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TOM WRIGHT, COMMISSIONER

Open Government

"THE BASIC PREMISE BEHIND ONTARIO'S ACCESS laws is that government is the custodian, not the owner, of the information it possesses".

So advised Ontario's Information and Privacy Commissioner Tom Wright in his remarks before the Standing Committee on the Legislative Assembly at the three-year review of the *Municipal Freedom of Information and Protection of Privacy Act.*

The Commissioner stressed the importance of government openness:

"The true owner of information is the public, not the government who holds it ... In today's society, access to government information is critical if public institutions are to be held accountable for their actions. Access to information can help restore the balance between government ... and the individual citizen".

Accordingly, the IPC is actively promoting the routine disclosure and active dissemination of government information.

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Forms Review Team (left to right): From the IPC Compliance department — Nick Magistrale, Noel Muttupulle and John Brans (Manager); and Assistant Commissioner Ann Cavoukian.

To e-mail or not to e-mail ?

... few people realize just how public their e-mail systems really are ...

IT HAS BEEN SUGGESTED THAT ELECTRONIC MAIL has the same security level as a postcard. This may be so. But before we discard our e-mail packages and revert to pen and ink, let's consider the possibilities.

On the positive side, e-mail can be an effective tool that helps break down barriers to communication and promotes the free exchange of information and ideas.

On the negative side, few people realize just how public their e-mail systems really are and how easily their personal information and confidential messages can be scrutinized by unexpected readers. E-mail creates an electronic trail of communications that can be used to monitor an employee's activities. Legal and ethical questions have emerged about the right to privacy of e-mail users, particularly in the workplace.

In order to heighten awareness of the privacy issues, the Office of the Information and Privacy Commissioner (IPC) has recently developed a set of guidelines to help public and private sector organizations develop formal e-mail policies.

Among the guidelines' suggestions:

- The privacy of e-mail users should be respected and protected;
- Each organization should create an explicit policy on the use of e-mail which addresses the privacy of its users;
- Each organization should make its e-mail policy known to its users and inform users of their rights and obligations in regard to the confidentiality of messages on the system;
- Users should receive proper training in regard to e-mail and the security/privacy issues surrounding its use;
- E-mail systems should not be used for the purposes of collecting, using and disclosing personal information, without adequate safeguards to protect privacy.

As discussed, e-mail can be an effective tool that can help promote good communications. But without policies and procedures to protect privacy, individuals may be reluctant to use such systems to their full potential. A commitment to protecting e-mail privacy may not only promote effective communication, but enhance the work environment by letting individuals know that their rights in the workplace are considered to be important enough to warrant protection.

If you would like a copy of "Privacy Protection Principles for Electronic Mail Systems", contact Jennifer in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

IPC Orders

The Office of the Information and Privacy Commissioner is continuing to streamline and simplify its processes to ensure the best possible service to its clients.

With this in mind, and due to the increasing number of orders that this office issues – over 900 to date – we are currently looking for ways to present the decisions in a simpler format.

Our aim is two-fold. First, we want to make the process of issuing orders more efficient, thus ensuring our clients get a decision as quickly as possible. Also, we plan to make the orders more reader-friendly, thereby ensuring an easy-to-understand document for everyone.

A review of the order format is underway. The results should be evident in decisions made in the second quarter of 1994. The next issue of *IPC Perspectives* will feature further developments.

Open Government

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By "routine disclosure", the IPC means the automatic release of certain types of administrative and operational records, in response to requests – either within or outside the formal access process. For instance, one government organization received numerous requests for building permit information. To improve customer service, they created a special database that could be directly accessed by the public.

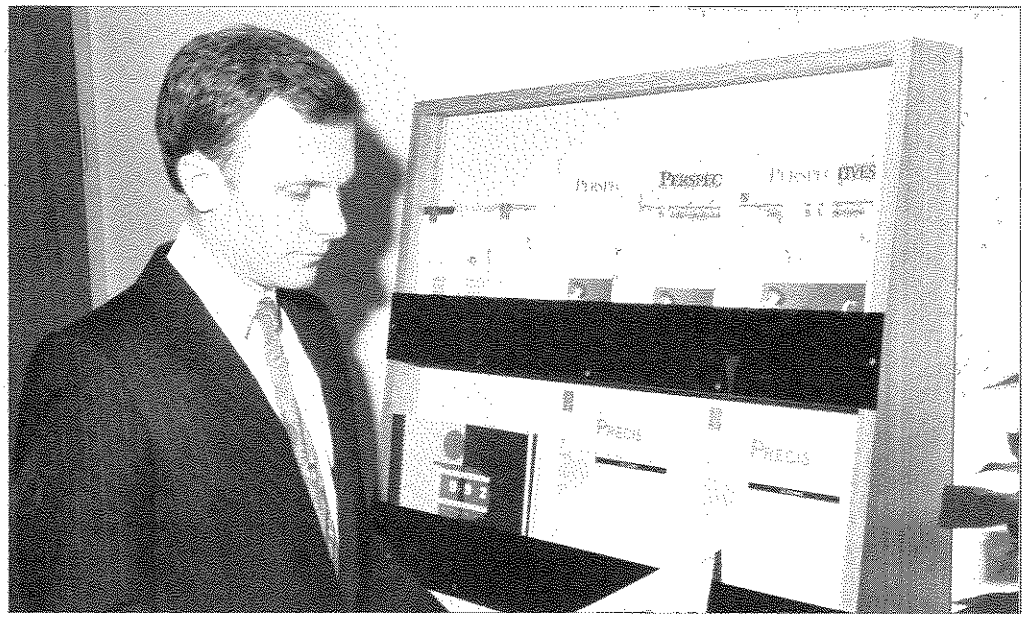
This is a good example of routine disclosure. However, the IPC is urging government to go a step further – towards active dissemination of government-held information. "Active dissemination" is the periodic release of useful general records without waiting for an access request. This requires anticipation of customer needs and acting to ensure such useful records are ready.

Examples of active dissemination can be found in many municipalities. Councils regularly consider whether program budget reports received at in-camera meetings can be publicly disclosed without a formal request under the *Act*. If a council decides that confidentiality is unnecessary, it can authorize the report's release without an access request.

The IPC believes the practices of routine disclosure and active dissemination are especially promising in today's climate of fiscal restraint. Instead of waiting for consumers to extract information through the formal access process – which may involve mediation, appeals and even court cases – it would be more cost-effective, where appropriate, to freely release items of interest to the public. Routine disclosure and active dissemination can also foster open government and assist organizations to meet the growing public demand for information.

In order to help institutions in their challenge to meet the public's growing need for information, a working group was established to provide direction in the area of routine disclosure and active dissemination. The working group, representing a cross-section of organizations covered by access and privacy legislation in Ontario, worked together to develop a paper entitled "Routine Disclosure/Active Dissemination (RD/AD)". This document was developed through the combined efforts of: the City of North York, Go Transit, Halton Regional Police, Information and Privacy Commissioner/ Ontario, Management Board Secretariat, Ministry of Finance, Regional Municipality of Peel and Simcoe County Board of Education.

If you would like a copy of "Routine Disclosure/ Active Dissemination (RD/AD)", please contact Jennifer in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.



Catching up on some FOIP reading at the IPC. See "Decisions, decisions!" p.4.

Decisions, decisions !

Orders as well as compliance investigation reports are vital sources of information ...

IPC ORDERS FORM A KIND OF JURISPRUDENCE or "FOI yardstick" which government organizations often refer to when measuring the various interests of an access request. Orders as well as compliance investigation reports are vital sources of information for access and privacy professionals in Ontario. Accordingly, here is a list of where you can find details about IPC decisions.

- Full-text orders and compliance investigations. All orders and compliance investigation reports issued on or after June 1, 1993 are available for purchase from Publications Ontario. They are also available for viewing at the IPC reference library.
- *IPC Précis.* This quarterly publication presents brief outlines of all orders, plus textual summaries for selected orders. A copy of *IPC Précis* may be requested through the IPC Communications department.
- *Directory to Précis.* If you don't know which issue of *Précis* has the information you want, just check this annual publication. It can help you quickly locate the specific issue of *Précis* containing the highlighted order or compliance investigation that you are looking for.
- *IPC Indices.* These annual publications catalogue IPC orders by subject or section. Simply refer to the indices enclosed in this distribution package.

You may request a copy of *IPC Précis, Directory to Précis, Subject Index* and either the provincial or municipal *Sectional Index* from Jennifer in the IPC Communications department at (416) 326-3952. If you would like to arrange a visit to the IPC reference library, call or write the IPC Legal department secretary at 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1; telephone (416) 326-3333 or 1-800-387-0073.

Copies of full-text orders are available through Publications Ontario Mail Order, 880 Bay Street, Toronto, Ontario M7A 1N8; fax (416) 326-5317.

Access and Privacy in Canada

YOU MAY BE AWARE THAT ON JUNE 15, 1993, the National Assembly in Quebec passed Bill 68, the *Act Respecting the Protection of Personal Information in the Private Sector.* You may also be aware that on October 4, 1993, British Columbia's *Freedom of Information and Protection of Privacy Act* came into effect. But did you know that Nova Scotia, Saskatchewan and Alberta have had recent access and privacy developments as well? The following are some brief highlights:

Nova Scotia

The new *Freedom of Information and Protection of Privacy Act* is now law. The legislation requires that the *Act* be proclaimed no later than July 1, 1994.

Saskatchewan

The *Local Authority Freedom of Information and Privacy Act* was proclaimed July 1, 1993 and covers all municipal government bodies.

Alberta

An all-party legislative committee was established in the fall of 1993 to hear from the public with regard to Bill 1 – the *Access to Information and Protection of Privacy Act.* The committee's recommendations, found in the Report on Public Consultation (December 1993), are being reviewed by the Alberta government.

Forms Review

THE ONTARIO GOVERNMENT COLLECTS personal information in many different ways – 43,164 different ways, to be exact.

A survey by the Ontario Records Council revealed that 43,164 registered forms are being used to collect information across the province. It was estimated that an additional 40,000 unregistered forms are also in use.

Since forms are a prominent method used by the government to collect personal information, the IPC felt that a review of a sample of government forms would be appropriate. The forms were reviewed for proper "notice of collection" as per the requirements of section 39(2) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

The IPC reviewed 11 ministries and sampled 351 forms. The findings indicated that 37 per cent of these forms were in full compliance with the three-part notice requirements of the *Act*; 63 per cent were not in compliance.*

This means that while roughly one-third of the forms reviewed gave complete notice of collection, almost two-thirds left out some essential details. As per section 39(2) of the *Act*, government organizations are required to advise individuals of certain facts when collecting personal information. They must advise individuals of: the legal authority to collect the personal information being requested; the purposes for which the information is being collected; and the name of a contact at the organization for further information.

The IPC made a number of recommendations to each of the 11 ministries involved in the review. Above all, the IPC stressed the importance of providing individuals with full notice when collecting personal information. Further details of the findings in this review will be provided in the next issue of *Perspectives*.

* For complete findings of the review, please see the "Review of Forms Used to Collect Personal Information in the Provincial Government – Summary Report of Significant Findings". For further information on providing notice of collection, refer to *IPC Practices: Providing Notice of Collection* (Compliance 3, July 1993). These publications are available through the IPC Communications department. Call Jennifer in Toronto at (416) 326-3952 or 1-800-387-0073.

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

Q&A

Q: *Are hospitals and universities covered by the* Acts*?*

A: Hospitals and universities are not covered by access and privacy legislation in Ontario. There is no formal access procedure at either hospitals or universities under the *Acts*.

On January 18, 1994, the Information and Privacy Commissioner/Ontario appeared before the Standing Committee of the Legislative Assembly to recommend that the *Acts* be extended to hospitals and universities.

The Standing Committee is undertaking a review of the municipal *Act**. When the review is complete, recommendations will be made to the Legislative Assembly regarding amendments to the municipal legislation.

* For more information, see "Three-Year Review Summary" on p.6.

Three -Year Review Summary

Commissioner Tom Wright urged the extension of information and privacy legislation to cover hospitals, universities, social service agencies and professional governing bodies, during appearances before the Standing Committee on the Legislative Assembly January 18 and 25.

Current Ontario freedom of information and protection of privacy legislation applies only to provincial and municipal government organizations.

"All of these additional bodies perform important public functions and many of them receive substantial government funding", Wright pointed out in his remarks. "It is in the public interest to make these key organizations more readily accountable by providing access to their general records. At the same time, these bodies often hold sensitive personal information which requires legislated privacy safeguards".

The extended coverage was one of 53 amendments proposed by the IPC in a written submission. The committee is conducting a review of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), as mandated by law after the *Act* has been in operation for three years.

Applicable to municipal government organizations, the *Act* has been in force since January, 1991. It closely mirrors the *Freedom of Information and Protection of Privacy Act* covering provincial government organizations, in effect since 1988. Given the links between the two *Acts*, the submission proposed concurrent changes to both.

A second major recommendation called for disclosure of the salaries of all provincial and municipal government employees. At present, legislation permits the release of salary ranges only.

"This recommendation reflects the spirit of new rules under the *Ontario Securities Act* concerning disclosure of executive salaries in the private sector", Wright observed. "Access to salary data is one way of holding government organizations more accountable to their shareholders, the tax paying public".

Other proposed amendments were intended to expand access to information, strengthen privacy protection and make the legislation more workable. Among them:

- special provisions dealing with electronic records, including mandatory consideration of access and privacy features in the design stage of government information systems;
- safeguards to ensure continued public access to basic government information when government negotiates contracts with the private sector to distribute the information;
- limits on the introduction of new unique personal identifying numbers by government organizations.

At the time of this writing, the Standing Committee was deliberating on whether to hold public hearings on the extension of the legislation to public hospitals.

Thank you for your responses!

With the winter issue of *Perspectives*, we sent a brief questionnaire asking what you thought about our publications. Your confidential responses are being analyzed and recommendations will be considered for future publications.

Coming up next issue:

The IPC reaches a milestone with Order 1,000.

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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