



IPC Perspectives - Working Towards Solutions

IPC PERSPECTIVES - Winter, 1996

Working Towards Solutions

"Ontario has a track record to be proud of ... but what does the future hold in the current cost- cutting, downsizing environment?" Last November, over 200 FOIP Co-ordinators attended the annual access and privacy workshop with such thoughts in mind.

The popular workshop *Working Towards Solutions*, held on November 15 and 16, was jointly sponsored by the Information and Privacy Commissioner/Ontario (IPC); the Freedom of Information and Privacy Office, Management Board Secretariat (MBS); and the Association of Municipal Clerks and Treasurers of Ontario (AMCTO).

Commissioner Wright's keynote speech on November 16 addressed the interests and concerns of both the public and the freedom of information and privacy Co-ordinators across the province. He commented on the extraordinary challenges of today's environment -- one driven by enormous pressure to both reduce costs and improve customer service. He also illustrated how well the system is working in Ontario.

"Ontario has a track record to be proud of. As my latest *Annual Report* indicates, every year provincial government organizations have replied to the majority of requests within 30 days -- and have answered more than eight in 10 requests within 60 days. Local government organizations have an outstanding record too -- responding to about 90 per cent of requests within 30 days, every year they have been covered by the municipal *Act*. These impressive response rates took place against a backdrop of an increasing volume of requests....

There is also good news on the privacy side. More than two-thirds of privacy complaints to the IPC were settled voluntarily in 1994 -- often through mediation.

When a case proceeds to a formal investigation report, we routinely follow up on the recommendations made. In 1994 we followed up on 70 recommendations from our investigation reports, and found that **all** of them had been implemented satisfactorily by the organizations involved....

To improve cost-effectiveness, I believe it is imperative to do everything possible to make use of the *Acts* as a matter of last resort.... For some time now, we have been advocating routine disclosure and active dissemination (RD/AD) of government information, as customer-focused alternatives to the formal access process.... I believe RD/AD approaches may well hold the key to the continued success of our freedom of information system, in a climate of diminishing public sector resources. Put simply, routine disclosure and active dissemination make access to information faster, easier and cheaper.

RD/AD ... need not be high-tech. For example, I know of a mayor of a sizeable Ontario city who puts a copy of all his expense accounts in a public file, available to anyone who asks for it. This is a low-tech, inexpensive way to make information accessible.

But it is the attitude demonstrated by this mayor toward the public's right to access information that is the key to achieving a vibrant, cost-effective FOI system in Ontario. This official has thought about the public's right of access to information, as well as the type of information in which the public is likely to be interested....

The time has come, then, to move beyond the conventional wisdom -- to bring an open mind as well as a dedicated heart to our efforts to advance the public interest in the information age. It is a time for creativity and innovation as we go about the day-to-day

realities of our business -- expediting access to information, safeguarding privacy, serving the public -- and doing it all in a cost-effective fashion.

I have every confidence that through the combined commitment of government organizations and the IPC, Ontarians will continue to benefit from a freedom of information and protection of privacy system that is second to none."

For a copy of Commissioner Wright's complete address, please contact the IPC Communications Department at (416) 326-3333 or 1- 800-387-0073. The speech is also available from the IPC's World Wide Web site.

Summaries

Order M-618

On October 18, 1995, the IPC issued a significant order on the subject of frivolous or vexatious requests. The order arose from a number of requests for information under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) made to various Police Services Boards since early 1993.

Following public hearings, Commissioner Tom Wright declared the requester involved, Robert Riley, to be engaged in a course of conduct that constituted an abuse of the processes of government institutions and the Commissioner's office under the *Act*. He also invoked his authority under section 43 (3) of the *Act* to impose conditions on processing any requests and appeals from Mr. Riley now and for a specified period into the future.

The Commissioner indicated this order puts all participants in the processes under both the provincial and municipal *Acts* on notice that attempts by any party to abuse those processes will be dealt with firmly and fairly.

In response to a number of requests made by Robert Riley and another individual, the Boards and Chiefs of Police of London, Metropolitan Toronto, Sarnia and Windsor applied for a court injunction against the requesters and the Information and Privacy Commissioner (the IPC). The application, filed in December 1994, claimed the requests were "frivolous, vexatious and...an abuse of the right of access provided in the *Act*."

Some of the requests included the number of washroom facilities and cleaning schedules in police departments. Requests were also made for detailed listings of all arrests made or charges laid by Metro Toronto Police over a five-year period, as well as a detailed listing of all arrests made over a 10-year period by London Police.

The court application was put on hold February 9, 1995 so that the issues raised in the application could be considered by the Commissioner. On May 9, 1995, the Commissioner issued a notice of inquiry on the issue of frivolous or vexatious requests. In preparation for the inquiry, the Commissioner's office invited applications for intervenor status from various government institutions, individual appellants whose appeals raised similar or related issues involving alleged abuses of process, the media and other potentially interested parties. The oral hearing stage of the inquiry took place on August 29 and 30, 1995.

Following a full review of the matter, the Commissioner concluded that while the *Act* does not address the question of an institution's obligation to respond to frivolous or vexatious requests, a crucial distinction exists between a statutory right and the means available to realize it. "While Mr. Riley in principle may have an unlimited right of access to government information, subject only to the exemptions set out in the *Act*, he does not have unlimited access to the processes available to secure that right," the Commissioner wrote.

The conditions imposed in the order are designed to maintain the right of access to information while preventing abuse of the process. The conditions include:

- the number of requests and/or appeals Mr. Riley can have at any one time over the 12 months following the order, until December 17, 1996, is limited to five;
- no individual government organization will be required to process any more than one request and/or appeal from Mr. Riley at a time, to a maximum of four requests and/or appeals during the year;
- after the 12 months, any person or organization affected by the order can apply to have it varied; otherwise its terms and conditions will continue from year to year.

I95-040P

The complainant, a student at a college of applied arts and technology, was concerned that the college had given a copy of his class schedule and his photograph to an employee of a department store without his consent.

The department store employee had gone to the college after speaking to the police regarding a person she thought was following her. According to the college, the police advised her that this person (the complainant) was a student of the college and that she should obtain his photograph to help the store's security staff, should he return to the store.

The college stated that they gave the complainant's class schedule and photograph to the store's security staff (not the employee) in accordance with section 42(g) of the *Act*, i.e. its disclosure was to an institution or law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding....

The IPC determined that the store was not an "institution under the *Act* and while the store's security service was involved in providing security it was not a law enforcement agency as this term is defined in the *Act*. It was the IPC's view that a law enforcement agency is one which has a primary law enforcement role and would include such traditional law enforcement bodies as police services boards. If the college's disclosure had been to the police to aid in their investigation, it would have been in compliance with section 42(g).

The IPC recommended that the college take steps to ensure staff are reminded of the disclosure provisions of the *Act*.

All IPC orders, as well as investigations from June 1, 1993, are available through the QUICKLAW database; or on the [IPC's Web site](#).

1995 - The Year in Review

January 1 - An amendment to the *Municipal Act* comes into effect requiring municipal councils to adopt procedural by-laws to ensure their meetings are open to the public.

February 24 - Tom Wright, Ontario's Information and Privacy Commissioner gives a presentation to the B.C. freedom of information and privacy community entitled: "Our Experiences in Ontario" while attending the Pan Pacific Conference.

March - The IPC releases *Access and the Canadian Information Highway - A Submission to the Information Highway Advisory Council Secretariat* in Response to the Discussion paper entitled *Access, Affordability and Universal Service on the Canadian Information Highway*.

March - The IPC releases *Eyes on the Road: Intelligent Transportation Systems and your Privacy*.

March - Darce Fardy becomes Nova Scotia's first Review Officer. Nova Scotia's *Freedom of Information Act* gives its Review Officer only advisory powers, but like the federal Access Commissioner, Fardy can take court action if his recommendations are disregarded.

May 15 - As a weapon against violence and vandalism, a few large urban school boards in Canada install surveillance cameras in schools.

July 7 - Ontario ends the use of photo-radar.

August - The Information and Privacy Commissioner/Ontario, together with the Dutch Data Protection Authority, release a joint report entitled *Privacy Enhancing Technologies: The Path to Anonymity*.

August 15 - The IPC tables its 1994 Annual Report to the Legislative Assembly.

August 29 & 30 - The first public inquiry held under Ontario's access and privacy legislation examines the issue of frivolous or vexatious requests for information.

October 1 - Alberta's *Freedom of Information and Protection of Privacy Act* comes into effect.

October 18 - Commissioner Wright issues Order M-618, on the matter of frivolous or vexatious requests.

October 25 - 27 - The IPC hosts the "Annual Meeting of Federal and Provincial Access and Privacy Commissioners" in Toronto.

October 31 - The IPC releases *Privacy Protection Principles for Voice Mail Systems*.

November 16 - Commissioner Wright gives the keynote address at the annual workshop " Access and Privacy: Working Towards Solutions."

December - Commissioner Wright presents two submissions to the Standing Committee on General Government regarding Ontario's Bill 26.

Q&A

Q: I've been told that as a consumer I should take control of my personal information and apply my own code of "fair information practices" to all my commercial transactions. What are fair information practices?

A: The spirit of fair information practices is rooted in the 1980 *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*, issued by the Organization for Economic Co-operation and Development (OECD) in September 1980. These guidelines provide a helpful overall way of thinking about privacy and are the foundation of most privacy protection legislation and privacy codes throughout the world.

Fair information practices are divided into three general categories. Although these categories are designed for collectors of personal information, knowledge of them can also help the consumer handle potential invasions of privacy in the marketplace. Remember, information collectors should:

- only collect accurate and pertinent information during any transaction;
- grant individuals access to their personal records; and
- limit access to personal data by third parties.

Learn about your right to privacy. Be aware. Exercise a little caution, a little curiosity and guard your personal information. By applying your own code of fair information practices to daily transactions, you will be better able to protect the privacy of your own personal information.

For further information on how to protect your privacy in the marketplace, see the *IPC Practices* entitled "Privacy Alert: A Consumer's Guide to Privacy in the Marketplace".

For a copy, call the IPC Communications department at (416) 326-3333 or 1-800-387-0073 or see the IPC's World Wide Web site.

Practising what we preach

In November, we launched our own Web site on the Internet as a research and information tool. The site includes:

- a listing of all our orders, policy papers and investigation reports from June 1, 1993;
- a section on frequently asked questions on access and privacy, summaries of our policy papers, text of our publication *IPC Practices* and the most current *IPC Perspectives*;
- the text of both *Acts*, as well as a summary of each; and
- indices to help identify orders by subject area and section of the *Acts*.

The IPC's address on the World Wide Web is: <http://www.ipc.on.ca>.

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The Information and Privacy Commissioner / Ontario (IPC) Web site is provided as a public service to promote greater understanding and awareness of access and privacy.

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