
Basic Privacy
*Freedom of Information and
Protection of Privacy Act*

Access & Privacy Workshop 2009

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Learning Objectives

- FIPPA Key Principles and Exclusions
- Role of the IPC
- Role of the Coordinator
- Important Definitions
- Privacy Rules
- Privacy Best Practices
- Privacy Tools

Key FIPPA Principles

Access

- Right of access to government information
- Formal access process
- Exemptions to access are limited and specific
- Independent review: All decisions can be appealed to the Information and Privacy Commissioner (IPC)

Privacy

- Right of privacy protection for personal information held by government
- Institutions must abide by statutory rules for collection, use, disclosure, retention and disposal of personal information
- Right to access and correct own personal information
- Can complain to IPC when privacy rights have been violated

Role of the IPC

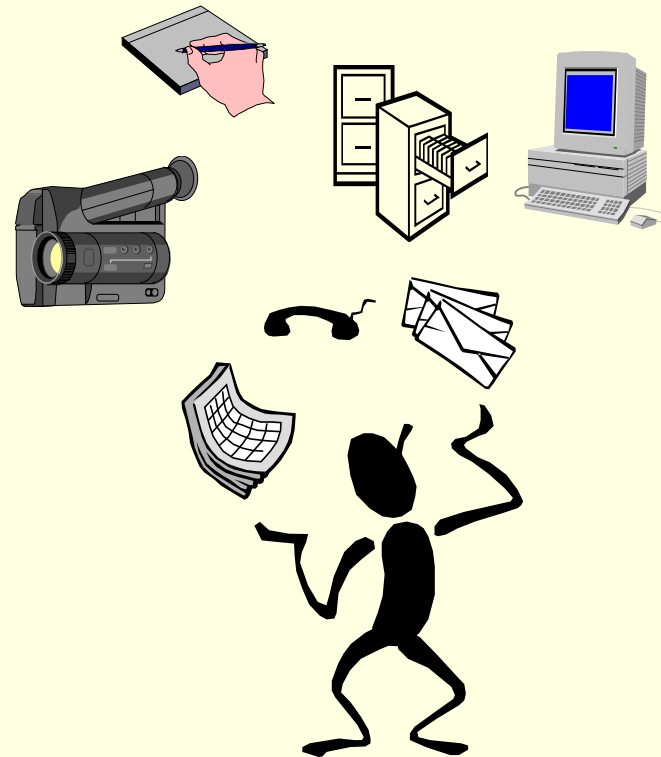
- Appointed by and reports to Legislative Assembly
- Adjudicates access appeals
- Investigates, resolves privacy complaints
- Monitors compliance with FIPPA, MFIPPA and PHIPPA

Role of the Coordinator

- Processing FOI requests in a timely manner;
- Providing privacy and access advice as required;
- Creating/maintaining a Directory of Records;
- Providing Notices of Collection;
- Annual reporting, etc.
- Promoting privacy and helping to ensure compliance with FIPPA
- Investigating privacy complaints

What is a record?

- A “record” is any record of information, however, recorded:
 - Printed correspondence
 - Marginal notes
 - Electronic documents
 - Audio or video tapes
 - Blueprints, drawings, pictures, diagrams
 - Voicemails and Emails



Personal Information (PI)

- Information about an identifiable individual, such as:
 - Name, race, age, sex, sexual orientation, marital status
 - Education, medical, employment history
 - Number or symbol
 - Address, telephone number
 - Individual's opinions or views
 - Individual's photo/image
 - Private correspondence sent to an institution

What is PI ?...

- Business identity information, e.g. name, title, contact information is *not* PI
- Information about individuals dead over 30 years is *not* PI (Sec. 2(2))

What is Privacy ?

- Privacy: “ the right to be let alone”... (Justice Louis D. Brandeis)
 - State of being private & undisturbed
 - Freedom from intrusion or public attention
 - Avoidance of publicity

(Oxford Dictionary)

- “Privacy revolves around an individual’s ability to maintain control over the uses of and circulation of their personal information.”

(IPC)

- FIPPA contains comprehensive rules governing the Collection, Use, Disclosure, Retention & Disposal of Personal Information

Overview of Privacy Rules

- The rules deal with the:
 - Collection; (Sec. 38(2))
 - Use; (Sec. 41)
 - Disclosure; (Sec. 42)
 - Retention; and (Sec. 40(1))
 - Destruction. (Sec. 40(4))
- Contraventions can be very serious
- Individuals can make privacy complaints to the IPC
- The IPC can also initiate its own investigations



N.B. minister resigns over privacy breach



Tony Huntjens, New Brunswick's Family and Community Services Minister, resigned Monday.

Canadian Press

Updated: Mon. Oct. 31 2005 11:22 PM ET

SAINT JOHN, N.B. — New Brunswick Premier Bernard Lord has had to accept the resignation of yet another cabinet minister who blurted private information in public.

Tony Huntjens, New Brunswick's Family and Community Services Minister, resigned Monday after he released the identity of a ward of the province to a newspaper reporter.

Huntjens is the second minister in three months to quit after mistakenly releasing information that is supposed to be kept private.

Environment Minister Brenda Fowle quit in the summer after she blabbed about a zoning issue involving a Liberal politician.

Although Lord admitted he'll have to read the riot act to his cabinet, he was generous in his praise of Huntjens, whom he described as an honourable man.

"We talked about this and concluded this was the appropriate course of action," Lord said in Saint John on Monday.

"He made a mistake, he slipped up. He knows that. For now, he's stepping down, but he could come back to cabinet down the road."

The New Brunswick Telegraph-Journal said Huntjens revealed the surname of an autistic man who was sent to a special facility in Maine for treatment. Liberal Kelly Lamrock said Huntjens broke privacy rules by naming the man.

"Privacy issues are sensitive personal matters that deserve the utmost respect from government officials," Lamrock said.

"The family involved has been put through an enormous amount of stress and suffering as a result of this disclosure."

Lamrock said that after losing two ministers for breaking the privacy laws of this province, Lord



New Brunswick Premier Bernard Lord

PI Collection Overview

- An institution must:
 - have the legal authority to collect the personal information; (Sec. 38(2))
 - collect directly from individual; (Sec. 39(1))
 - provide a notice of collection. (Sec 39(2))

Legal Authority

- Collection must be:
 - expressly authorized by statute or;
 - used for the purposes of law enforcement; or
 - necessary to the proper administration of a lawfully authorized activity.
- Otherwise, an institution cannot collect the personal information

Collection

- Direct:

- Must be collected directly from the individual (some exceptions).

- Indirect:

- Individual consents to indirect collection (Sec. 39(1)(a))
- Information collected is for determining suitability for an honour or award (Sec.39(1)(e))
 - e.g. Citizen of the Year Award

Collection

- Indirect Collection Continued:
 - Information is collected for law enforcement (Sec. 39(1)(g))
 - e.g. Background checks, criminal investigations
 - Indirect collection is authorized by statute (Sec. 39)
 - e.g. Assessment Act
- Other limited circumstances.

Notice of Collection

- **Contains:**

- legal authority for the collection;
- principal purpose(s) for which their personal information is intended to be used;
- title, business address, telephone of a public official for questions.

(Sec. 39(2))

Notice of Collection

- Can be written or recorded
- When drafting a Notice:
 - consider possible future uses & disclosures;
 - build in consistent purposes.

Sample Notice of Collection

Personal information contained in this form is collected under the authority of sections 4 and 10 of Ontario Regulation 473/07 under the HTA and will be used to verify entitlement to a driving instructor licence and for law enforcement purposes.

Direct enquiries to: Manager, Operational Policy Office, 1201 Wilson Avenue, Room B-051, Building A, Downsview, Ontario M3M 1J8, Telephone (416) 235-4612

Use of Personal Information

- For original or consistent purpose
- With consent
- For other limited circumstances

Disclosure of Personal Information

- In accordance with Part II (Access) of the Act
- With consent
- For original or consistent purpose
- Where needed in connection with duties
- To a consultant/agent (new April 2007)
- Compliance with legislation
- For law enforcement investigations
- Compelling circumstances; health/safety
- Compassionate circumstances
- ...others

Consistent Purpose

- An individual might reasonably have expected the use or disclosure at time the information was collected
- Other purposes depend on collection notice and what (reasonable) expectations it creates

Retention and Destruction of Personal Information

- Maintain PI for at least one year after last use
- Only use PI if accurate, up to date
- Dispose of PI effectively/securely
- Do not destroy requested records
- Use appropriate security/precautions

Privacy Breaches



'Here's an unusual one, Wayne: Gentleman says he's lost an umbrella.'

When a Breach Occurs...

Steps to managing privacy breaches:

- Respond and contain
- Notify
- Investigate
- Implement change
- Advise IPC of the breach and the actions taken by the institution

- OCIPPO Tools:
 - Taking the Right Steps – A Guide to Managing Privacy and Privacy Breaches
 - Best Practices for Responding to Privacy Breaches (poster)

Privacy Breaches - IPC Investigations

- The IPC investigates and resolves apparent breaches of M/FIPPA & PHIPPA privacy protections
 - Re: collection, use, disclosure, retention & destruction of Personal Information
- Possible outcomes of IPC investigation:
 - Complaint dismissed/settled
 - Investigation Report (recommendations)
 - Investigation reports made public
 - Investigation reports name institution

Exemptions to Privacy Provisions

Privacy provisions do not apply when:

- Personal information is maintained expressly for the purpose of creating a record that is available to the general public.

(Sec. 37)

- E.g. Court Dockets, Voter's Lists, Tax Assessment Roll, etc.

E-Mail and Voice Mail...

- Use e-mail and voice mail with the same care as with other records like letters and memos
- Don't leave personal information on voice mail - ask for a callback instead
- Unencrypted e-mail is not a secure medium
- Avoid inappropriate messages and limit the amount of personal information
- Assume e-mail/voice mail will be forwarded
- Retention, disposal rules apply

Privacy Tips

- Personal information must be kept secure at all times.
- Check the names of e-mail recipients and distribution lists prior to sending a message.
- Do not discuss personal information in locations where you can be overheard
- Always confirm the fax number and notify the recipient before sending a fax that contains personal information.
- Only remove records containing personal or confidential information from the office when it is absolutely necessary.

Privacy Tips...

- When in doubt, don't release
- Ensure your computer systems have firewalls
- Keep monitors turned away from public viewing when dealing with PI
- Records containing PI should be shredded vs. recycling/garbage

Enhancing Privacy Protection within your institution

- Be aware of what PI is being collected, used and disclosed in your organization
- Establish consistent practices for managing personal information
- Integrate privacy protection into programs, systems, policies and use tools
- Conduct Privacy Impact Assessments (PIA) during project design
- Educate and enhance staff awareness of privacy and FIPPA requirements
- Review privacy policies and practices periodically

The Privacy Impact Assessment

- Privacy Impact Assessment (PIA) process:
 - Determines whether new technologies, information systems, and proposed programs or policies meet basic privacy requirements
 - Identifies potential effects of new initiatives on personal privacy
 - Examines how any negative effects on privacy might be addressed
 - Ensures privacy is considered throughout project lifecycle

More Privacy Tools & Resources

- IPC's Website - www.ipc.on.ca
- MGS' Website – www.accessandprivacy.gov.on.ca
- OCIPO website - <http://intra.cio.gov.on.ca/IM/index.htm>
- Privacy Basics – Online training – MyOPS, Centre for Leadership
- Guidelines for the Protection of Information When Contracting for Services - http://intra.cio.gov.on.ca/pub/contracting_guidelines.pdf
- Guide and Checklist for Managing Personal Information – OCIPO
http://intra.cio.gov.on.ca/IM/privacy/Guide_Checklist_for%20Managing_PI_v_0%2018_2008_05_19.pdf
- FIPPA Best Practices Guide for Correspondence – Correspondence Council of Ontario - http://cco.edu.gov.on.ca/pdfs/FOI_Guide.pdf
- Taking the Right Steps – A Guide to Managing Privacy Breaches – OCIPO
<http://intra.cio.gov.on.ca/IM/privacymgmt/index.htm>
- Privacy Impact Assessment (PIA) Tools:
http://intra.cio.gov.on.ca/IM/privacy/privacy_home.htm

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