

**REACHING OUT  
TO ONTARIO**

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Reaching Out to Ontario  
Queen's University, Kingston  
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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

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

# Our Office

- Information and Privacy Commissioner (IPC) reviews government decisions, practices concerning access and privacy
- Commissioner is appointed by, reports to the Legislative Assembly; independent of the government of the day to ensure impartiality



# IPC Office

## Tribunal

- Mediation, investigation, adjudication
- Led by **Assistant Commissioner Sherry Liang**

## Policy, Health Policy, Legal, Communications, Administration

- Research, advice, comment on proposed programs/legislation affecting privacy and access
- Represent IPC in court
- Led by **Assistant Commissioner David Goodis**

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# ACCESS



# Open Government

- Open Government supports, enables right of access to information under *FIPPA/MFIPPA* by encouraging proactive disclosure
- Three pillars:
  - 1. Open Data:** proactive publication of data in free, accessible, machine-readable forms for public use [e.g. water test results]
  - 2. Open Dialogue:** new ways to give the public a meaningful voice in planning, decision making [e.g. police carding consultations]
  - 3. Open Information:** proactive release of information about the operation of government [e.g., contracts]

# Benefits of Open Government

- **Accountability**

Public better able to hold government responsible for its decisions, actions, spending

- **Public Participation**

Public has a stronger voice, ability to influence government decisions

- **Economic Value**

Increased access to data supports innovation, allowing for new analyses and re-use of government data holdings

# Open Government in Ontario

## Open by Default report:

- Open Government Engagement Team recommends ways to create culture of openness

## Open Data Directive:

- Ontario government draft open data directive codifies minimum requirements to implement open data
- Directive opened for public consultation – many of the suggestions received adopted in final directive

# Open Government and the IPC

- IPC developing series of guides to help institutions advance Open Government, including:
  - overview of Open Government, important resources
  - key implementation considerations, review of the personal privacy issues raised by Open Government
- We are available to advise individual institutions on how to move forward with their Open Government initiatives (no matter what stage)

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## Data Catalogue

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The City believes our data should be accessible. Over the past several years, we have made a significant investment in making data available to our community. This data catalogue is the first step in making it easier for you to view, obtain and use the information we have gathered.

Use the data catalogue below to view and request the City's datasets. Click on 'Show Details' to see additional information for a particular dataset. For the dataset of interest click on the 'Request Data' to submit an email request. For data requests, please be sure to state the purpose of the request and the geographic extent required under the 'Notes' section. Data requests, with the exception of GTFS downloads, are subject to the [Fees and Charges By-law](#) and [Data Licensing Agreement](#), and fees and or charges may apply. The City is developing an Open Data portal in the near future, which will simplify access to GIS data managed by the City and remove any service fees.

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### Frequently Asked Questions

▶ How were the first datasets selected for the Data Catalogue and how will they be released?

▶ What are the terms of use?

▾ Will more public data become available in the future?

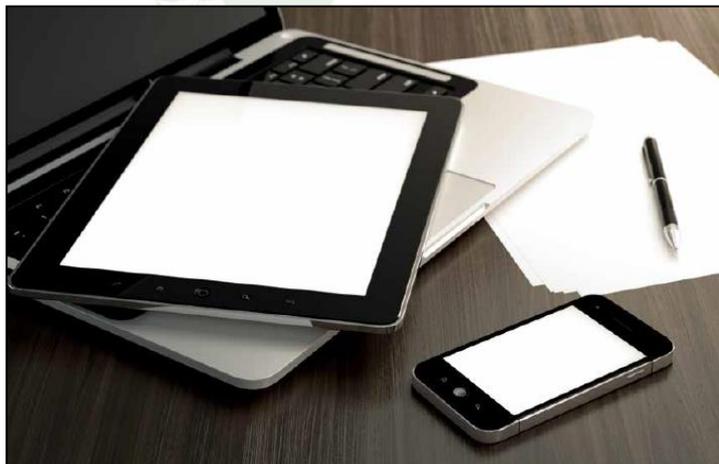
Yes. The City is also looking for feedback from citizens to determine what should be added to the data catalogue. Your opinion matters, so please tell us what types of information you would like to see made available by contacting us 

▶ Does the City have an Open Data policy?

# *Public Sector and MPP Accountability and Transparency Act, 2014*

- In effect January 2016
- Amends *FIPPA/MFIPPA*, institutions must take **reasonable measures** to preserve records
- Based on already existing record-keeping requirements
- New 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: Records Management Practices of Political Staff* ("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
- Offence for intentional destruction or alteration of records

# New Resource from the IPC: *FOI Fact Sheet Series*

- New series focusing on freedom of information (FOI) in Ontario
- Designed to clarify law, best practices; to assist public, institution staff
- Will help people navigate the FOI process more effectively, better understand their rights and duties

# Councillor Records

- IPC decisions: individual members of municipal councils (except mayor) not officers or employees of the municipality, thus many councillors' records not subject to *MFIPPA*
- But some councillor records are covered by *MFIPPA* if in the municipality's "custody or control"
- Law is technical, not easy to understand; largely comes down to whether record is about municipal business
- IPC is recommending changes to *MFIPPA* to help clarify law, ensure that the business of municipalities is fully open

# FOI Fact Sheet No.1 – *MFIPPA and Councillors' Records*



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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.

- Whether councillors' records subject to *MFIPPA* depends largely on context
- Fact sheet outlines relevant factors, IPC findings in several cases
- Will assist in educating councillors about their responsibilities, how to properly manage business records



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# PRIVACY



# Police Record Checks

- Problem across Canada: police background checks for employment, volunteer positions inconsistent
- Sometimes non-conviction information (e.g. mental health) disclosed without justification
- IPC Crossing the Line report
- Attempted suicide on CPIC due to 911 call
- US border officials have direct, instant access

# Police Record Checks

- *Police Record Checks Reform Act* [not yet in force]
  - 1st in Canada; based on OACP guidelines
  - Three types: criminal record, criminal record and judicial matters, vulnerable sector
  - Says precisely what information can be disclosed in each
  - Non-conviction information disclosed only in vulnerable sector check, only if it meets “exceptional disclosure” test

# Police Street Checks

- Since 2014, the IPC working with the Toronto Police on improving street check related practices
- Ministry of Community Safety and Correctional Services (MCSCS) consulted with IPC, OHRC, police, community groups, general public in developing a draft street check regulation
- MCSCS also published the draft on the Regulation Registry for further feedback
- We commend the government for undertaking to regulate street check practices, open consultation

# Street Check Regulation

- March 2016, regulation filed, many IPC recommendations included:
  - arbitrary, race-based stops banned
  - involuntary interactions – police must explain that person does not have to provide information
  - must provide a written record of interaction, officer's name, how to contact police complaints
  - police annual report must include number of attempts to collect personal information, including race, age, gender
  - rules on how information collected, retained, destroyed
  - independent reviewer of regulation
  - independent training and oversight



# Thinking About Clouds?

- Guidance for institutions to help evaluate whether cloud computing services are suitable
- Increase understanding of the risks associated with various types of cloud services
- Some strategies to mitigate risks



**Thinking About Clouds?**  
Privacy, security and compliance  
considerations for Ontario public  
sector institutions

February 2016



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# Video Surveillance



## Guidelines for the Use of Video Surveillance

October 2015



- IPC published video surveillance guidelines for public spaces in 2001, then for schools in 2003
- 2015 guide consolidates previous advice, presents new issues and factors to consider, including **retention periods**, **notice of collection**
- Key messages and examples for clarity

# Coming Soon

- Practical guide for de-identifying information
- Overview of Open Government and a how-to implementation guide
- Discussion paper on public sector employees using instant messaging, personal email to conduct institutional business
- *PHIPA* Fact Sheet on health care providers communicating with their patients by email

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# DEVELOPMENTS IN ACCESS TO INFORMATION

**Sherry Liang**  
**Assistant Commissioner**



# What We Do

- Key part of IPC's mandate is to resolve access to information appeals under *MFIPPA* and *FIPPA*
- Three main stages to IPC's processes:
  - Intake
  - Mediation
  - Adjudication

# What We Do - Intake

- Intake stage:
  - Phone line to give information about the appeal process
  - Deals with urgent matters
  - Screens out appeals which are not in our jurisdiction or for other reasons do not present a basis to go forward

# What We Do - Mediation

- The Mediator contacts the parties, investigates the circumstances of the appeal and attempts to:
  - Settle all issues in the appeal; or
  - If not settled, narrow and clarify the issues that proceed to Adjudication
- Can provide expert opinions to parties on likely outcome at Adjudication
- Uses shuttle mediation (phone calls to each party in turn) or conference calls; occasional face to face mediation

# What We Do - Adjudication

- Adjudicator conducts an inquiry in the appeal
- Usually a written process – asks each party in turn to provide their written submissions
- Share, to the extent possible, the submissions with all parties
- Issues a written decision

# What We Do: Some Statistics

- In 2015, IPC received 1,403 appeals
- In 2015, IPC closed 1,329 appeals
- The majority of appeals were resolved through mediation
- Some appeals were screened out at an early stage
- Over 240 decisions disposing of appeals issued in 2015
- Majority of the appeals come from individuals, although majority of their appeals were not about access to their own information but were requests for general information

# Some Issues We Decided in 2015

- When does the public interest in disclosure outweigh privacy rights?
- What is “personal information” v. general or business information?
- Do contracts have to be disclosed?
- What can a town withhold under the “closed meeting” exemption?
- Are councillor records available under *MFIPPA*?
- Can a government institution refuse to accept a request that it believes is frivolous?
- Developments under the *Personal Health Information Protection Act (PHIPA)*

# When Does the Public Interest in Disclosure Outweigh Privacy Rights?

- **Order PO-3461** – A reporter asked the Ministry of Community Safety and Correctional Services for records detailing when DNA samples were taken from victims and/or identified addresses as part of a specific investigation into a high-profile crime
- The ministry refused to give the information, citing privacy rights
- Our office decided there was a compelling public interest in disclosure that outweighed the privacy exemption

# Disclosure In the Public Interest continued

- **MO-3295** - Algoma Public Health (APH) received an access request for a report examining whether a conflict of interest existed regarding the appointment of their former interim CFO and whether funds had been misappropriated or lost
- Although the report contained personal information, APH granted access based on public interest
- An affected party appealed APH's decision, claiming possible exposure to civil liability and questioning the public interest
- The IPC agreed with the APH that there was a compelling public interest in disclosure of the record and dismissed the claim of exposure to civil liability

# What is “personal information” v. general or business information?

- **PO-3467** - A request to the Ministry of Transportation asked for the name of driving instructors who have had their instructor licenses revoked, without the reasons for the revocation
- The IPC decided that this information was about the individuals in a business (rather than personal) capacity, and ordered the record disclosed

# Personal v. General Information continued

- **MO-3261** – The Sudbury District Health Unit (SDHU) received an access request for the addresses of all locations where there were investigations into mould complaints or concerns
- SDHU denied access to the list of addresses, claiming an invasion of personal privacy of the homeowners
- The IPC decided that the list did not contain personal information because it was about properties and did not reveal anything personal about the property owners or occupiers

# Personal v. General Information continued

- **MO-3298** – The Township of Perth East denied request for the names and addresses of all registered kennel owners, as well as those who had their licence suspended or revoked, been investigated for by-law infractions, and/or been reported to the Ontario Society for the Prevention of Cruelty to Animals, claiming this was personal information
- After hearing from the Township and giving the kennel owners an opportunity to provide comments, the IPC decided that the names and addresses of the kennel owners is not “personal information” and ordered the information to be disclosed

# Do Contracts Have to be Disclosed?

- **MO-3178** - The York Catholic District School Board was asked for details of the lease of a specific parcel of land
- The Board denied access claiming, among other things, that the information was the confidential business information of a third party
- The IPC rejected that argument and ordered the lease disclosed
- In general, contracts are not covered by the exemption for confidential business information
- This case is only one of many in which contracts have been ordered disclosed

# What can a town withhold under the “closed meeting” exemption?

- **MO-3228** – The Toronto District School Board denied access to an audit report about a "Focus on Youth" program, claiming it would reveal the deliberations of a closed meeting
- The closed meeting exemption only applies if the Board is authorized under the Municipal Act to hold a closed meeting
- Board claimed the meeting was to discuss "security of the property" of the Board
- The IPC decided the audit report was not about "security of the property" of the Board and ordered it disclosed

# Are Councillor Records Available under *MFIPPA*?

- **MO-3281** – The City of Oshawa received a request for access to emails between a councillor and an individual who was retained by the city to investigate alleged wrongdoings of city staff
- The email discussed potential terms of a contract between the city and the individual
- City denied access to the email saying it was not within its custody or control because it was sent from a personal email account
- The IPC decided that the email account used is irrelevant if it is for city business and ordered the information to be released

# Can a government institution refuse to accept a request that it believes is frivolous?

- **MO-3292** – A requester made six access requests to the City of Brampton, some of which required considerable search time and covered voluminous records
- He then filed an additional nine requests, which were almost identical to the earlier ones
- The purpose of the additional nine requests was not to get access but to make a point. The city made efforts to address the point the requester was making and asked him to withdraw the additional requests and pay outstanding fees
- When the requester refused, the city denied access on the new requests claiming they were frivolous and vexatious
- The IPC agreed with the city and imposed processing limits on the requester

# Developments under the *Personal Health Information Protection Act (PHIPA)*

- **PHIPA Decision 17** - This Decision addressed a number of issues arising from a request for records relating to the birth and death of an infant and the care given to the mother and child at the hospital
- As the hospital is subject to both *PHIPA* and *FIPPA*, the adjudicator conducted a combined review and examined:
  - Application of *PHIPA* v. *FIPPA* to the records
  - Which are "records of personal health information" (PHI) and extent of access
  - Ability of complainant to make request on behalf of wife/daughter

# Developments under *PHIPA* continued

- **PHIPA Decision 19** – A complainant asked the Ministry of Health and Long-Term Care to disclose the list of names of medical practitioners who submitted OHIP claims with respect to his deceased brother
- The requester claimed that he needed the information to make decisions about his own health care
- The requester filed a complaint with the IPC
- The IPC agreed with the ministry that he did not meet the conditions permitting disclosure of the information
- The decision clarified that while the IPC has jurisdiction to receive and inquire into such a complaint, the ministry has the discretion to refuse disclosure, if done in good faith

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# How to Contact Us

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