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TOM WRIGHT, COMMISSIONER

Informational Privacy of Concern to Public

"INFORMATIONAL PRIVACY ISSUES ARE RAPIDLY moving up the public agenda," said Tom Wright, Ontario's Information and Privacy Commissioner, in a keynote address given at the annual access and privacy workshop held in Toronto on November 21 and 22, 1994.

In this address, Commissioner Wright reflected on the effect the information highway will have on access and privacy in the future.

Over 250 people attended this year's workshop which was jointly sponsored by the Information and Privacy Commissioner, the Freedom of Information and Privacy Branch of Management Board Secretariat and the Association of Municipal Clerks and Treasurers of Ontario.

"The information highway... if the number of newspaper column inches is any measure, has been one of the top stories of the year...."

The Commissioner went on to discuss how the information highway could enhance access.

"First, on the access side, we should keep in mind that the information highway is only a means of communication. What data travels along the road is another matter. From the point of view of government information, there will be little traffic moving on the highway unless the traditional reflex towards secrecy is replaced by a vibrant commitment to openness.

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Assistant Commissioner Irwin Glasberg chaired Speed Bumps on the Information Highway at the fall access and privacy workshop.

Electronic I.D.

A RECENT REPORT FROM THE OFFICE OF THE Information and Privacy Commissioner says that individual privacy could be significantly affected by all the electronic identification now being planned for our wallets.

In Ontario, new, digitized photo Health Cards and Driver's Licences will be released soon. As well, the idea of fingerprint identification cards — either for people on welfare, or for all Ontario citizens — has been raised.

In Ottawa, Ministers are considering electronic Indian Status cards for native people, Permanent Resident cards for landed immigrants, and a handprint passport.

The new, proposed identification cards are part of a growing trend, says Commissioner Tom Wright. "It's becoming possible to find out a lot about an individual person, electronically. In Canada and all over the world, the rise of technology is proving to be the fall of individual privacy."

At issue is exactly what kind of safeguards would be planned for electronic identification. Wright's recently-released report, "Privacy and Electronic Identification in the Information Age", cautions that any new method of collecting information needs to be carefully designed with fair information practices in mind.

Fair information practices are not, in themselves, a new idea. What has changed is their application: It's now necessary to think about fair information practices in the electronic world of technology and computers.

And the world, with technology and computers in it, is a very different place than it was a century ago: Thanks to the storage capacity of computers, an enormous number of regular transactions are now recorded electronically. Those electronic records can be, and are, easily stored, sold, rented or traded.

Within established limits, government ministries share and compare records. Companies rent their databases to each other. In some cases, the public and private sectors are even pooling information.

"It's now possible for someone out there to build a very complete picture of you," says Wright. "And you won't know anything about it."

Polls show that this technological assault on privacy is making Canadians uneasy right now. In 1978, Equifax, a credit bureau that's been tracking the consumer appetite for privacy, found 67 per cent of Canadians were "very concerned" about privacy.

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Co-ordinators met for a series of sessions at the fall workshop to discuss access and privacy issues.

Three-Year Review of the Municipal *Act* Completed

THE STANDING COMMITTEE ON THE LEGISLATIVE Assembly has completed its three-year review of the *Municipal Freedom of Information and Protection of Privacy Act.* The *Act* requires that a review be held after the legislation has been in effect for three years.

The report issued by the Committee includes a series of 84 recommendations.

The municipal *Act* came into effect on January 1, 1991. It is modelled after the *Freedom of Information and Protection of Privacy Act*, which came into effect on January 1, 1988.

In 1991 the *Freedom of Information and Protection of Privacy Act* underwent a similar review. The result was a detailed Committee report containing 81 recommendations.

At the time, the government was unable to act on the Committee's recommendations because of a crowded legislative agenda, and the government indicated it would look at it again once the review of the municipal *Act* was concluded.

The government now has the reports, and the Information and Privacy Commissioner/ Ontario is hoping it will be able to respond quickly to the suggested recommendations to both *Acts.*

Q&A

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

Q: *Is there one place I can go to access all the information the provincial and municipal government has stored on me?*

A: There is no central location where government information on an individual is stored. In order to access this information, you need to know whether the information you want to access is held by a provincial or local government organization.

Provincial Records

A *Directory of Records* is available for viewing throughout Ontario at offices of all ministries, provincial government organizations and in public libraries.

Consult the *Directory of Records* to find out the kinds of records held by ministries and organizations covered by the provincial *Act.* The *Directory* also describes what each organization does, as well as the kinds of general records and personal information kept by these organizations; it also lists the addresses of provincial government organizations.

Municipal Records

Municipalities, local boards, agencies and commissions covered by the municipal *Act* have prepared their own directories which should be available at offices such as city halls, police departments and boards of education.

To make a request under the *Acts*, follow these steps:

Step 1: Complete a request form, or write a letter stating that you are requesting information under one of the two *Acts.* These forms are available from government organizations across the province.

Step 2: Forward the completed request form or letter to the "Freedom of Information and Privacy Co-ordinator" at the government organization most likely to have the information you are looking for.

1994 – The Year in Review

January – The IPC submits "Call Management Services - Name Display" to the CRTC.

January – The IPC submits suggested changes to the *Municipal Freedom of Information and Protection of Privacy Act* to the Standing Committee on the Legislative Assembly. Commissioner Tom Wright makes two presentations to the Committee during the hearings.

January – The IPC conducts a review of forms used to collect personal information within the Ontario government.

February – The IPC releases "Privacy Protection Principles for Electronic Mail Systems".

February 5 – "Health Net" is unveiled by the Government of Ontario. This new computer network links Ontario drug stores to a province-wide database. The IPC was involved during the design of the system to ensure privacy protection.

February 14 – The *Environmental Bill of Rights* is proclaimed. The bill establishes a computerized environmental registry which can be accessed by anyone with a computer modem.

March 28 – Industry Canada holds workshop on the Privacy Implications of the Information Highway.

April – The IPC releases "Routine Disclosure/ Active Dissemination (RD/AD)".

May – The IPC releases "Privacy Alert: A Consumer's Guide to Privacy in the Marketplace".

June – The IPC releases its 1993 Annual Report.

June 27-29 – The Summit of Canadian Access and Privacy Commissioners takes place in Ottawa.

July – Nova Scotia proclaims *The Freedom of Information and Protection of Privacy Act.*

August – A report released by the International Labour Organization (part of the UN) found that workers in industrialized countries are steadily losing their privacy.

August 16 – The Canadian Human Rights Tribunal rules that testing job applicants for signs of drug abuse is not a breach of the federal human rights code.

September – The Canadian Human Rights Commission asks the Federal Court to overturn a Canadian Human Rights Tribunal decision that allows the Toronto Dominion Bank to continue screening new employees for drug testing.

September – The Ontario Library Association's Coalition for Public Information releases a document called *Future-Knowledge: A Public Policy Framework for the Information Highway.* The IPC developed the access and privacy principles included in the document.

October – The IPC presents a submission to Industry Canada called *Privacy and the Canadian Information Highway* in response to their discussion paper *Privacy and the Canadian Information Highway.*

October – The Information Highway Advisory Council releases "Privacy and the Canadian Information Highway: Building Canada's Information and Communication Infrastructure".

October 1 – An Alberta Order-in-Council is signed proclaiming sections of the *Freedom of Information and Protection of Privacy Act.*

November – The IPC releases "Privacy and Electronic Identification in the Information Age".

November 22 – Ontario's Information and Privacy Commissioner, Tom Wright, gives the keynote address at the workshop *Fast Forward: Access and Privacy Issues in the Information Age.*

December – The Standing Committee on the Legislative Assembly issues a report on "Suggested Changes to the *Municipal Freedom of Information and Protection of Privacy Act*".

Summaries

Investigation I94-042M

An individual was diagnosed as HIV-positive, and advised by his doctor to get some more help to care for his mother, who had suffered a stroke. The local Municipality already provided some in-home assistance, through a contract with a private company.

The Municipality turned down his request for additional help. The individual then chose to reveal his HIV status to the Municipality. He was told the information would not be passed on to the private company, without his consent.

However, when he later phoned the private company about another matter, the individual was told that the company had learned about his HIV status — from the Municipality.

The Municipality believed that the situation was a compelling circumstance that could affect someone's health or safety. As a result, they had given the private company the information in order to protect the safety of its staff.

The individual complained to the Information and Privacy Commissioner/Ontario (IPC) that the Municipality had improperly disclosed his HIV-positive status to the private home care company.

The IPC found that it was not necessary to disclose the individual's HIV status, since the private company had a policy to use "universal precautions" as standard procedure. The staff did not need to know the individual's specific condition to be safe, particularly since they were not providing care for him but rather his mother.

Order M-430

A Town was interested in buying a certain piece of property, so it commissioned an environmental audit. Satisfactory audit results were a condition of the sale.

A request was made for the audits. The Town denied access, and the requester appealed to the Information and Privacy Commissioner/Ontario (IPC).

The IPC considered the implications of two procedural concerns: the appeal was filed after the 30-day deadline which is prescribed by the *Act*, and the Town no longer had possession of the audits by the time of the Inquiry.

After the Town decided not to buy the property, it agreed to return the environmental audits to the property owner.

The IPC ruled that the current status of a record with respect to custody and control was not at issue. In this case, the Town had custody and control of the audits when the original request was made, and when the appeal was filed. Accordingly, the audits were subject to the *Act*.

The IPC also considered the 30-day deadline. When the Town originally denied access to the audits, it sent a letter to the requester explaining the decision. The letter did not inform the requester of his right to an appeal, or the 30-day deadline for filing an appeal. The IPC found that institutions must provide requesters with a meaningful notification of the right to appeal, including the time limit. It ruled that the 30-day appeal deadline should not apply in this case. As a result, the appeal was deemed valid.

Electronic I.D. (cont'd)

That number has climbed steadily ever since. It reached 84 per cent this year.

"The technological invasion is a silent one," says Wright. "And it's not going away. Either we learn to harness technology to protect privacy, or privacy will be the invasion's first casualty."

If you would like a copy of "Privacy and Electronic Identification in the Information Age", contact Lisa in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

"It is for this reason that my office is energetically promoting the routine disclosure and active dissemination of government information.

"The IPC feels government organizations should automatically release designated types of administrative and operational records in response to requests, either within or outside the formal access process ....

"We are also urging government organizations to go farther to anticipate customer needs by periodically releasing useful general records without waiting for an access request."

The Commissioner emphasized that the information highway should be available to everyone.

"It is also imperative to ensure wide access to the information highway itself. It will be important to avoid financial toll booths where government and other basic services are concerned. Otherwise we risk creating a new social division between information 'haves' and 'have-nots'."

The Commissioner also discussed the public's concern with privacy. "On the privacy side, as the polls show, the information highway and its uses are causing anxiety."

He quoted some recent privacy horror stories as an illustration:

- Lotus Marketplace — a joint venture by a computer company and a credit bureau to produce a series of diskettes — available to anyone at a price — with the names, addresses, buying habits and income details on 80 million Americans.
- Or Blockbuster Video's plan to sell mailing lists categorized by rental patterns — that is, lists of those who rent action movies, children's movies, adult-rated movies and so forth.
- Or the sale by Equifax of a list of creditworthy customers to Citibank, which then tried to sign them up for a pre-approved credit card.

In all three cases the projects were cancelled following a consumer backlash.

"Incidents like these convince me that privacy protection is about to break through as a major consumer issue — the way environmental concerns led companies to introduce green products a few years ago. Those businesses that respect privacy will gain an edge over the competition, while those that don't will find themselves at a disadvantage.

"The information highway — which without a doubt brings enormous economic and social benefits — does challenge our traditional concepts of access and privacy. We have to ask ourselves if access in the computer age will mean something less than it did in the age of the telephone — and if we are now willing to abandon our privacy, our right to be left alone, or to remain unknown."

For a copy of the Commissioner's keynote address at "Fast Forward: Access and Privacy Issues in the Information Age", please contact Lisa in the IPC Communications department at (416) 326-3952 or 1-800-387-0073.

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