



# ACCESS BASICS

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# Agenda

- History of FIPPA
- Principles
- Coverage
- FOI Request Processing
- Exemptions
- Role of MGS
- Role of IPC



# Williams Commission Report

- Released in 1977
- Served as a blueprint for FIPPA
- FIPPA became law in 1988



# Principles of FIPPA

The purposes of this Act are,

- (a) to provide a right of **access** to information under the control of institutions in accordance with the principles that,
  - (i) information should be available to the public,
  - (ii) necessary exemptions from the right of access should be limited and specific, and
  - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the **privacy** of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.



## Who is subject to FIPPA?

- All provincial ministries
- Any agency, board, commission or other body designated as an “institution” in Regulation 460
- Community Colleges
- Universities



# What is Covered by FIPPA?

- Any record of information, however recorded, is subject to FIPPA

Examples:

Voice mail	Memos	Email	Maps and Plans
Notebooks	Photos	Drawings	Diagrams
Film	Video	Letters	Briefing Notes
Agendas	Reports	Minutes	Contracts



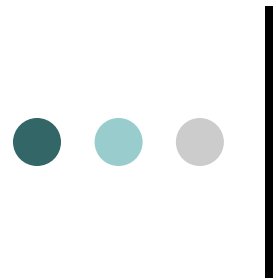
# Responsibilities & Accountabilities

- The Role of the Head of an Institution
  - The head has the responsibility to make all the decisions about access to a record under FIPPA as well as the decisions dealing with processing access requests. Regulation 460 provides listing of all heads.
  - The authority to make decisions may be formally delegated to another person in the institution (e.g. FOI Coordinator, ADM, Manager, etc.)



## Right of Access - s.10(1)

- Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
  - (a) the record or the part of the record falls within one of the exemptions under sections 12 to 22; or
  - (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.



# Custody or Control (s.10)

- **Custody**

- Keeping care, watch, preservation or security of a record for a legitimate business purpose
- e.g. physical possession

- **Control**

- Power or authority to make a decision about the use or disclosure of the record (may not be in physical possession)

## **Greater Interest**

- the record was originally produced in or for the other institution;
- or
- in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof



# What makes a Request?

- A request must:
  - Be in writing
  - Be accompanied by a \$5.00 application fee
  - Provide sufficient detail to identify record(s)



# FOI Request Process

- Request made in writing with application fee
- 30-day timeframe to respond
- Clarify request / transfer (within 15 days)
- Search
- Consult with program areas and others
- Determine which exemptions apply and sever if necessary
- Determine if time extensions apply
- Fee/Fee estimate
- Final decision/Release records to requester



# Fees / Estimate

- Fees for the purposes of subsection 57 (1) of the Act as outlined in Regulation 460
  - Copying (20 cents per copy)
  - Search time (\$7.50 per 15 minutes)
  - Record preparation (severing) (\$7.50 per 15 minutes)
  - Computer costs (\$15.00 per 15 minutes)
  - Fee estimate over \$100 (processing request is stopped until 50% deposit is paid)
  - Fee Waiver (*financial hardship* for requester and/or *public health and safety* must be considered)
  - No search fees and preparation fees charged for access to one's own personal information



# Time Extensions

- Large volume of records
- Necessitates a search through a large number of records
- Consultation



# Decisions

- Made by head of institution (authority to make decisions may be formally delegated to another person in institution)
- Decisions include access, fees, extensions, etc.
- Decision should consider:
  - Provisions of FIPPA
  - Previous orders of the IPC, Court decisions (e.g. Court of Appeal)
  - Legislation specific to your institution



# Mandatory Exemptions

**Records that fall within a mandatory exemption CANNOT be disclosed**

- Cabinet Records (S. 12 )
- Third Party Information (S. 17)
- Personal Privacy (S. 21)



## Cabinet Records (s.12)

- Where the disclosure would reveal the substance of deliberations of the Executive Council or its committees.



# Third Party Information (s.17)

To qualify for this exemption, information must:

1. Reveal a trade secret or scientific, technical, commercial, financial or labour relations information;

**and**

2. Have been supplied to government by the third party in confidence;

**and**

3. The third party must show that disclosure would:
  - a) Prejudice the third party's competitive position

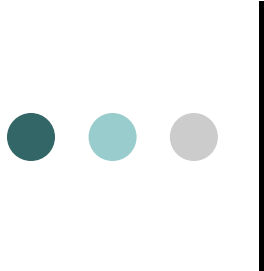
**or**

  - b) Result in information no longer being supplied to the ministry **or**
  - c) Result in an undue loss or gain to someone.



# Personal Privacy (s.21)

- FIPPA defines “personal information” as information about an identifiable individual, which includes:
  - Race, ethnicity, colour, religion, age, sexual orientation, marital status
  - Educational, medical, psychiatric, criminal or employment history
  - Any identifying number or symbol assigned to the individual
  - The individual’s personal opinions or views, except where they relate to another individual
  - Views or opinions of another individual about the individual



# Mandatory Exemption: Personal Information (s. 21)

P.I.	Not P.I.
Name if associated with other info	Name if not associated with other info
Employment or educational history (e.g. qualifications, résumés)	Information about an individual in his/her professional capacity
Personal opinions	Professional opinions
Personal correspondence	Business correspondence
An individual's home address and telephone number	An individual's business address and telephone number
Information that would reveal the identities of individuals who report incidents of non-compliance (e.g. a complaint from a neighbouring property owner; a company employee who reports "off the record")	Identities of professionals who report incidents of non-compliance (e.g. a representative of another regulatory body; a company official who is required to self-report instances of non-compliance)



# Discretionary Exemptions

- **Records that fall within a discretionary exemption MAY or MAY NOT be disclosed**
  - Advice and Recommendations (s.13)
  - Law Enforcement (s.14)
  - Relations with other Government (s.15)
  - Defence of Canada (s.16)
  - Economic Interests of Ontario (s.18)
  - Solicitor-Client Privilege (s.19)
  - Danger to Safety and Health (s.20)
  - Endangered Species (s.21.1)
  - Publicly Available Records (s.22)



# Discretionary Exemptions

- **Advice or recommendations (s. 13)**
  - From one government employee to another
- **Interference with a law enforcement matter (s. 14)**
  - Open investigations
  - Investigative techniques
  - Intelligence gathering
  - Information that would:
    - Endanger the life/safety of a law enforcement officer or other person
    - Deprive a person of the right to a fair trial
    - Endanger the security of a building/vehicle/system in need of protection



# Discretionary Exemptions

- **Intergovernmental relations (s.15)**

- Includes: relations with federal government; other provinces, states or countries; international bodies like the United Nations
- Does not include municipalities
- Records require Cabinet approval to release or providing government

- **Defence of Canada (s. 16)**

- Require Cabinet approval to release

- **Economic and other interests of government (s.18)**

- Similar to third party exemption, except information in need of protection is owned by Ontario



# Discretionary Exemptions

- **Solicitor-client privilege (s.19)**
  - Legal advice or privileged communications between ministry counsel and ministry personnel only
  - Does not apply to outside parties who claim privilege for information they submit to ministry
  - The substance of the record itself must be privileged or reveal legal advice



# Discretionary Exemptions

- **Danger to safety or health (s.20)**
  - “A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.”
- **Fish and wildlife species at risk (s.21.1)**



# Discretionary Exemptions

- **Publicly-available information (s.22)**
  - Government records that are public by statute (e.g. land title records; compliance orders; permits)
  - Government records that are expected to be published within 90 days of the request for information
  - Non-government published information: newspaper articles; website printouts
  - IPC has ruled that institutions should not release another ministry's public information



# Exclusions from the Act

- “Labour Relations” Exclusion - s.65(6)
  - Excludes *employment or labour relations* records
  - Exception: (s.65(7) – *Expense claims and agreements*
- Other exclusions
- Exceptions to exclusions



## Compelling Public Interest (s.23)

The following exemptions do not apply if a *compelling* and *public interest* outweighs their purpose:

- Advice to government (s.13)
  - Law Enforcement (s.14)
  - Relations with other government (s.15)
  - Third Party Information (s.17)
  - Economic and other interests (s.18)
  - Solicitor-Client Privilege (s.19)
  - Danger to Safety and Health (s.20)
  - Personal Privacy (s.21)
- Must be public as opposed to “personal” interest
  - Often raised by appellants as an issue on appeal
  - The individual seeking its application bears the burden of proof



# Ministry of Government Services

- The Minister of Government Services is the designated Minister responsible for the administration of FIPPA
- MGS Access and Privacy Office:
  - Part of the Office of the Chief Information and Privacy Officer
  - Develops policy
  - Provides advice to municipal/provincial FOI professionals
  - Provides training and education
  - Maintains Directory of Records/Institutions
  - Website [www.accessandprivacy.gov.on.ca](http://www.accessandprivacy.gov.on.ca)



# Role of the IPC

- Information and Privacy Commissioner (IPC)
- Officer of the Legislature
- Mediates and adjudicates access appeals
- Investigates/resolves privacy complaints
- Monitors M/FIPPA compliance
- Provides advice and comments on proposed government legislation and programs
- **[www.ipc.gov.on.ca](http://www.ipc.gov.on.ca)**



# Contact Information

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