

FIPPA: A Year Later Lessons Learned

Tuesday, February 26, 2008
11:00 a.m. – 12:15 p.m.

Agenda

Context: FIPPA Requirements
IPC Orders / Privacy Reports
Tips
Q & A / Discussion

Context: FIPPA Requirements

- Collection
 - Use
 - Disclosure
 - Retention/ Disposal
- ...of personal information (PI)

Personal Information

Personal information is...

“recorded information about an identifiable individual”.

Collection

The University can only collect personal information (PI):⁺

- Where needed for (established) operational, pedagogical or program purposes;
- Directly from the individual to whom it pertains; and
- Consistent with the University's notice of collection.

⁺ MO-2225 (Ottawa/police), 2007-Sep-11
IPC Order to cease collection and destroy records

Notice of Collection

Use a Notice of Collection containing:

- the legal authority for the collection of the information,
- the principal purposes for which the information is intended to be used, and
- the title, business address and telephone number of a public official who can answer the individual's questions about the collection.

Use and Disclosure

Share personal information within the University only on a need-to-know basis:

- Personal information is **only** disclosed to a...
- University officer, employee, (consultant or agent) who...
- needs the record in the performance of his/her duties and...
- disclosure is necessary and proper in the discharge of the University's functions.

Retention

- Know what personal is contained in records with which you work.
- Ensure that you have a retention schedule and that you apply all retention requirements that are relevant to the records with which you work.
- Ensure that, in accordance with privacy legislation, personal information is retained for at least one year after its last use.

Disposal / Secure Destruction

- Know which records are confidential and which contain personal information.
- Know which records require secure destruction and when.
- Destroy records promptly – do not store records for later destruction.
- Know which methods are effective for destroying the media/records in question.
- Match destruction methods to the sensitivity of the information being destroyed.

Context: FIPPA Requirements

- Law enforcement
 - Third party information
 - Economic and other interests
 - Solicitor-client privilege
 - Danger to safety of health
 - Personal privacy
 - Public interest override
- Exemptions**

Context: FIPPA Requirements

“This Act does not apply”

- Labour relations
- Research
- Teaching materials

Exclusions

IPC Orders / Privacy Reports

- Brock 1 Order
- Laurentian 2 Orders
- McMaster 2 Orders, 1 Privacy Report
- Queen’s 1 Order
- Ryerson 1 Order, 1 Privacy Report
- Toronto 1 Order
- York 3 Orders

as of 2008-Feb-21

 11 Orders, 2 Privacy Reports

IPC Orders / Privacy Reports

PC06-85 Ryerson University (April 17, 2007)

http://www.ipc.on.ca/images/Findings/up-pc06_85.pdf

- Use of list of student names and contact information to administer mailings on behalf of the Golden Key Society
- Section 2(1) definition of personal information - records contain personal information
- Section 41 use of personal information - the use was in accordance with section 41 of the Act
- No recommendations
- FIPPA 2(1) personal information, 39(2), 41(b), Section 43*

* Order / privacy report highlights in this presentation adapted from IPC summaries at www.ipc.on.ca

Tip

Only use personal information (PI) “for the purpose for which it was obtained or compiled or for a consistent purpose.”

FIPPA s.41(b)

IPC Orders / Privacy Reports

PO-2574 Laurentian University (May 04, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2574.pdf

- Request for documents about a facility and correspondence with an identified research council.
- Fee estimate of \$6,253
- Section 57(1) (fees) - fee estimates upheld in part, denied for additional preparation costs.
- FIPPA 57(1)*

Tip

Consider the possible consequences of release, even if a record appears to fall under an exemption or exclusion.

FIPPA s.1, exemptions, exclusions

IPC Orders / Privacy Reports

PO-2584 Laurentian University (May 30, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2584.pdf

- Request for documents about an identified committee's minutes and various related correspondence.
- Fee estimate of \$29,930
- Section 57(1) (fees) - fee estimate upheld in part, denied for additional preparation costs.
- FIPPA 57(1)*

Tip

Charge FOI request fees only for costs specifically identified in the legislation (FIPPA), such as actual search and severance, and photocopies.

FIPPA s.57, Reg. 460 s.6

IPC Orders / Privacy Reports

PO-2601-I McMaster University (July 31, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2601_i.pdf

- Records relating to clinical trials.
- Jurisdiction of Commissioner to conduct inquiry where an exclusion under section 65 is claimed: Commissioner has jurisdiction to conduct an inquiry.
- University ordered to comply with request for documentation.
- FIPPA 1(a)(iii), 50(1), Section 53*

Tip

**Release documents to the IPC
(consistent with legal obligations)
when they are requested in an inquiry.**

FIPPA s.1(a)(iii), 52(4)

IPC Orders / Privacy Reports

PO-2614 University of Toronto (September 21, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2614.pdf

- Records of resolution relating to mediation of sexual harassment complaints.
- Section 65(6)3 (labour relations and employment) – upheld for some records.
- Section 2(1) remaining records contain "personal information".
- Section 21(1) (personal privacy) – upheld.
- Section 23 - (public interest override) - not upheld
- University's decision to not disclose records upheld.
- FIPPA 2(1) personal information, 21(1), 21(2)(a), 21(2)(b), 21(2)(c), 21(2)(e), 21(2)(f), 21(2)(g), 21(2)(h), 21(2)(i), Section 23, 65(6)3*

Tip

Withhold personal information if the disclosure would constitute an unjustified invasion of personal privacy.

FIPPA s.21

IPC Orders / Privacy Reports

PO-2619 York University (October 22, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2619.pdf

- “Special Covenants” section of agreement with donor to University.
- Section 18(1) - (economic and other interests) upheld.
- University's decision to deny access upheld.
- FIPPA 18(1)(c)*

Tip

Some records *may* be withheld from a requester; the university must demonstrate the exercise of discretion when discretionary exemptions are applied.

(cont...)

FIPPA s.18(1)(c) and other discretionary exemptions

Tip

Error in exercising discretion if:

- **bad faith or improper purpose**
- **takes into account irrelevant considerations**
- **fails to take into account relevant considerations**

(cont...)

FIPPA s.18(1)(c) and other discretionary exemptions

Tip

Document steps taken for each FOI request to assist in the appeal process.

IPC Orders / Privacy Reports

PO-2621 York University (October 31, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2621.pdf

- Total dollar amount of legal fees expended with respect to proceedings between the University and Daniel Freeman-Maloy.
- Section 24 – University's interpretation of scope of request not upheld.
- Section 24 – University's search for responsive records upheld as reasonable.
- Appeal dismissed.
- FIPPA Section 24*

Tip

Be prepared to grant access to any record or part of a record (with limited and specific exceptions) in the custody or under control of the university.

FIPPA s.10

IPC Orders / Privacy Reports

PO-2625-I Ryerson University (November 29, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2625_I.pdf

- Records related to formal sexual harassment complaints.
- Section 65(6)3 (labour relations and employment) – upheld.
- University’s decision to not disclose records upheld.
- FIPPA 65(6)3*

Tip

While FIPPA may apply to some records held by Human Resources, those determined to be “about... employment-related matters in which the institution has an interest” are excluded.

FIPPA s.65(6)3

IPC Orders / Privacy Reports

PO-2626 York University (November 30, 2007)

http://www.ipc.on.ca/images/Findings/up-po_2626.pdf

- University emails.
- 13(1) - (advice or recommendations) partly upheld.
- 19(c) - (solicitor-client privilege) upheld.
- 65(6) (labour relations or employment) partly upheld.
- 23 (public interest override) not applied.
- University's decision to deny access partly upheld.
- FIPPA 13(1), Section 23, 65(6)3*

Tip

Be prepared to grant access to most records or parts of records (with limited and specific exceptions) containing the personal information of the requester.

FIPPA s.47

IPC Orders / Privacy Reports

PO-2635 Brock University (January 15, 2008)

http://www.ipc.on.ca/images/Findings/up-po_2635.pdf

- Request for records regarding proposed budget cuts.
- Section 13(1) (advice or recommendations) upheld in part.
- Section 18(1)(f) (economic & other interests) not upheld.
- Reasonable search - search by University found to be reasonable.
- Decision of University upheld in part. Further disclosure ordered.
- FIPPA 13(1), 18(1)(f), 24(1)*

Tip

Be prepared to release most records pertaining to plans that have been put into operation or made public.

FIPPA s.18(1)(f)

IPC Orders / Privacy Reports

PO-2641 McMaster University (January 31, 2008)

http://www.ipc.on.ca/images/Findings%5Cpo-2641_864307968750.pdf

- University President's employment contract
- Section 21(1) (personal privacy) - not upheld
- Section 21(4)(a) - applied to the information in the employment contract other than the salary
- Section 21(1)(d) - applied to President's salary
- Section 22(a) – not upheld
- University ordered to disclose the President's employment contract
- FIPPA 2(1) personal information, 21(1), 21(1)(d), 21(1)(f), 21(4)(a), 21(4)(b), 22(a)*

Tip

Be prepared to consider release of personal information that does not constitute an unjustified invasion of personal privacy, such as employee salary range and benefit information.

FIPPA s.21(4)(a)

IPC Orders / Privacy Reports

PC07-71 McMaster University (February 07, 2008)

<http://www.ipc.on.ca/images/Findings%5Cpc07-71.pdf>

- Disclosure of personal information by a university to a collection agency, as a result of a parking infraction at the university and pursuant to the Ministry of Transportation's Authorized Requester Program.
- Section 2(1) (definition of personal information) – the information disclosed to the collection agency was personal information
- Section 42 (disclosure of personal information) - the disclosure was not in accordance with section 42 of the Act
- Recommendation made to comply with the terms of the Authorized Requester Program and to review its records back to 2006 for any other violations under the Act and notify the affected individuals of the privacy breach
- FIPPA 2(1) personal information, 42(1)(c)*

Tip

Only disclose personal information (PI) “for the purpose for which it was obtained or compiled or for a consistent purpose” (with limited and specific exceptions).

FIPPA s.42(1)(c)

IPC Orders / Privacy Reports

PO-2642 Queen's University (February 14, 2008)

<http://www.ipc.on.ca/images/Findings%5Cpo-2642.pdf>

- All information related to the issuance of a Trespass Notice and files related to named individual and requester.
- Section 2(1) definition of "personal information" - records contain personal information of appellant and others
- Section 49(a)/14(1)(e) (law enforcement) - upheld
- Section 49(a)/ 20 (threat to health and safety) - upheld
- Section 49(b) (personal privacy) - upheld
- Reasonableness of search - search upheld as reasonable
- University's decision to deny access to records and portions of records upheld. University's search for responsive records upheld. Appeal dismissed.
- FIPPA 14(1)(e), 20, 24(1), 49(a), 49(b)*

Tip

In some circumstances, records *may* be withheld from a requester even if they contain the personal information of the requester.

FIPPA s.49

IPC Orders / Privacy Reports

HO-004 Hospital for Sick Children (March 7, 2007)

http://www.ipc.on.ca/images/Findings/up-3ho_004.pdf

- Theft of a laptop computer containing the personal health information (PHI) of approximately 2,900 patients.
- Sections 2 and 4 – definition of personal health information - records contain personal health information.
- Section 3(1) – definition of health information custodian - Hospital was a health information custodian.
- Hospital did not comply with sections 10(1) (information practices), 12(1) (prevention of theft/loss of personal health information), 13(1) (security of personal health information), 37(1)(j) and 37(3) (use of personal health information for research purposes).
- Hospital fulfilled notification requirements under section 12(2)....

IPC Orders / Privacy Reports

HO-004 Hospital for Sick Children (March 7, 2007)

IPC sets out new standard for protection of PHI

- Hospital ordered to develop or revise and implement policies and procedures that ensure that records of personal health information are safeguarded, pursuant to section 12(1) and 13(1) and that its information practices comply with the Act.
- Hospital further ordered to develop a corporate policy that prohibits the removal of identifiable personal health information from the premises. If identifiable personal health information must be removed in electronic form, it must be encrypted.
- Hospital also ordered to develop an encryption policy for mobile computing devices, a policy relating to the use of virtual private networks, a privacy breach policy, and to educate staff regarding the policies how to ...*

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IPC Orders / Privacy Reports

HO-004 Hospital for Sick Children
(March 7, 2007)
IPC sets out new standard for protection of PHI

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graph TD; A[Store on secure server] --> B[Use secure remote access / VPN]; B --> C[De-identify data]; C --> D[Encrypt];
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Store on secure server
(If you can't, then...)

Use secure remote access / VPN
(If you can't, then...)

De-identify data
(If you can't, then...)

Encrypt

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IPC 2006 Annual Report

FOI Requests and Privacy Complaints
http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- 36,739 FOI requests across Ontario (a record high)
- 173 FOI requests to Ontario universities
- 170 privacy complaint files opened under FIPPA/MFIPPA
- 183 privacy complaint files opened under PHIPA

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UNIVERSITY	REQUESTS COMPLETED	30-DAY COMPLIANCE %	EXTENDED COMPLIANCE* %
Toronto	23	87.0	100.0
York	22	54.5	68.2
Laurentian	21	85.7	95.2
Ryerson	16	12.5	25.0
McMaster	13	23.1	61.5
Queen's	8	87.5	100.0
Western	8	87.5	100.0
Carleton	6	100.0	100.0
Ottawa	6	100.0	100.0
Windsor	4	100.0	100.0
Lakehead	3	66.7	66.7
Trent	3	100.0	100.0
Guelph	2	100.0	100.0
Nipissing	2	100.0	100.0
Brock	1	100.0	100.0
Waterloo	1	100.0	100.0
U of OIT	0	n/a	n/a
Wilfrid Laurier	0	n/a	n/a
OCAD	0	n/a	n/a

- from IPC 2006 Annual Report (p.28)

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IPC 2006 Annual Report

Contracts and Bids (pp. 19-21)

http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- IPC concerned that FIPPA s.17(1) exemption is often claimed when it does not apply. She urges posting “the winning bid for every contract awarded by a provincial government organization to a website, accessible to the public. Further, to ensure that the entire process is transparent, the unsuccessful bids should be posted alongside the successful bid.”
- See also press release at http://www.ipc.on.ca/images/Resources/up-2007_05_29_ar.pdf

IPC 2006 Annual Report

Culture of Privacy (pp. 1-2, 24)

http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- Example cited: “during and after [the complainant’s] treatment at the hospital as an in-patient, her personal health information was illegally accessed ... and some of that information was disclosed without her consent, to her estranged husband with whom she is in the midst of divorce proceedings, for an illegal purpose.”
- See also IPC Order HO-002 The Ottawa Hospital (July 27, 2006)
http://www.ipc.on.ca/images/Findings/up-HO_002.pdf

IPC 2006 Annual Report

Identity (pp. 2-3, 8, 10-14)

http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- IPC: “Personally-identifiable information is a special category of sensitive data that, more than ever, organizational custodians must treat as both an asset and a liability, and manage in a principled and verifiable manner .”
- See also IPC’s “7 Laws of Identity: The Case for Privacy-Embedded Laws of Identity in the Digital Age” (October 18, 2006)
http://www.ipc.on.ca/images/Resources/up-7laws_whitepaper.pdf

IPC 2006 Annual Report

Identity (pp. 2-3, 8, 10-14)

http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- IPC: “We may not be able to put the information genie back in the bottle, but we can set and enforce limits on permissible levels of **collection, use** and **disclosure** of personal information by organizations, vest individuals with certain **rights** that organizations must observe, and hold those organizations accountable for actions that impact negatively on the privacy of individuals and the security of our freedoms.” [emphasis added]

IPC 2006 Annual Report

High Profile Privacy Incidents:

Abandoned Records (pp. 23, 43-44, 46)

http://www.ipc.on.ca/images/Resources/up-ar_06e.pdf

- Records of personal health information were abandoned at the premises of a medical clinic when the clinic closed
- “Inadequate records management policies and procedures”
- See also IPC Order HO-003 Martin Grove Medical...(Dec. 11, 2006)
http://www.ipc.on.ca/images/Findings/up-HO_003.pdf
- See also IPC’s “How to Avoid Abandoned Records: Guidelines...” (May 29, 2007)

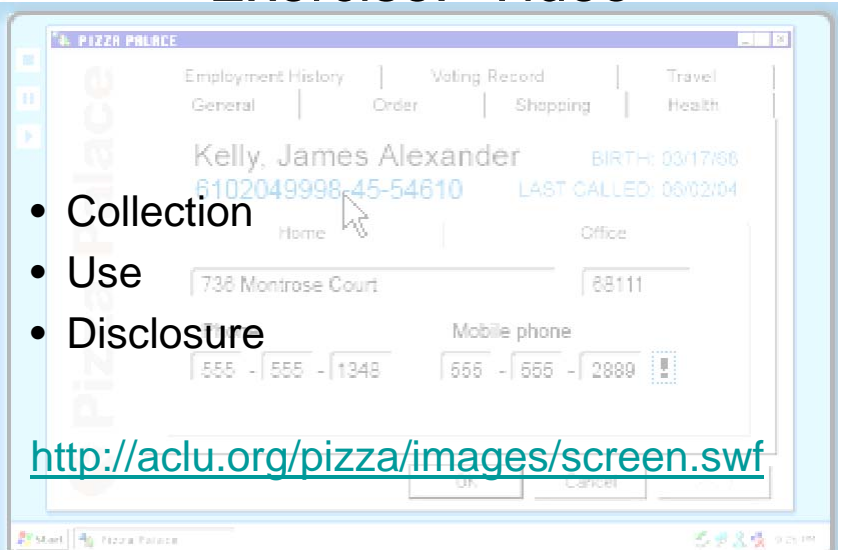
http://www.ipc.on.ca/images/Resources/up-abandonedrec_gdlines.pdf

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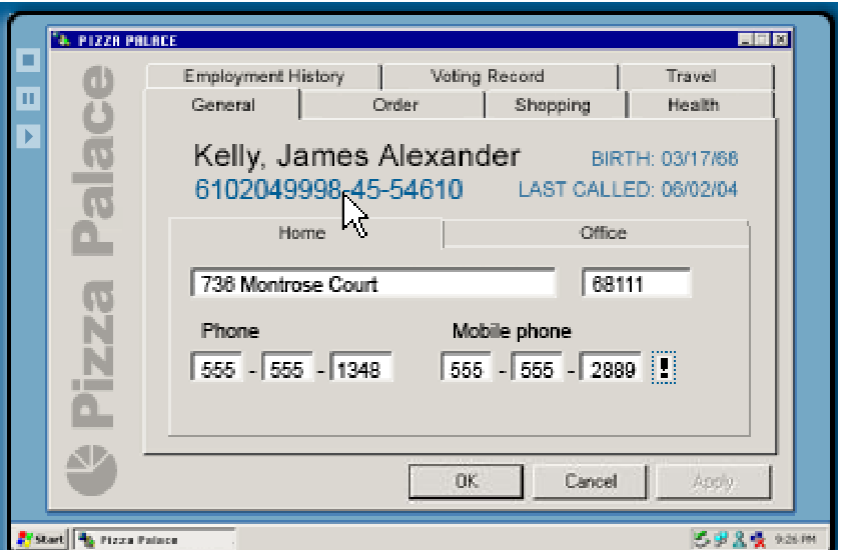
Exercise: Video

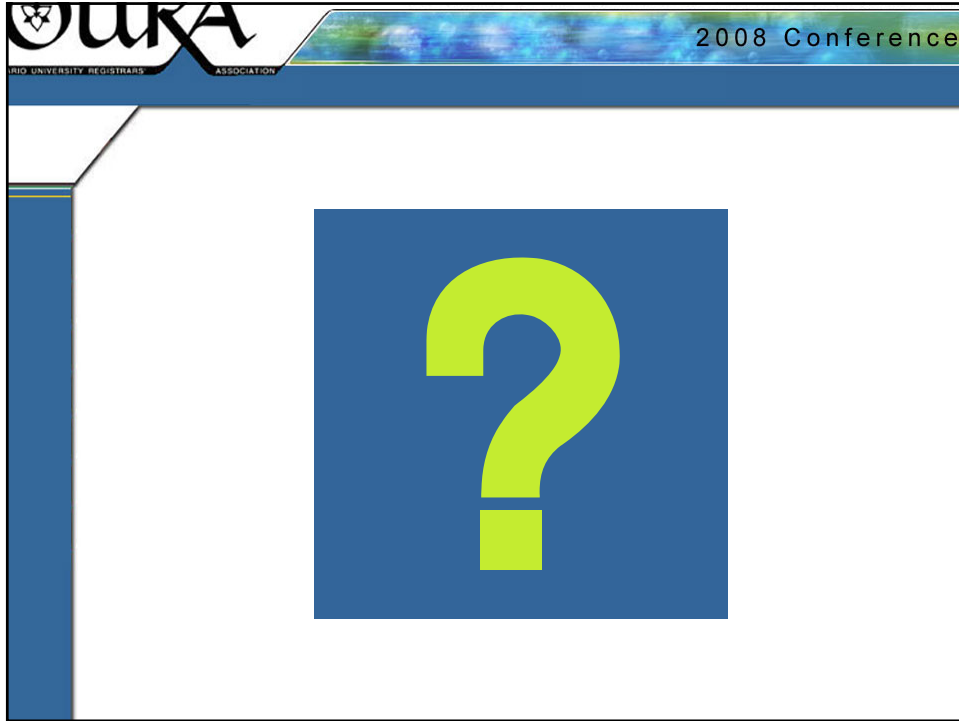
- Collection
- Use
- Disclosure

<http://aclu.org/pizza/images/screen.swf>



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Discussion

Approaches to:

- Identity authentication/management
- Attendance at exams
- Requests for PI from law firms
- Refusal to confirm or deny
- Disclosure of PI in emergency or other urgent circumstances

Links

FIPPA

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90f31_e.htm#BK23

PHIPA

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04p03_e.htm

IPC

<http://www.ipc.on.ca>

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