

Freedom of Information and Document Disclosure

Prepared for Internal Staff

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Agenda

- Introducing the FIPPA team
- Understanding relevance to the IESO
- Introduction to *Freedom of Information and Protection of Privacy Act* (FIPPA) and types of “records” created
- Information and Privacy Commissioner (IPC)
- Processing Freedom of Information Requests at the IESO
- Duty to Document and Email etiquette

Team FIPPA

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How is FIPPA relevant to the IESO?

- As a public sector organization, the public has the right to request information from the IESO, and the IESO has a general obligation to disclose requested information, subject to restrictions.
- The IESO is exercising a broad public interest mandate in exercising its powers and performing duties under the *Electricity Act, 1998*.
- Our activities will produce many records of interest that are not otherwise publicly available.

The Freedom of Information and Privacy Act, also called FIPPA was created so that the public could hold public sector institutions accountable. As a public sector organization, the IESO has a obligation to disclose requested information.

We have received FIPPA requests on LTEP, how the Control Room operates, the Fair Hydro Plan. Etc

As we will discuss in later slides, if information is not publicly available does not mean that it does not exist or that we are not able to produce it. We have had requests for Board Meeting Minutes, information shared at briefings with the Ministry, material presented at Stakeholder Advisory Committee, etc.

FIPPA Overview

- The *Freedom of Information and Protection of Privacy Act* (the “Act”) applies to the IESO, and to Ontario’s provincial ministries and agencies, boards and most commissions.
- **Freedom of Information (Access Rights):**
 - Every person has the right to request access to a record, or part of a record, that is in the custody or control of the IESO
 - This access right is limited by specific exemptions
 - The identity of requestor is also generally not disclosed outside the institution and will generally not be disclosed outside the FOI team
- **Privacy Protection:**
 - The IESO is required to protect all personal information that is in our custody or control
 - This includes destruction of personal information after any statutory periods have expired, or if we are requested by the individual to destroy their personal information

FIPPA at the IESO

- **It is a challenging job with tight timelines**
- **Since 2015:**
 - **208** FOI requests
 - reviewed **100,000s** of pages
 - produced more than **25,000** pages
 - notified more than **1000** affected parties, from program contract holders to other public institutions
 - Responded to **32** appeals
- Requests usually relate to current IESO initiatives or programs
- Requesters can be anyone, such as members of the public, media, political parties, homeowners or community groups, or interest groups
- Breadth of information sought ranges from:
 - specific presentations or documents
 - to any and all documents related to a specific subject matter or that mention a specific keyword

How many FOI requests do you think the IESO has received since 2015?

208 FOI Requests

We have reviewed 100,000s of pages of documents and materials

We have produced 25,000 pages

And notified more than 1000 affected parties, from program contract holders to other public institutions. Requests can come from media, private citizens, organizations, political parties

We have responded to 24 appeals

You should note that a responsive document does not mean we will disclose the document

Key Definitions – What is a “record”?

- A **record** is any information, however recorded, whether in printed form, on film, by electronic means or otherwise, and includes but is not limited to:
 - Correspondence (both emails and letters), memorandums, notebooks, plans, meeting notes, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microfilms, sound and video recordings, machine readable records and any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
 - subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution
- **Once collected, personal or other information becomes a record**

Freedom of Information (Access)

- **Access is the default subject to very limited exemptions**
- **The most common exemptions applicable to our work are:**
 - Section 13 (advice to government)
 - Section 17 (third party information)
 - Section 18 (economic and other interests of Ontario)
 - Section 19 (privilege)
 - Section 21 (personal information)
- Sections 17 and 21 are mandatory exemptions. This means that the IESO cannot disclose information that may be exempt under these sections without first notifying all affected parties
 - **We may need your assistance identifying applicable exemptions and the affected parties**, for example, if a third party provides data that is subsequently used in our work (e.g. presentations, spreadsheets etc.) we may still be required to notify the third party before disclosing any information

Freedom of Information (Access)

Section 21 (Personal Information)

- Personal information does not include your job title or business contact information (including business cell phone numbers)
- Personal information can include any affiliations or groups you have that are outside your business role, for example if you are a board member for an organization outside of your role with the IESO

Section 23 is the **compelling public interest override**

- The IESO may be ordered to disclose records that are otherwise exempt under FIPPA if there is a compelling public interest in disclosure
- Solicitor client privilege is the only exception to this provision
- The interest must apply to the public as a whole, it cannot be a personal interest, for example a community member opposed to a FIT contract trying to get commercial information about the contract

Section 65 – outlines specific types of recorded information that are excluded from the Act. For the purposes of the IESO, this generally includes negotiations between management and the PWU or Society union members.

Information and Privacy Commissioner's Office (the "IPC")

- **The Information and Privacy Commissioner oversees the administration of FIPPA and is independent of the government of the day.**
- One of the their mandates is to independently review the decisions and practices of government organizations concerning access and privacy.
- The Commissioner delivers on this mandate by :
 - resolving appeals when government organizations refuse to grant access to information;
 - investigating privacy complaints related to government-held information;
 - ensuring that government organizations comply with the Acts;

Duty to document

- In 2015 the IPC formally recommended what it calls **“the duty to document”**
- This recommendation includes developing a broad and effective duty to document business-related activities, including key decisions
- The IPC recommended this action because of complaints about requests for records that should exist but did not
- When public entities fail to document key decisions and activities, the right of access, and the accountability inherent in such access, is denied
- This means that, for best practice, **if key decisions are made during in person meetings or on phone calls, the IESO should document any decision(s) that occurred**, this can be done with formal meeting minutes or with an informal summary of the issue(s), including attendance

Freedom of Information (Process)

- **How does a FIPPA request get initiated:**
 - Formal request submitted in writing with sufficient detail to enable an experienced employee to locate the record(s) using reasonable effort
 - We may need your help to scope or narrow requests that are too broad since you will be more familiar with the subject matter
- **A request may be transferred** if it is considered that another institution has a greater interest in the record.
 - An institution has a greater interest if they produced the record, or if they were the first to receive a copy
 - The record **can only** be transferred within the first 15 calendar days
 - Not always apparent to the FOI team that another institution has a greater interest in the record(s); **if you think the request should be transferred please notify the FOI team ASAP** to meet the 15 day deadline
- All dates in the Act are in calendar days, not business days

Freedom of Information (Process)

- FOI requests are received and processed by the FOI team **working with you...it is a shared responsibility**
- Upon receipt of an FOI request, the FOI team will send you an email with the details of the request
- **Your initial task:**
 - Respond quickly (the clock is ticking on deadlines)
 - Assist us to scope or narrow requests that are too broad
 - provide the relevant search terms, electronic file locations, hard copy records and custodian(s) mailbox(es) within the timeline indicated in our email
- The FOI team will conduct all electronic searches, but **hard copies and notebooks must be reviewed by each individual** who may have responsive records
- **What to do if you find responsive information in your hard copy records**
 - scan it, save it to the relevant folder on the network drive and advise the FOI team by email where the information has been saved

Freedom of Information (Process)

- **Deadlines matter:** the Act provides **30 calendar days** during which requests are to be completed.
- If a request produces a large number of records or requires consultations with a person outside the IESO, **we may request a time extension** for a period of time that is reasonable. **We need your timely assistance to determine whether we need an extension and for how long.**
- The IESO can charge the requester for the time it takes to locate responsive records, record preparation (which includes the time needed to redact the records) and for the number of pages produced.
- **If you anticipate that there will be a large volume of records, please notify the FOI team** so we can issue a cost estimate to the requestor and receive the deposit before you begin your document collection.

Freedom of Information (Process)

- Once all responsive records have been collected, they are reviewed by the FOI team
- **Relevant records are then circulated to the program area determine whether they contain confidential information** 
 - You do not need to know the applicable exemptions, **if there is information in the records that you think should not be disclosed, please explain, in a detailed manner, why this information should be withheld, including any potential consequences of disclosure**
 - The FOI team will use this information to determine if an exemption applies
 - Please note, **additional public scrutiny or embarrassment are not reasons in and of themselves to withhold information**
 - **We cannot withhold information because “we usually don’t disclose that type of information”, we need to be able to demonstrate that the records fit within one of the 15 exemptions listed in the Act**
 - You may be asked to swear an affidavit explaining why the records were withheld if the IESO’s decision is appealed to the IPC

Freedom of Information (Process)

- **If the records contain confidential commercial information that was supplied by a third party the IESO must provide notice** under section 28 of the Act
 - This notice must include the wording of the request together with the responsive records the IESO is proposing to disclose
 - Third parties are given 20 calendar days to provide written representations
- Once the third party notice, if applicable, has been done and the internal review is complete **the FOI team prepares a memo with our recommendations regarding disclosure of the records**
- This memo is reviewed and approved by the General Counsel who has been delegated this authority by the CEO
- **If we disagreed with one of your concerns regarding the disclosure of information**
 - **it will be documented in a memo to the General Counsel who is making the final decision on what information is disclosed and withheld**
 - **We will advise you if we overrule your concerns**

Freedom of Information (Process)

Appeals

- Appeals can be filed by the requester or any affected parties.
- The IPC reviews all IESO FOI decisions that are appealed.
- **Your role on an appeal:**
 - you may be asked to provide more specific information about the harms of disclosing information
 - you may be asked to swear an affidavit related to these harms

Electronically Stored Information (ESI)

- **Searching for Electronic Records**
- To perform a reasonable search, we require:
 - All relevant keywords (including any code names that may have been used)
 - All electronic folder locations (including relevant personal drives on Aspen, your computer desktop (C drive) and home computers if you have electronic data stored at home)
 - Names of document custodians (anyone at the IESO who may have worked on the file(s) or have relevant emails in their mailbox)

Electronic Images

- The **software cannot search images in documents and therefore, by default, it will collect all documents that have images imbedded in their content.** Images include:
 - Logos in email signatures
 - Non-searchable PDF documents included as attachments
 - Images copied and pasted into the body of an email
- If you want to use an image in your email signature, our suggestion is to only include this on external correspondence, this will help to reduce the over-collection of your unresponsive email correspondence
- Given this limitation, it is also important to **be as specific as possible** when providing electronic file locations. We need specific folders within the network drives where we can find the responsive documents. This includes personal drives if you store work files on it.

Hardcopies

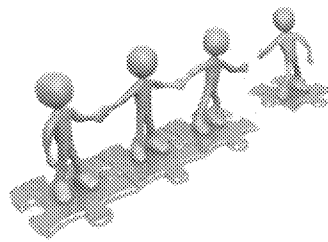
- For hardcopies:
 - For the purposes of FOI requests, hardcopy records include paper records that have changed or marked up (including highlighter) and are not available electronically and your notebooks and/ or other handwritten notes.
 - This also includes any hardcopies you have taken home with you and have not brought back.
 - **Please scan any relevant hardcopies including handwritten notes, notebook pages, meeting notes or “to do” lists, save them to your shared network drive and send the file path to the FOI team.**

Personal Information

- How can my personal information be impacted by FOI requests?
 - All emails that originate from or are received by the corporate email system are captured records. This includes emails sent to or received from your home or personal email address.
 - If you need to work remotely, use VPN or webmail to access.
 - Mixing personal correspondence and work related correspondence increases the likelihood that personal information may accidentally be disclosed in response to a request. If your conversation has gone from work to personal, please start a new email exchange.
 - While the IESO does not generally use code words, they have been used in the past and can result in some interesting emails being collected. Code words are usually innocuous and have nothing to do with the subject matter of the work, so words like “Apple” or “Fruit Salad” may result in the collection of recipes shared between co-workers.

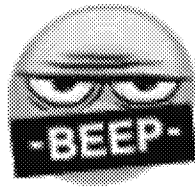
Other Responsibilities

- The FOI team does not have the same in-depth knowledge and understanding of the subject-matter that you do and **you must therefore inform us of any relevant issues or special circumstances with the file.**
- This could include the use of code words or a small team working on a separate issue that affects the FOI request or records produced.
- As an example, we once had a request where no one informed us that director was working directly with an analyst on some calculations, as a result these calculations were missed in our initial document collection and not discovered until after the request had been appealed.



Email Etiquette

- **We comply with our legislative obligations...embarrassment is not an exemption**
- **Never:**
 - Use curse words or their abbreviations
 - Make insulting remarks or comments, especially when discussing IESO business, stakeholders and service providers
 - Make sarcastic comments or retorts
 - Mix personal information and business information in one thread



Email Etiquette

On another note, the fucking MCF will not pay him \$15M for settling Keele Valley, so I have to figure out how to pay him an additional \$5M without, of course, having it look like we're paying him an additional \$5M. This, sadly, is my entire fucking weekend.

Who says accounting isn't sexy

He doesn't want Canada to become a banana republic, he says. WTF? Stock in Chiquita Bananas has just plummeted.

WTF?

What is this? What do you want me to scope? Can we do this a bit more coordinated and discuss strategy. I find it hard to provide any information without understanding the impacts of providing this information.

Tips for Responding to FOI Requests

- **Help us Help you**
- **Control the overall volume of records**
 - **Do not save the same file or email more than once**, while duplications are usually removed in Clearwell, if the metadata behind the file is different, this will not occur
 - Do not use logos or images in every email you send
- **Organize your records**
 - Do not save work related files to your personal drive
 - Have a proper folder structure in place to help narrow the document collection
 - Consider scanning meeting notes or other hard copies after meetings and saving them, in their proper folder, electronically
 - Do not send personal emails from your mailbox
 - Use naming conventions so that files can be easily located

Take-Aways

- **Every email that you send, note that you write, list that you create, or document you save to any of the IESO network drives or email accounts is considered a “record”** under the FIPPA legislation and can be requested by the public. Therefore, be cautious what you write.
- **Do not send business emails to or from personal computers.**
- **Create necessary and appropriate work related records** – once created they must be retained/ destroyed according to IESO policies.
- If you use IESO network drives and email addresses to send or store **personal information, it may be collected , reviewed and potentially produced in response to an FOI request.**
- **External contacts may also access records in the review process;** in the past this included external legal counsel, the federal government in response to the NAFTA tribunals, and the auditor general when the gas plants cancellations were being reviewed.

Questions or Comments?

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