

2009 ONTARIO ACCESS AND PRIVACY CONFERENCE

“FROM THE SHADOWS TO THE
SPOTLIGHT”

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FREEDOM OF INFORMATION
POLICE NETWORK
PRESENTATION

RELEASE OF POLICE RECORDS
TO EXTERNAL AGENCIES

PANEL MEMBERS

- Shobana Rajan, Waterloo Regional Police, FOI, Secretary - FOIPN
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- Pat Seaton, Peel Regional Police, FOI, Chair - FOIPN

GOAL OF PRESENTATION

- Identify sub-sections of 32 MFIPPA/42 FIPPA to be invoked when accessing police records
- How to request records
- The purpose of the request
- Retention and disposal of the records
- Identify agencies who frequently request records from Police

Section 32 MFIPPA/42 FIPPA

- **Secs. 32 (e), (f), (g) most frequently used where Police refer to or request authority to release police reports to external agencies**
- **NOTE: The release under Section 32 is NOT mandatory and Police may choose to withhold release of the records**
 - for security reasons
 - matters are still under investigation, or
 - if the purpose of the request is not deemed to comply with any of the subsections referred to above.

Section 32 MFIPPA/42FIPPA

- An institution shall not disclose personal information in its custody or under its control except,
 - (e) For the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;

Section 32(e) MFIPPA 42(e) FIPPA

- Requesting agency must stipulate their legal authority identifying the applicable statute that provides the release of information held in police records under that statute

Section 32(e) MFIPPA 42(e) FIPPA

- Example of IPC decisions relating to this subsection:
 - Privacy Complaint Report No. MC-060020-1 deals with a Toronto Police Service Complaint relating to police background checks
 - In this instance, section 41 of the *Police Services Act (PSA)* deems certain disclosures to be in accordance with section 32(e).
 - (1.1) Despite any other Act, a chief of police, or a person designated by him or her for the purpose of this subsection, *may disclose personal information about an individual in accordance with the regulations.*
 - (1.2) details the purposes for which this Section applies

- Example of IPC decision (contd.)
 - O. Reg. 265/98 under the *PSA*, entitled “Disclosure of Personal Information”, sets out several categories of authorized disclosures of personal information, and conditions that must be complied with in order for such disclosures to be authorized.
 - In this report, the complainant was charged with an offense and the Regulation under the *PSA* was deemed to apply
 - Section 6 of the Regulations *must* be complied with in relation to the disclosure the Police would make in response to a reference check application in this case. This section requires that in deciding whether to disclose, the Police must “... consider the availability of resources and information, what is reasonable in the circumstances of the case, what is consistent with the law and the public interest....”

Section 32(e) MFIPPA 42(e) FIPPA

- Examples of requests received by Police pursuant to this subsection:
 - Ministry of Transportation – Motor vehicle collision reports – authority to release is pursuant to Highway Traffic Act Sec. 205(1)

Section 32(e) MFIPPA 42(e) FIPPA

- Examples (contd.)
- Statistics Canada – Police are mandated by the Statistics Act Chapter S-19 National Justice Statistics Initiative 1981.
- The Federal, Provincial and Territorial Deputy Ministers responsible for the administration of justice in Canada, with the Chief Statistician, have been working together in an enterprise known as the National Justice Statistics Initiative whose mandate is to provide information to the justice community as well as the public on criminal and civil justice in Canada. Although this responsibility is shared among Federal, Provincial and Territorial departments, the lead responsibility for the development of Canada's statistical system remains with Statistics Canada.

Section 32(e) MFIPPA 42(e) FIPPA

Sample form
to make an
access
request to
Police

AGENCY / ORGANIZATION		LAST REVISED
CONTACT INFORMATION	PHONE NUMBER(S)	E-MAIL
Purpose for Requesting Law Enforcement Records		
Legislation / Regulation which Supports Disclosure		
Records Which May be Disclosed		
YCJA Considerations		
OPIC Considerations		
Notes		

Section 32(f) MFIPPA/42(f) FIPPA

(f) If disclosure is by a law enforcement institution,

(i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or

(ii) to another law enforcement agency in Canada;

Section 32(f) MFIPPA 42(f) FIPPA

- Police share police reports on a continual basis with other police agencies and law enforcement agencies
- These agencies will indicate that they are investigating a matter and will make the request in writing (fall under “law enforcement”)
- Examples: RCMP, OPP, Immigration, Border Services.

Section 32(g) MFIPPA/42(g)FIPPA

- (g) Disclosure is to a law enforcement institution or a law enforcement agency in Canada to aid an investigation with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

Section 32(g) MFIPPA 42(g) FIPPA

- **Police often refer to this section as the primary authority to release records to external agencies**
- **External agencies must be a recognized “institution” and/or considered to be a law enforcement agency in Canada, and**
- **The external institution/law enforcement agency must be conducting an investigation with a view to a “law enforcement proceeding” or “from which a law enforcement proceeding is likely to result”**

Section 32(g) MFIPPA/42(g) FIPPA

- Examples: Family and Children's Services (CAS), Regional Social Services (welfare fraud investigations), City/Regional By-law Officers, Criminal Compensation Board, Ministry of Labour (industrial accidents), Ministry of the Attorney General (Probation and Parole), Ministry of Community Safety and Correctional Services (Parole), College of Physicians/Surgeons, Teachers, Nurses, Dentists, Pharmacists

PROCEDURE TO MAKE A REQUEST UNDER SECTION 32 (e)(f)(g)

- External agency must indicate its legal authority to obtain information, identifying applicable statute and section (only applicable to Section 32(e)/42(e) MFIPPA)
- External agency must indicate if it is a law enforcement agency or institution i.e. does the agency have a right to impose a penalty or sanction

PROCEDURE TO MAKE A REQUEST UNDER SECTION 32 (e)(f)(g)

- External agency must indicate that it is conducting an investigation with a view to a law enforcement proceeding
- External agency must make the request in writing, listing the above criteria
- External agency must provide a contact person and telephone number should Police need to discuss the request

USE OF RECORDS

- **Records are only to be used for the purpose for which they have been obtained**
- **Any other use of these records may be a violation of MFIPPA/FIPPA and possibly other statutes**
- **If records are released they will mostly likely be stamped indicating that they are released subject to Sec. 32 and any further dissemination of the records is subject to Police approval**

RETENTION AND DISPOSAL OF RECORDS

- When records are no longer required they are to be destroyed in a confidential manner that meets the requirements of MFIPPA/FIPPA
- Records that are received by an institution shall be retained in compliance with Reg. 823(5) of MFIPPA
- Often the concern for Police is the lack of control over the records once released as the records may not fit the same retention policies as when in Police custody

EXAMPLES OF AGENCIES POLICE RECEIVE REQUESTS FROM

- **Ministry of Labour**
- **Ministry of Community Safety and Correctional Services**
- **Ministry of Attorney General (Crown Attorney, Probation/parole)**
- **Ministry of Health**
- **Hospitals**
- **Criminal Compensation Board**
- **WSIB**
- **Colleges of Physicians/Surgeons/Teachers, Nurses, Dentists, Pharmacists**
- **City/Regional By-Law Offices**
- **Police agencies**
- **Family and Children's Services**
- **Office of the Children's Lawyer**
- **School Boards/Schools**
- **Regional Social Services**

RELEASE OF POLICE RECORDS TO EXTERNAL AGENCIES

- Questions??

