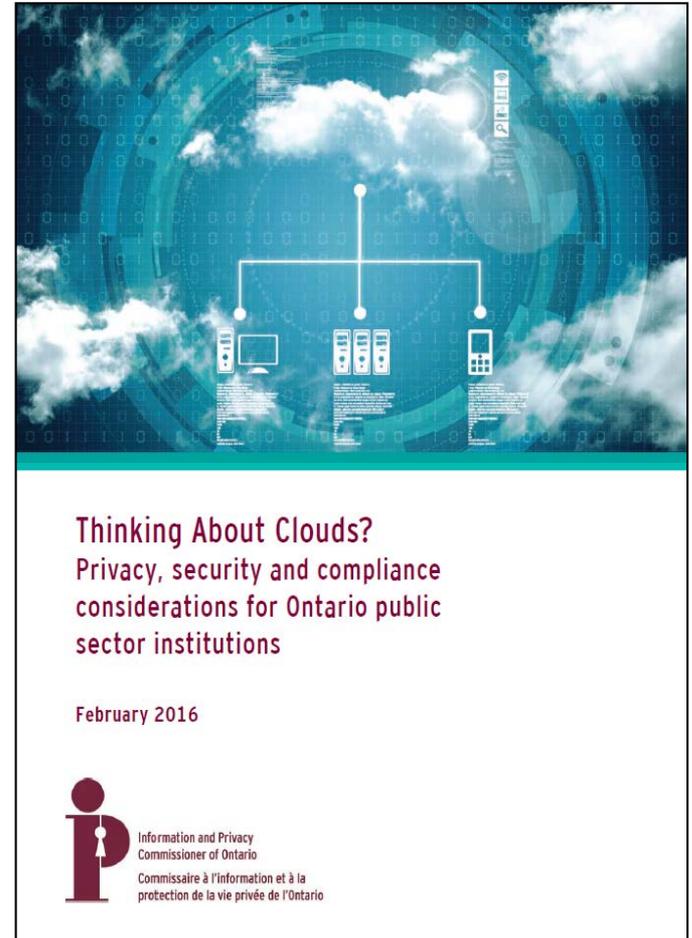


PRIVACY



Thinking About Clouds?

- Evaluate whether cloud computing services are suitable
- Identify risks associated with using cloud computing
- Outline strategies to mitigate risks



Clouds

Risks and Mitigation Strategies

Risks

- Unauthorized Processing and Secondary Uses
- Covert Surveillance
- Insider Threats
- Data Permanence
- Loss of Access
- Identifying Applicable Law
- Audit
- Inability to negotiate terms of service

Risk Mitigation Strategies

- Understand Your Legal and Policy Obligations
- Conduct a PIA and TRA
- Minimize PI
- Know Your Cloud Service Provider
- Negotiate Comprehensive and Enforceable Contracts
- Consider Applicable Standards
- Incident Management Plan



Privacy Complaint – Publishing Private Information

- Complaint about municipality publishing PI collected as part of a variance application
- IPC found publishing was not in contravention of the *MFIPPA* – it was required under the *Planning Act*
- IPC recommended protective measures to keep information from search engines and automated agents



Transparency, Privacy and the Internet: Municipal Balancing Acts



Transparency, Privacy and the Internet: Municipal Balancing Acts



Risk mitigation strategies:

- *Redaction*: remove unnecessary PI
- *Data minimization*: request and store only as much PI as is necessary
- *Technological measures*: to limit search-ability, E.g., robot exclusion protocols, images instead of text
- *Transparent administration*: be clear if information will be published; manage expectations

De-identification

Guidelines for Structured Data

- “De-identification” - the process of removing PI from a record or data set
- Outlines a risk-based, step-by-step process to assist institutions in de-identifying data sets containing PI
- Covers key issues to consider when publishing data:
 - *Release models*
 - *Types of identifiers*
 - *Re-identification attacks*
 - *De-identification Techniques*



De-identification Guidelines for Structured Data

June 2016



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Exercising Discretion: SIU

- Privacy laws allow institutions to use discretion in releasing PI
- Special Investigations Unit (SIU) investigation of the shooting of Andrew Loku attracted significant public attention
- Institutions may disclose details for the purposes of accountability and transparency, public confidence

The life and bloody death of Andrew Loku: Toronto police officer's face 'went white as a ghost' after shooting



RICHARD WARNICA | July 17, 2015 | Last Updated: Jul 19 2:06 PM ET
More from Richard Warnica



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Doctor's Billings

- Significant public attention about the amount doctors bill to public
- Decision in 1990s kept this information private
- New order requires information to be released – cites business info, public interest

News · Queen's Park

Ontario's top-billing doctor charged OHIP \$6.6M last year

Health minister flags 500 doctors who made more than \$1 million last year in a bid for public support in reforming outdated OHIP system.



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Yes, You Can

- Collaboration with Provincial Advocate for Children and Youth
- Professionals sometimes cited privacy as the reason for refusing to disclose information to child protection workers
- Dispels myths - 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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Commissioner of Ontario

Provincial Advocate
for Children & Youth

Disclosure to Prevent Harm

- Ontario law (*FIPPA*, *MFIPPA*, *PHIPA* and *the Child and Family Services Act*) permits professionals working with children to share this information with a Children's Aid Society, including:
 - Teachers
 - Police officers
 - Health workers
 - Social service workers



CONSULTATIONS



ORPP

- The Ministry of Finance consulted with IPC on a series of bills creating the Ontario Retirement Pension Plan
- ORPP pension administrator is not an institution under *FIPPA*
- We worked to ensure that the bill protects individuals' access to their own PI and protects privacy by granting:
 - Individuals the right to file an appeal with the IPC if not satisfied with an access decision
 - IPC the authority to review the PI practices of the administrator



Situation Tables

- Regular meetings between representatives from agencies
- Can include police, municipalities, hospitals, social services and schools
- Discussions about individual cases and concerns about community safety or well-being
- Participants in situation tables should use de-identified information
- Only share PI on a 'need-to-know' basis



Guidance on Situation Tables

- Wilfrid Laurier University's Centre for Public Safety and Well-Being, with support from the OPP, released an online situation table training package
- IPC worked with the OPP to ensure that the information sharing scheme in the guidance:
 - Based on need-to-know principle
 - Operates in a privacy-protective manner



Growing Use of Surveillance Technology

- Increasing use of technology in law enforcement
- New technologies from body-worn cameras to stingray (ISMI catchers) raise privacy concerns
- Balance between transparency, accountability, law enforcement needs and right to privacy is imperative
- To address these issues, we recommended a province-wide standard for police use of surveillance technologies in our 2016 submission to the MCSCS' consultation on a Strategy for A Safer Ontario



Body Worn Cameras

- Body Worn Cameras (BWCs) present different challenges from CCTV and dashboard camera systems
- They are mobile – increased potential to capture information in various settings like residences, hospitals, places of worship
- BWCs viewed as important transparency and accountability tools
- IPC was consulted by the Toronto Police Service on its pilot project
- Results of pilot expected this spring



PHIPA



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EHR Records under Bill 119

- Sets out rules for collection, use and disclosure by:
 - Establishing processes by which individuals can implement instructions for the use of their personal health information (PHI)
 - Determining processes by which individuals access their records of PHI



Bill 119 Summary

- If passed, the Bill will:
 - Require privacy breaches to be reported to our office /relevant regulatory colleges
 - Remove requirement that prosecutions be started within six months
 - Double fines for offences
 - 50,000 to \$100,000 for individuals
 - \$250,000 to \$500,000 for organizations



Referrals for Prosecution

- Since my 2014 appointment, I have referred five cases to the attorney general for prosecution under *PHIPA*:
 - **2015**
 - Two Radiations therapists at the University Health Network
 - A social worker at a family health team
 - **2016**
 - A registration clerk at a regional hospital
 - A regulated professional at a Toronto hospital



Convictions

- Successful offence prosecutions:
 - Two radiation therapists pled guilty to willfully collecting, using or disclosing PHI
 - Each fined \$2,000, \$500 victim surcharge:
 - Registration clerk pled guilty to same offence
 - Clerk agreed to \$10,000 fine, \$2,500 victim surcharge
 - professional discipline
 - Two Nurses in North Bay and Peterborough suspended by College of Nurses of Ontario for four months each



PHIPA Process Review

- 10+ years of experience handling *PHIPA* complaints
- Volume continue to increase
- 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?



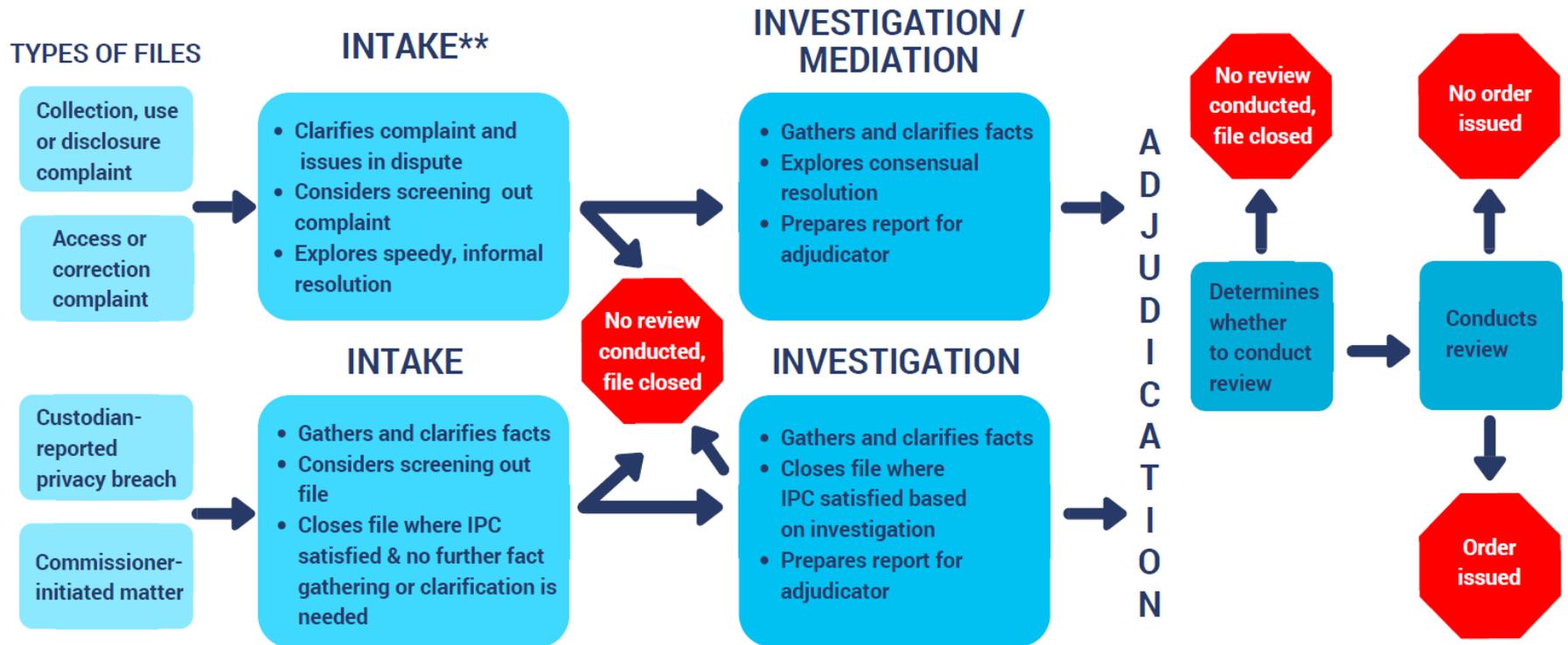
New *PHIPA* Processes

- Publish an expanded range of *PHIPA* decisions
- Clarify the roles and responsibilities of the three stages of the tribunal processes
- Following similar processes for all types of complaints



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.



How to Contact Us

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Toronto, Ontario, Canada

M4W 1A8

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TDD/TTY: 416-325-7539

Web: www.ipc.on.ca

E-mail: info@ipc.on.ca

Media: media@ipc.on.ca / 416-326-3965



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