



PRIVACY AND PUBLIC SAFETY: A PROGRESS REPORT

Brian Beamish
Commissioner

Toronto Reference Library
Privacy Day | January 28, 2016

The Three Acts

The IPC is an independent office that oversees compliance with the:

- *Freedom of Information and Protection of Privacy Act (FIPPA)*
- *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*
- *Personal Health Information Protection Act (PHIPA)*



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

The Privacy Protections

- *FIPPA* and *MFIPPA* protect Ontarians' right to informational privacy
- These *Acts* allow special latitude for legitimate law enforcement purposes
- **BUT** - law enforcement activities must also be consistent with fundamental *Charter* values



Balancing Privacy and Public Safety

*[The Charter] requires that when a law authorizes intrusions on privacy, it must do so in a manner that is reasonable. A reasonable law must have **adequate safeguards to prevent abuse**. It must avoid intruding farther than necessary. It must strike an appropriate balance between privacy and other public interests.*

SCC Justice Karakatsanis (*Wakeling v. U.S.A.*, 2014)



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Collaborating for Success: Collective Achievements



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Police Record Checks

- The Ontario Association of Chiefs of Police (OACP) consultation on police record check guidelines obtained feedback from many organizations including:
 - IPC
 - Ontario Human Rights Commission (OHRC)
 - Canadian Mental Health Association Ontario
- 2014 OACP guidelines led to Bill 113



GUIDELINE FOR POLICE RECORD CHECKS

POLICE CRIMINAL RECORD CHECK
POLICE INFORMATION CHECK
POLICE VULNERABLE SECTOR CHECK

March 28, 2011

Last Updated: June 2014



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Bill 113, the *Police Record Checks Reform Act, 2015*

- Minister Naqvi introduced the Bill on June 3, 2015
- The Bill clarifies, limits and controls the scope of police record check disclosures in Ontario
- Why was the Bill necessary?
 - Police record check practices in Ontario are inconsistent
 - Some police services follow the 2014 OACP guidelines, but police services are not legally required to do so



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Overview of the Bill

- The Bill provides for three types of police record checks:
 1. Criminal record check
 2. Criminal record and judicial matters check
 3. Vulnerable sector check
- The Bill's schedule sets out the type of information that is permitted to be disclosed in each check
- Non-conviction information can only be disclosed in a vulnerable sector check and only if it meets the test for “exceptional disclosure”



Ongoing Work

- The IPC will assist in the preparation of materials to inform record check providers, the public and other key stakeholders on what is required to comply with the Bill
- We will also provide guidance to MCSCS on:
 - **Secure retention** and **timely destruction** of personal information (PI) collected for administering the checks
 - **Reconsideration and correction** procedures to address individuals' concerns about improper disclosure



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Licence Plate Recognition

- Automated Licence Plate Recognition (ALPR) systems are used by police to match plates with a “hotlist,” that may include stolen vehicles, expired plates and suspended drivers
- Privacy challenges associated with ALPR include:
 - Potential for function creep
 - Ability to track the locations of individuals over time and to facilitate surveillance and profiling
- In 2003, IPC determined that the Toronto Police Service's use of ALPR to find stolen vehicles was in compliance with *MFIPPA*
- The IPC has worked with the Ontario Provincial Police (OPP) to provide guidance on their use of ALPR since 2008



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Best Practices for ALPR

- The IPC is developing best practice guidelines on the use of ALPR including:
 - Ensuring a **comprehensive governance framework** is in place
 - Implementing policies and procedures to ensure the appropriate handling of PI
 - Providing **notice** to the public through a combination of practices such as verbal notices, insignias on police vehicles and website notifications
 - **Limiting retention** - non-hit data should be deleted as soon as practicable



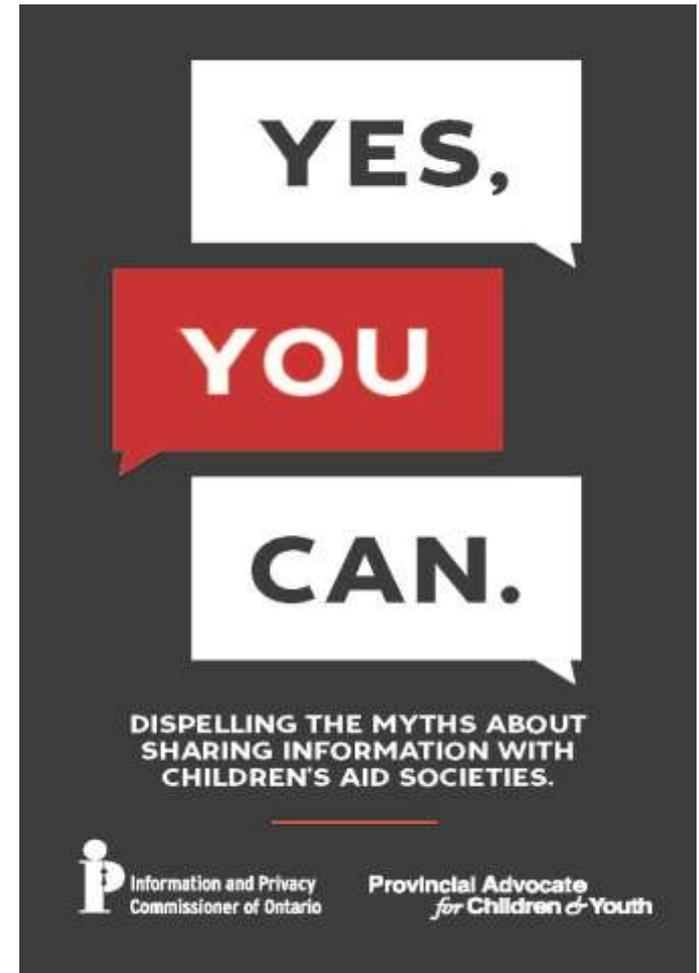
Assisting Victims of Crime

- In 2014, victim services organizations indicated that the provision of services to victims suffered because of difficulty in obtaining victims' contact information from police
- Proactive disclosure of information such as *name, address, contact number* and *language spoken* was seen as critical to providing appropriate and timely assistance to victims of crime
- IPC worked with the OACP's ***Victim Assistance Committee*** to develop an agency template agreement to facilitate proactive disclosure of PI by police to service organizations
- In December 2015, MCSCS accepted the template agreement and sent out an ***All Chiefs Memorandum*** encouraging OPP and municipal services to use template



Yes, You Can

- IPC collaborated with the Provincial Advocate for Children and Youth to develop this guide about privacy and Children's Aid Societies
- This guide dispels myths and explains that privacy legislation is not a barrier to sharing information about a child who may be at risk



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Disclosure to Prevent Harm

- Ontario law (*FIPPA*, *MFIPPA*, *PHIPA* and *the Child and Family Services Act*) permits professionals working with children to share this information with a Children's Aid Society, including:
 - Teachers
 - Police officers
 - Health workers
 - Social service workers



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Collaborating for Success: Ongoing Work

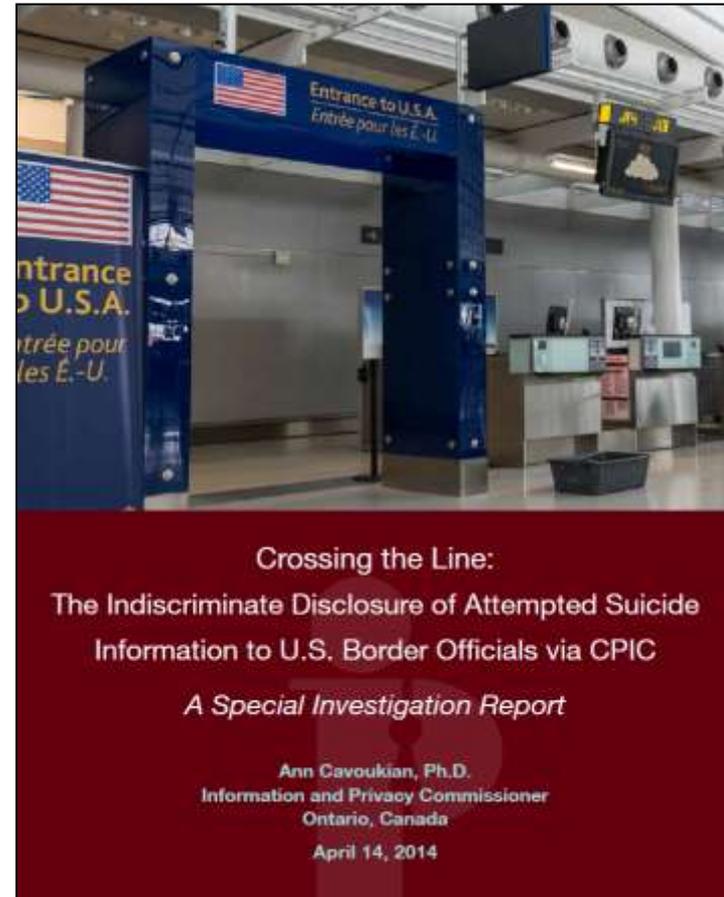


Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

IPC Report on CPIC Disclosures

- In November 2013, a Toronto woman was denied entry to the U.S. by border officials on the basis of a previous suicide attempt. IPC learned:
 - U.S. border officials have access to the Canadian Police Information Centre (CPIC) and are relying on information in CPIC to deny Ontarians entry
 - Some police services automatically upload information about attempted suicide to CPIC, while others exercise discretion before doing so



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Crossing the Line – Recommendations:

- The IPC found that the routine and 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
 - Exercise discretion using IPC’s Mental Health Disclosure Test
 - Develop a transparent process to enable individuals to seek the removal of their PI related to attempted suicide from CPIC



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Post Report Update

- IPC filed a court application challenging the Toronto Police Service's policy of disclosure of attempted suicide information to CPIC
- Working with CPIC officials, the TPS has developed a new "suppression" tool which it is using to limit information sharing with U.S. border, consistent with the requirements of the IPC's Mental Health Disclosure Test
- The IPC is considering the impact of this and other related developments



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Police Street Checks

- Since 2014, the IPC has been working closely with the TPS and its Police and Community Engagement Review (PACER) Committee on improving street check related practices
- MCSCS consulted with the IPC, OHRC and other regulators, police, community groups, and the general public in developing a draft regulation governing street check practices in Ontario
- The MCSCS also published the draft on the Regulation Registry for further feedback
- We commend the government for undertaking this initiative



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

IPC Recommends...

In commenting on the draft, the IPC recommended:

- The regulation should apply to a **broader range** of street check-related encounters, including when an officer is investigating a particular offence
- Enhancing the requirement for **timely and clear notice** of right not to answer questions and to leave, and reasons for the street check
- Stricter limits on **data retention**, including legacy data
- Requiring collection of de-identified data to help determine effectiveness



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Body Worn Cameras

- Body Worn Cameras (BWCs) present different challenges from CCTV and dashboard camera systems
- As mobile devices, they have the potential to capture information in various settings, including private places like residences, hospitals and places of worship
- BWCs viewed as important transparency and accountability tools
- Balance between transparency, accountability, law enforcement needs and right to privacy is imperative



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Governance Framework For BWCs

- A comprehensive framework should be in place to address privacy and security issues including:
 - When recording will be permitted, required, prohibited (e.g. on/off protocols)
 - The retention, use, disclosure and destruction of recordings
 - Privacy and security safeguards for cameras, servers, and other systems (e.g. encryption, role-based access, audit processes)
 - Responding to access requests (e.g. redaction)
 - Specific requirements regarding notifying individuals of the collection of their PI



Situation Tables

- Information sharing among police and other local agencies to develop intervention strategies in individual cases identified as involving “*acutely elevated risks of harm*”
- ***Key Privacy Issues under FIPPA, MFIPPA and PHIPA:***
 - Do participating agencies have adequate legal authority to collect, use and disclose PI/Personal Health Information (PHI)?
 - Role of consent?
 - Is PI/PHI being used when de-identified information will serve the purpose?
 - Is there sufficient governance, training, and oversight?



Privacy Commissioners' Involvement

- In November 2014, the Saskatchewan IPC investigated a situation table, finding that necessary privacy safeguards were missing. Recommended changes included:
 - Consent as the default for collection, use and disclosure of PI
 - Disclosures of PI should be based on need to know
 - Governance framework and documentation to ensure compliance
- Ontario IPC involvement has included:
 - Participated in a national forum on the future of policing (Ottawa, January 2015)
 - Staff observed and commented on three situation tables (2015)
 - Developed “**Harm Prevention Disclosure Framework**” when disclosure without consent is necessary



Next Steps

- Excellent work is being done in Ontario to create new service delivery models that respond to urgent needs of vulnerable populations
- Situation tables and other innovative models can operate in a privacy-protective manner with sufficient planning and governance
- IPC continues dialogue with MCSCS and various situation table participants



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

The IPC'S Open Door Policy

- Achieving the kind of balance we are striving for is not possible without the involvement of other agencies and stakeholders
- The IPC has an **open door policy** for any Ontario police service or any institution considering programs which may impact privacy
- We believe that the vast majority of privacy challenges can be addressed through collaboration
- Appropriate privacy protections can be developed and must be implemented
- The key is to address privacy concerns from the outset



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

HOW TO CONTACT US

Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400

Toronto, Ontario, Canada

M4W 1A8

Phone: (416) 326-3333 / 1-800-387-0073

TDD/TTY: 416-325-7539

Web: www.ipc.on.ca

E-mail: info@ipc.on.ca

Media: media@ipc.on.ca / 416-326-3965



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario