

# ***Current Issues, Recent Reports and Orders***

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***Freedom of Information Police Network Fall Seminar  
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# Overview

## *Police Background Checks*

- *IPC Position*
- *OACP Learn Guideline*
- *Privacy Complaint MC13-49 – Youth Criminal Justice Act*

## *Crossing the Line: A Special Investigation Report*

## *Iacobucci Report*

## *Police Disclosure to Victims' Services Providers*

## *IPC Orders*

- *Order MO-2999 – Access to CPIC Records of Attempted Suicide*
- *Order MO-2954 – Section 38(b)/49(b) and the Presumptions*
- *Order MO-3026 – Custodial Parents' Access Rights*
- *Order MO-2910 – Method of Access*



# ***Police Background Checks***



# IPC Activity

- Inquiries and complaints regarding police records checks (PRC) have been increasing.
- IPC has conducted investigations, issued reports and made recommendations, intervened before the courts and worked with the OACP, the CCLA, the OHRC and others to help improve the PRC practices in Ontario.



# IPC Recommendations

- Non-conviction information (NCI) should only be disclosed in exceptional circumstances (i.e., public safety).
- Legislative response is required to ensure consistency in approach and application.
- The IPC supports the implementation of an evidence-based procedure for determining when NCI should be disclosed.
- There should be greater transparency and public education regarding PRC practices, policies, and procedures.



# OACP Guidelines

- OACP developed guidelines to facilitate consistent approach to PRC process.
- OACP has consulted and collaborated with IPC on development of Guidelines.
- Recent call by OACP for provincial legislation and an evidenced based, centralized approach, is supported by the IPC.
- Provincial government has signaled some willingness to consider legislative reform – we will be offering our services to the province as it develops enforceable standards.



# Privacy Complaint MC13-49

## *Youth Criminal Justice Act (YCJA)*

- Complaint about the use and disclosure of NCI in PRC process. NCI related to incidents that occurred when complainant was a young person and a child.
- Police claimed:
  1. information was not disclosed because response to PRC was provided to the complainant, and
  2. the complainant consented.



# Privacy Complaint MC13-49

The Investigator found:

- The *YCJA* applied to youth matter and given that the use of the NCI information in responding to the PRC was outside the legislated “disclosure period” (s.119(2)), the use was contrary to the *YCJA*.
- *MFIPPA* applied to the child matter and the use of the NCI information was contrary to section 31.



# Privacy Complaint MC13-49

## *Key Messages*

- The use of a consent form does not transform PRC practices into a consent based practice since the applicant has no choice but to sign the form.
- Police cannot avoid the application of the *YCJA* and *MFIPPA* and *FIPPA* by disclosing the results to the individual seeking the PRC.



# Crossing the Line:

## *A Special Investigation Report*



Crossing the Line:

The Indiscriminate Disclosure of Attempted Suicide  
Information to U.S. Border Officials via CPIC

*A Special Investigation Report*

Ann Cavoukian, Ph.D.  
Information and Privacy Commissioner  
Ontario, Canada

April 14, 2014

— [Crossing the Line](#)



Information and Privacy Commissioner,  
Ontario, Canada

# Crossing the Line

In November 2013, a Toronto woman was denied entry to the U.S. by U.S. CBP officials on the basis of a previous suicide attempt.

IPC investigated and learned that:

- ✓ U.S. CBP officials have access to CPIC and are relying on information in CPIC to deny Ontarians entry.
- ✓ Some police automatically upload information about attempted suicide to the SIP portion of CPIC – others exercise discretion before doing so.



# Crossing the Line:

## *Recommendations*

The IPC found that the automatic uploading of attempted suicide information to CPIC is an unauthorized disclosure of PI and recommended that all police in Ontario:

- Cease the practice of automatically uploading PI relating to attempted suicide to CPIC, by default.
- Exercise discretion by applying the Mental Health Disclosure Test.
- Develop a transparent process to enable individuals to seek the removal of their PI related to attempted suicide from CPIC.

— [Recommendations](#), p.46



# The Mental Health Disclosure Test

Uploading to CPIC of attempted suicide information complies with *MFIPPA* and *FIPPA* if one of the following circumstances exists:

1. The suicide attempt involved the threat of serious violence or harm, or the actual use of serious violence or harm, directed at other individuals;
2. The suicide attempt could reasonably be considered to be an intentional provocation of a lethal response by the police;
3. The individual involved had a history of serious violence or harm to others; or
4. The suicide attempt occurred while the individual was in police custody.



# Crossing the Line:

## *Next Steps*

- One police service has indicated that it will not comply with the recommendations.
- June 5, 2014 - The IPC launched a judicial review application with the Ontario Superior Court of Justice requesting an order that this police service stop its current practice in accordance with the recommendations made in the *Crossing the Line* report.



# ***Iacobucci Report***



# Iacobucci Report:

## *Police Encounters with People in Crisis*

- TPS Chief Blair requested investigation by Justice Iacobucci into police response to people in crisis.
- Comprehensive report issued - eighty-four (84) recommendations including several that impact on privacy.
- The Report called for the involvement of “privacy experts” and “privacy commissioners” to assist with the implementation of the recommendations.

— Download [Iacobucci Report](#)



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Ontario, Canada

# IPC Will Assist with Implementation

- IPC will sit on the External Advisory Committee which will advise on implementation of all of the recommendations in the Report.
- IPC will also be involved in the inter-disciplinary police - mental health oversight body to be established by the TPS.



# Key Privacy Issues – Health Privacy

- **Iacobucci recommended:** development of a privacy-protective and confidentiality-respecting protocol for sharing healthcare information by health care professionals with the TPS.
- **IPC view:** If healthcare information is to be shared, it needs to be in compliance with the *Personal Health Information Protection Act (PHIPA)* **and**, as noted in the Report, the information should be “... *segregated from existing police databases and therefore prevented from subsequently being passed on to other law enforcement, security and border services agencies.*” – Iacobucci Report, p. 11



# Key Privacy Issues – Body-worn Cameras

- **Iacobucci recommended:** (1) the TPS issue BWCs to all officers who may encounter people in crisis to ensure greater accountability and transparency and (2) develop privacy protocol for recordings.
- **IPC view:** With a solid and transparent governance structure in place, the use of BWCs in *carefully defined contexts* can assist police in the proper performance of their duties while protecting privacy.



# *IPC Work on BWCs*



# IPC and Police Use of BWCs

- IPC has been working with the TPS on a pilot project looking at implementing the use of BWCs. Many other police services are studying the implications and advantages of these devices.

## Key messages:

- BWCs raise different considerations from CCTV surveillance cameras.
- Do a Privacy Impact Assessment (PIA) if you are considering implementing this technology.
- The IPC is ready to work with the police services looking at the implementation of these devices.



# BWC – Privacy Concerns

## Privacy concerns include:

- Area under surveillance is not fixed;
- Notice is required and presents challenges;
- May result in a collection practice that violates *MFIPPA/FIPPA*;
- Need strong access and security controls, and
- Must develop protocols to handle access requests.



# Victim Assistance Committee of the OACP



# Victim Assistance

- Committee goal is to ensure appropriate, timely disclosure of victims' personal information by police services to victim services groups to facilitate victims' access to services.
- IPC is participating in the work of this Committee along with MCSCS, MAG, victims' services groups and some municipal police services.
- The working group is considering options to facilitate the disclosure of information in a manner that is compliant with *FIPPA* and *MFIPPA*.



# IPC

- Disclosure of personal information that is necessary to ensure that victims gain access to available services may be supported:
  - ✓ Under an MOU and in accordance with sections 42(1)(d)/32(d) which allow disclosure to an agent of an institution where the disclosure is necessary and proper in relation to the institution's functions and the agent's duties.

NOTE: The Committee is also considering developing a disclosure framework under new legislation (e.g. possibly under new *Police Services Act* regulations).



# *Recent Orders Involving Ontario Police Services*



# Order MO-2999

## *Access to CPIC Records of Attempted Suicide*

- Access request was made to police for CPIC records relating to an attempted suicide.
- The service claimed that disclosure would compromise the security of the CPIC system (sections 8(1)(c) and 8(1)(l)).
- The service also claimed that disclosure would be an unjustified invasion of another person's PI and that the presumption in section 14(3)(b) in conjunction with section 38(b) applied.



# Order MO-2999

*(cont'd)*

- The adjudicator found:
  - ✓ Section 14(3)(b) did not apply because the information was not compiled as part of an investigation into a “possible violation of law.”
  - ✓ The factors in section 14(2) favoured disclosure.
  - ✓ Some police code information was withheld on the basis of section 8(1)(c) and (l).



# Order MO-2954

## *Section 38(b)/49(b) and the Presumptions*

- Request for a copy of a complaint letter which included the requester's own PI and the PI of another person.
- Denied on the basis of sections 38(a) and 8(1)(d)(confidential source). The affected party raised section 38(b) and 14(3)(b) (presumed unjustified invasion of privacy).

— Download [MO-2954](#)



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Ontario, Canada

# Order MO-2954

## (cont'd)

- Adjudicator found:
  - ✓ section 38(a), in conjunction with 8(1)(d), does not apply;
  - ✓ disclosure of portions of the record would not constitute an unjustified invasion pursuant to section 38(b), in conjunction with section 14.
  - ✓ When applying section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.



# Order MO-3026

## *Custodial Parents' Access Rights*

- Request for copies of reports relating to an alleged assault and copies of the video statements made by the requester's children.
- The police service denied access relying on section 38(a) in conjunction with 8(2)(a) and 38(b) and the presumption in section 14(3)(b).

— Download [MO-3026](#)



# Order MO-3026

## (cont'd)

- Adjudicator found that section 14(1)(d) applied which permits disclosure where expressly authorized by statute.
- Section 20(5) of the *Children's Law Reform Act* expressly authorizes the disclosure of the information about the health, education and welfare of children to individuals who have a right of access to children.



# Order MO-2910

## *Method of Access*

- Requester sought records from a police service located in a different town and requested that they be mailed to his home.
- Police sent the records to a police service serving the area in which the requester resided and advised him to pick up the records from that station.
- The requester then appealed the method of delivery/access.

— Download [MO-2910](#)



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# Order MO-2910

*(cont'd)*

- The Adjudicator found that:
  - ✓ The *Act* does not specify how access is to be given other than in section 23 (copy to be provided or original to be examined), nor the method of delivery.
  - ✓ The appellant was given clear instructions to send notarized identification if he wanted the records mailed to his home.
  - ✓ By giving the appellant two options for obtaining the records, the police complied with its obligations.



# How to Contact Us

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