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IPC PERSPECTIVES

INFORMATION AND PRIVACY COMMISSIONER / ONTARIO

TOM WRIGHT, COMMISSIONER

Key Challenges Conference 1991

THIS YEAR'S KEY CHALLENGES CONFERENCE, HELD in Toronto on October 24 and 25, offered keynote speakers, panel discussions and workshops on current issues in access and privacy in Ontario. It brought together more than 350 participants from provincial and local governments, school boards, police departments and other institutions covered by the *Acts*.

This sell-out conference was co-sponsored by the Office of the Information and Privacy Commissioner/Ontario; the Freedom of Information and Privacy Branch, Management Board Secretariat; and the Institute of Public Administration of Canada.

The following are excerpts from Information and Privacy Commissioner Tom Wright's keynote address where he considers the responsibilities of governments in Ontario regarding access and privacy:

Whatever our role, I believe we are all engaged in one of the most important functions of government – making the "business" of government known to the public. In that

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Enjoying a brief break in conference proceedings are, from left to right: Frank White, John Grace and Tom Wright.

Working Together

Yet, at the most basic level – such as a response to an FOI request – how do the respective organizations interact?

THE OFFICE OF THE INFORMATION AND PRIVACY Commissioner (IPC), the FOI Branch of Management Board Secretariat (MBS), and FOIP Co-ordinators (FOIPC) – each has a role to play when it comes to access and privacy legislation in Ontario. However, it is not always an easy task to understand exactly how they interact. Can an individual make an FOI request through the IPC? Should an institution contact the IPC when it wants legislative guidance on an issue? Does MBS issue an order to release a record?

These are some of the questions that are regularly asked of us. It is the role of the IPC to consider and balance, in the form of an appeal or compliance investigation, the sometimes competing interests of access and privacy. FOIPCs across the province have a similar task – weighing the competing interests of access and privacy in the context of their own organizations. MBS is responsible for supporting and providing guidance to institutions regarding access and privacy matters.

Yet, at the most basic level – such as a response to an FOI request – how do the respective organizations interact? The following steps describe, in simple terms, how an individual's access and privacy rights are dealt with in Ontario. Everyone has an important role to play, as well as a significant duty towards ensuring that the system works as it was intended.

1. An individual contacts the institution to request a record.

2. Before deciding whether or not a record will be released, an institution may consult reference materials or – when further guidance is needed – a policy advisor at MBS.

3. The institution makes a decision regarding access to the record.

4. If the individual disagrees with the institution's response, he or she **may** appeal the decision to the IPC.

5. Once an appeal has been received, the IPC appoints an Appeals Officer and the mediation process begins.

6. If mediation is not successful in settling an appeal, the appeal proceeds to an inquiry. The final decision comes from the Commissioner or Assistant Commissioner in the form of an order.

IPC Renames Newsletter

WELCOME TO THE PREMIER EDITION OF *IPC Perspectives*. Formerly called *Newsletter*, this publication takes a fresh look at topics of interest to those interested in Ontario's freedom of information and protection of privacy legislation.

After receiving responses from a survey sent to a selection of *Newsletter* readers last fall, the IPC undertook a revision of both content and design. We are pleased to report that the results were extremely positive.

Here is a summary of some of the findings:

- 81% of all respondents prefer a quarterly newsletter;
- 30% found privacy and access articles of interest;
- procedural information and "The Commissioner's Message" were found to be particularly useful;
- readers suggested the addition of a question-and-answer column;
- a preference was stated for a clearer, easier-to-read format;

Reflecting universal concerns, *IPC Perspectives* is printed on Canadian-made recycled paper, using only vegetable-dye inks.

Key Challenges Conference 1991

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function, we all have important roles to play, as well as significant responsibilities toward ensuring that the system works as it was intended.

The actual tasks in which we are engaged – safeguarding citizens' rights to their own privacy and access to government information are, I believe, some of the most significant jobs in government today...

Governments must start from the premise that the public has a right to information and, in fact, I would argue that it is to government's advantage to make as much information available as is possible.

If the public knew more about the genuine efforts being made on its behalf by every municipal government and school board, by the provincial and federal governments, the current mood of cynicism might begin to dissipate. If governments made greater efforts to show how decisions are made, they might have greater success in explaining the tough, difficult ones.

The economic situation these days is such that hard decisions have to be made. No one would argue with that. But at a minimum, the public must have the chance to understand how and why those decisions are made. Full participation in the democratic process is only possible if there is a fully informed public.

I believe this is particularly true for those of you working in local government. Decisions made by local government touch people's lives the most closely – on their street, in their schools, in their neighbourhoods. Tangible decisions about money, people and programs have a major impact on daily life in the community. The public wants to know how those decisions are made...

The IPC also has a role to play. We consider ourselves to be advocates for the principles of access and privacy. We believe it is our responsibility to speak up for the rights and expectations of the public.

But I also believe in applying common sense to the exercise, and in trying to make any recommendations and decisions based on reality as it exists, not as we believe it to be.

To that end, we have begun a number of initiatives which I believe will help us all. We are implementing a provincial "road show" which will take me and others in my office to provincial and local institutions across the province. We hope to meet with elected representatives, heads and co-ordinators in the weeks and months ahead. We want to hear their, and your, comments, concerns and suggestions on how we might best work together to make the *Acts* work as they were intended...

While I believe in the *Acts*, in the rights they give the public and the responsibilities they place on all governments, I also understand that freedom of information is not the only business of your organization; not the only set of challenges you have to face. However, I believe it must become an integral part of the day-to-day business of your organization. I am committed to the principles of access and privacy, and want to help you achieve the same level of commitment. ■

Key Challenges panellists discuss, "Ethics, Access and Privacy: What are the issues for public institutions?"

The Year 1991 in Review

The following are some of the main events of 1991, as they relate to freedom of information and protection of privacy in Ontario

JANUARY 1
The *Municipal Freedom of Information and Privacy Act* comes into effect; significant media reaction to possibility that police won't release names of crime victims and that fire departments may withhold addresses;

FEBRUARY 4
The establishment of a task force to examine computer matching practices is among the recommendations made by the IPC to the Standing Committee on the Legislative Assembly reviewing the provincial *Act*;

FEBRUARY 7
Ontario's Solicitor General issues a summary of guidelines to police departments – a clarification of the municipal *Act* as it relates to the release of crime victims' names;

MARCH
The Ontario Fire Marshal's office rules that fire departments may legally release the addresses of fires and names of building owners and tenants as long as their names already appear on public documents;

APRIL 4
The *Health Card Numbers Control Act* comes into effect, restricting the collection and use of another person's health card to health-related professionals;

APRIL 9
The Ontario government releases a statement of principles warning employers that it is illegal to discriminate against people with AIDS;

APRIL 15
Ontario's Health Minister announces expansion of anonymous testing for AIDS throughout province;

APRIL 17
The Senate endorses appointment of Bruce Phillips as federal Privacy Commissioner;

APRIL 18
Ontario's Health Minister resigns after publicly disclosing the name of an individual receiving medical treatment in the United States;

An IPC investigation concludes that a Toronto firehall had no authority to post the addresses of HIV patients;

APRIL 25
An all-party committee of the House appoints Tom Wright Ontario's new Information and Privacy Commissioner;

JULY 4
Federal Privacy Commissioner Bruce Phillips calls for legislation to regulate video surveillance, cellular-telephone monitoring and payphone wire-tapping;

JULY
Ontario okays testing of OHIP "smart cards" – equipped with computer chips that will enable health care users to carry their complete medical records at all times;

SEPTEMBER 9
Management Board of Cabinet Chair Tony Silipo releases "whistleblowing" discussion paper;

OCTOBER 24/25
FOIP delegates from across the province attend "Key Challenges", Ontario's third annual access and privacy conference;

DECEMBER 11
The Standing Committee on the Legislative Assembly tables its review of the provincial *Act* in the Legislature;

Ontario's Health Minister asks Commissioner Wright to investigate a possible disclosure of confidential records, by the Ministry, about a Sudbury doctor.

Q&A

Q & A will be a regular column featuring topical questions directed to the IPC.

Q: *I have heard that municipal and provincial FOI Co-ordinators are being requested to include more information in their decision letters. Why is this necessary?*

A: Periodically, the IPC receives Notices of Appeal from appellants that lack important information, thereby delaying the processing of appeals. When certain information is not conveyed to the IPC, the Registrar of Appeals must contact the FOI Co-ordinator who must, in turn, take time to locate the relevant request. To reduce the workload for FOI Co-ordinators and to assist the IPC in the efficient handling of appeals, local and provincial institutions are requested to add a paragraph to their decision letters. The addition should indicate that, if a requester launches an appeal with the IPC, he or she should provide this agency with:

1. The file number which the institution has assigned to the request, and if possible,

2. A copy of the decision letter and the original request for information.

Q: *I recently applied for a job, and didn't understand why certain questions on the application form were being asked, or how the information would be used. What should I do?*

A: If this was a provincial or municipal government application form, you can contact the FOI Co-ordinator in the institution and ask why the institution needs the information in question, and how it relates to the application process. If you feel a government institution has wrongfully collected, used or disclosed your personal information, you can send a letter to the Commissioner stating why you feel your privacy has been invaded. The IPC will work with you and the institution to try and resolve the matter.

Publications from the IPC

The following documents are available free of charge, from the Office of the Information and Privacy Commissioner/ Ontario.

BROCHURES:
The Appeals Process (new)

Your Introduction to Ontario's Information and Privacy Commissioner

Your Privacy and Ontario's Information and Privacy Commissioner

POCKET GUIDES:
Ontario's Freedom of Information and Protection of Privacy Act

Ontario's Municipal Freedom of Information and Protection of Privacy Act

PUBLICATIONS:
HIV/AIDS In The Workplace

HIV/AIDS: A Need for Privacy

Guidelines on Facsimile Transmission Security

Update on 1989 Guidelines on Facsimile Transmission Security

Guidelines on the Use of Verbatim Reporters

Computer Matching

Annual Reports (1988, 1989, 1990)

Summaries of Appeals 1988-1989

New Procedures in Appeals

... the prompt receipt of records is essential for the timely and efficient processing of appeals.

ONE OF THE KEY FUNCTIONS OF THE OFFICE OF the Information and Privacy Commissioner (IPC) is to hear appeals from individuals who have been denied access to either general records or personal information. As soon as an appeal is received at the IPC, an Appeals Officer is appointed to mediate the case.

Before the process of mediation can begin, it is necessary for the IPC to obtain and review the information or document to which the appeal relates. As it is virtually impossible for an Appeals Officer to consider any settlement initiative without having a copy of the record at issue, the prompt receipt of records is essential for the timely and efficient processing of appeals.

In order to ensure that all institutions comply with their legal obligation to provide appeals-related documents to the IPC, the agency has recently adopted new procedures regarding the receipt of records from institutions.

In brief, the procedures state that:

1. An institution is required to remit the records in an appeal to the relevant Appeals Officer within 21 days from the date that the institution receives the "Confirmation of Appeal" notice.

2. This 21-day period may be briefly extended only if the institution can provide reasonable justification for the delay.

3. Where the IPC has not received the required record within the stipulated time frames, the Appeals Officer will request that the Commissioner issue an Order for Production, ensuring the records are sent by a specific date.

These procedures were created to be fair to everyone concerned with an appeal, while acknowledging there may be instances where exceptional circumstances mean an institution cannot meet the 21-day deadline. On these rare occasions, institutions are urged to communicate with the Appeals Officer assigned to the file in order to discuss the matter.

The IPC appreciates the co-operation of provincial and municipal co-ordinators in helping to make the appeals process quicker and more efficient.

Upcoming Conference

Third Party Information in Ontario, Protecting and Releasing it: *What you need to know*

FEBRUARY 18, 1992, SHERATON CENTRE, TORONTO

This one-day training session examines commercial confidentiality and third party access and intervention – in relation to current access and privacy legislation.

For further information and registration, contact Riley Information Services Inc., 633 Bay Street, Suite 2207, Toronto M5G 2G4; telephone (416) 593-7352; facsimile (416) 593-0249.

Coming up next issue:

The IPC shares its perspective on the Standing Committee's review of the provincial *Act* in the Legislature. The article will feature highlights from the review, tabled December 11, 1991.

IPC
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If you have any comments regarding this newsletter, wish to advise of a change of address or be added to the mailing list, contact:

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