



Office of the Chief Information  
and Privacy Officer

Unclassified

# Freedom of Information and Protection of Privacy

## A Basic Orientation Ontario East Municipal Conference





# Agenda

- Your Questions
- Basic Concepts & Definitions
- Access Overview
- Privacy Overview
- MFIPPA Issues
- MFIPPA Resources



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# FUNDAMENTAL CONCEPTS & DEFINITIONS



## FIPPA and MFIPPA Are

- Freedom of Information and Protection of Privacy Act & Municipal Freedom of Information (FIPPA & MFIPPA)
- Provincial laws which provide for:
  - public **access** to government records
  - **protection of privacy** respecting government-held personal information
- **(FIPPA)** covers provincial ministries, ABCs – **Courts are not institutions under the Act**
- **(MFIPPA)** covers ~2,500 local institutions, like municipalities, local boards and health units



# ACCESS

- **Right of access** to government information
- Formal access process in M/FIPPA
- Exemptions to access are limited and specific
- Independent review: All decisions appealable to the Information and Privacy Commissioner

# PRIVACY

- **Privacy protection** for govt-held personal information
- Statutory rules for collection, use, disclosure, retention and disposal of personal information by institution in its activities.
- Right to access and correct own personal information
- Right to complain to Information and Privacy Commissioner when privacy rights have been violated

## MGCS and the IPC

- Minister of Government and Consumer Services responsible for FIPPA & MFIPPA Including:
  - Responsibility for the legislation
  - Policy respecting M/FIPPA
  - Advising FOI professionals in other institutions
- The IPC
  - Adjudicates access appeals
  - Investigates/resolves privacy complaints
  - Monitors **FIPPA/MFIPPA** compliance
    - E.g. 30 day FOI request response time

## RECORDS

- Record - **any record of information**, however recorded, whether in printed form, on film, by electronic means or otherwise
- **INCLUDES** drafts, postit notes, hard drive files, blackberry, e-mail, voice mail, agendas address books. ALL RECORDED information - However recorded, is a record under **FIPPA**



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# E-MAIL

- E-mail is a record
- Use with same care as other records
  - easy to copy/send vs. letters & memos
- Not a secure medium
  - Never send personal information
- Additional/forwarded copies usually exist
- Retention, disposal rules apply
- Be professional in your e-mails

# VOICE MAIL

- Voice mails are records
- Use with same care as other records
- Only leave personal information when certain only one recipient ... or (better)
- Ask for a callback rather than leaving personal information
- Assume voice mails will be forwarded
- Be professional in your voice mails

# CUSTODY AND CONTROL

- **Custody**

- legitimate keeping, care, watch of a record
- lawful possession, Responsibility for care/ protection
- not unsolicited, accidental, fraudulent possession
- Established custody standards in IPC orders

- **Control**

- No physical possession ...but
- (Usually legal/contractual) right to deal with records
- Established control standards in IPC Orders

- ...BUT:

- Different rules for outsourcing/ ASD providers ...



# CUSTODY AND CONTROL

- Control
  - Multi-part tests (likely IPC response to effects of outsourcing):
    - **Statutory Duty/Core Business**
    - Right of possession
    - Agency/Contractual relationship/payment
    - Customary practice of institution/3rd party
    - Reliance on record
    - Ownership
    - Other factors – **open list**
    - Orders # MO-1237, MO-1242, MO-1251, MO-1289



# ACCESS OVERVIEW

## FREEDOM OF INFORMATION (FOI) REQUESTS



# RIGHT OF ACCESS

- The *Act* establishes **right of access** to records in the **custody** or **control** of institutions unless:
  - An Exemption applies
  - The head determines the request is frivolous or vexatious

## FOI REQUESTS

- Formal process under MFIPPA to request government records
- The MFIPPA Coordinator/FOI office processes requests
- **Requester id** is protected **personal information**
- Requests must be processed in **30 calendar days** (time extensions permitted in limited circumstances)

## WHO MAKES FOI REQUESTS?

- **No limitation** under MFIPPA as to **who can make an access request**
- Majority of requests to municipal institutions from **individuals 68.0%** (2007 Annual Report)
- Other requesters include:
  - Individuals
  - Associations
  - Law Firms
  - Opposition parties
  - Media (CNA, OSPREY & Atkinson Reports)



# FOI REQUEST REQUIREMENTS

• MFIPPA REQUIRES THAT REQUESTS:

• Be made **in writing**

• Provide **sufficient detail** to locate records

• Include a \$5.00 **application fee**

• State that it is being **made under MFIPPA**



# COPY OF A RECORD

- Responding to requests normally means providing access to a copy of requested records
- Where it is not practical to provide a copy, a requester can examine the record (subject to severances)
- Requester can also seek access to record(s) in electronic format

# FOI REQUEST PROCESS

- Institutions establish a formal protocol for responding to requests
- Program Areas and FOI & Privacy Coordinator work cooperatively to:
  - Locate responsive records
  - Make recommendations on disclosure
  - Apply the provisions of the Act
  - Issue formal written decision to requester
- **Any decision** can be appealed to IPC



# FEES/FEE ESTIMATES

- MFIPPA works on a **user-pay principal** – not cost recovery - fees for certain processing steps:

Record search/preparation (\$7.50/15 min), Photocopies (¢20 per page), CD-ROM (\$10.00), Developing Computer Program (\$15.00/15 min), Invoiced Costs (invoice amount) – no charge for search time when individuals request their personal information

- **Fees can be waived** in circumstances of financial hardship or where dissemination of record benefits public health and safety

- **Fee estimates/interim decision** if costs exceed \$100.00





# ACCESS OVERVIEW

## EXCLUSIONS AND EXEMPTIONS



# APPLICATION OF ACT -- EXCLUSIONS

- MFIPPA s. 52(3)
- Describes records which are **excluded** from the operation of the Act
- Wording “This Act does not apply to...”
- Removes records from jurisdiction of FIPPA, taking away **both** access rights and privacy protections



# LABOUR RELATIONS EXCLUSION MFIPPA s. 52(3)&(4)

• **MFIPPA does not apply to** records prepared, maintained, used by/on behalf of an institution with respect to:

- **Proceedings**/anticipated proceedings ct,tribunal,other
- **Negotiations**/anticipated negotiations re labour relations or employment of a person
- **Meetings, consultations, discussions** or **communications** about labour relations or employment-related matters in which institution has an interest
- ...Except the following, to which FIPPA **does** apply:
  - agreements with trade unions,
  - Agreements which end proceedings,
  - Agreements resulting from negotiations and
  - Employee-submitted expense accounts



# THE EXEMPTIONS

- Draft by-laws/closed meetings
- Advice or Recommendations
- Law Enforcement
- Relations With Other Governments
- Third Party Information**
- Economic and Other Interests
- Solicitor Client Privilege
- Danger to Safety or Health
- Personal Privacy**
- Information Soon to be Published



# PUBLIC INTEREST OVERRIDE

- Overrides MFIPPA exemptions at ss. 7, 9, 10, 11, 13, 14

Need **compelling** AND **public** interest

- That clearly outweighs the purpose of the exemption,

  - (as opposed to the value of disclosure to the requester of the record at issue)

- Burden of proof on person seeking override



# ACCESS OVERVIEW APPEALS PROCESS

# ROLE OF THE IPC/ APPEALS

- All **decisions** can be appealed to the IPC
- The IPC receives and reviews the record
- Attempt to **mediation** appeal (IPC emphasizes)
- Representations are required
- **Representations shared** with appellant
- The **IPC may order** part or full disclosure



# ACCESS OVERVIEW ISSUES MANAGEMENT

# ISSUES MANAGEMENT

- FOI requests can require issues management
- Issues management involves:
  - **Notice for senior management**, at start then before release of decision and/or records
  - Prepare briefing materials with help of communications staff
  - Ensure senior officials are in a position to react once the records are released



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# PRIVACY



# WHAT IS PRIVACY?

- The right to be left alone?
- Informational Privacy; “ability of individual to **control** collection, use disclosure of his/her own personal information”
- Collection, Use, Disclosure, Retention & Disposal of PI regulated by MFIPPA
- ...**Notice** usually required under MFIPPA

# SECURITY DOES NOT EQUAL PRIVACY

- Security involves data protection and integrity, confidentiality and identity authentication – **lock and key issues**
- Privacy involves the individual's ability, within reasonable limits, to control his/her own information and how it will be used – **legal rights issues**



# PRIVACY UNDER MFIPPA

- Very Sensitive
    - contraventions extremely serious
  - Deals with:
    - collection,
    - use,
    - disclosure,
    - retention and destruction
- .....of personal information

# DEFINITION OF PERSONAL INFORMATION

- **Recorded Information About an Identifiable Individual**, including:
  - ethnic origin, race, religion, age, sex, sexual orientation, etc;
  - information regarding education, financial, employment, medical, psychiatric, psychological or criminal history
  - identifying numbers e.g. S.I.N.
  - home address, home telephone number etc.
  - personal opinions of, or about, an individual
  - personal correspondence
  - the individual's name where it appears with or reveals other personal information



# PERSONAL VS PROFESSIONAL INFORMATION

- **New (April 2007) definition for Business Identity** information:
  - name, title, contact information or designation of an individual in a business, professional or official capacity is NOT personal information...  
even if carrying out business/professional/official responsibilities in personal dwelling
- Your name, position and records about routine work matters do not usually constitute your personal information

# COLLECTION OF PERSONAL INFORMATION

- Must have **legal authority** to collect
- Must **collect directly** from individual
- Must provide **notice of collection**

# LEGAL AUTHORITY TO COLLECT PERSONAL INFORMATION

- Collection must be :
  - expressly authorized by statute or,
  - used for the purposes of law enforcement or,
  - necessary to the proper administration of a lawfully authorized activity
- **Otherwise**, you **cannot** collect the personal information

# HOW (NOT) TO COLLECT PERSONAL INFORMATION





# DIRECT COLLECTION OF PERSONAL INFORMATION

- Must collect directly from person unless:
- Individual authorizes another manner of collection
- Information disclosable under s. 32
- Information collected for determining suitability for an honour or award
- Information collected for law enforcement
- Indirect collection authorized by statute



# NOTICE OF COLLECTION

- Must provide notice of collection to individual, containing:
  - legal authority for the collection
  - principal purpose(s) for which personal information is intended to be used
  - title, business address telephone of a public official for questions



# RETENTION AND DESTRUCTION OF PERSONAL INFORMATION

- Maintain PI at least a year after last use
- Willful disclosure without authority an offence
- Only use PI if accurate, up to date
- Dispose of PI effectively/securely
- Do not destroy requested records
- Use appropriate security/precautions



# USE OF PERSONAL INFORMATION

- With consent
- For original or consistent purpose
- For other limited circumstances (for a purpose which the information may be disclosed under section 32)



# DISCLOSURE OF PERSONAL INFORMATION

- .In accordance with an FOI request
- .With consent
- .For original or consistent purpose
- .Where needed in connection with duties-
- .To a consultant/agent **(new April 2007)**
- .Compliance with legislation/ agreement
- .For law enforcement investigations
- .To aid investigation > law enf. proceeding
- .Compelling circumstances; health/safety
- .Compassionate circumstances
- .Member of legislative assembly
- ....others

# CONSISTENT PURPOSE

- Relates to use and disclosure of personal information
- Consistent purpose requires that the individual might reasonably have expected the use or disclosure at the time that the information was collected
- Consistent purpose therefore depends on the collection notice and what (reasonable) expectations it creates



# PRIVACY BREACHES

- The IPC investigates and resolves apparent breaches of MFIPPA privacy protections
  - Re; collection, use, disclosure, retention & destruction of Personal Information
- Investigations initiated by complainants
  - or
  - By the IPC itself



# PRIVACY BREACHES

- No privacy investigation power in MFIPPA
- Outcome IPC Investigation:
  - Complaint dismissed / settled (rarely)
  - Investigation Report (recommendations)
    - Investigation reports made public
    - Investigation reports name institution
- New OCIPPO Privacy Breach Protocol – outlines steps to managing breaches



# MFIPPA RESOURCES





## PRIVACY BASICS – ONLINE TRAINING

- New On-Line FIPPA training introduced spring 2007
- Interactive format provides employees with fundamental understanding of FIPPA and their obligations are under the Act
- Five modules including “test” – takes approximately 2 hours to complete
- Contact OCIPO to obtain a copy



## KEY WEB-SITES

- <http://www.accessandprivacy.gov.on.ca/>
- Manual, Acts, Annotation, Orders
- Publications/Guidelines
- Privacy Impact Assessment
  
- [www.ipc.on.ca](http://www.ipc.on.ca)
- What's New, IPC Role
- Publications & Presentations
- Orders, Privacy Reports, Judicial Reviews
- Ontario's Access & Privacy Acts



## OTHER RESOURCES

- E-laws - [www.e-laws.on.ca](http://www.e-laws.on.ca)
- Ontario Courts - [www.ontariocourts.on.ca](http://www.ontariocourts.on.ca)
- MGS Access and Privacy Conference:  
•October 7 & 8th – Metro Toronto Convention  
Centre
- Verney Conference Management 613-226-8317  
// fax 613-226-8421 [www.verney.ca](http://www.verney.ca)



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