

# Privacy Commissioners: Powermongers, Pragmatists or Patsies?

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## Freedom of Information and Protection of Privacy Legislation in Ontario

### *THE PURPOSES OF THE ACTS*

The purposes of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* are:

- a) To provide a right of access to information under the control of government organizations in accordance with the following principles:
  - information should be available to the public;
  - exemptions to the right of access should be limited and specific;
  - decisions on the disclosure of government information may be reviewed by the Information and Privacy Commissioner.
- b) To protect personal information held by government organizations and to provide individuals with a right of access to their own personal information.

### *The Information and Privacy Commissioner/Ontario*

#### *ROLE AND MANDATE*

Ontario's *Freedom of Information and Protection of Privacy Act* came into effect on January 1, 1988. The *Act* established an Information and Privacy Commissioner as an officer of the Ontario Legislature to provide an independent review of the decisions and practices of provincial government organizations concerning access and privacy. The Commissioner is appointed by and reports to the Legislative Assembly of Ontario and is independent of the government of the day.

The *Municipal Freedom of Information and Protection of Privacy Act*, which came into effect on

January 1, 1991, broadened the number of public institutions covered by Ontario's access and privacy legislation.

The Information and Privacy Commissioner (IPC) plays a crucial role under the two *Acts*. Together, the *Acts* establish a system for public access to government information, with limited exemptions, and for protecting personal information held by government organizations at the provincial or municipal level.

The provincial *Act* applies to all provincial ministries and most provincial agencies, boards and commissions; colleges of applied arts and technology; and district health councils. The municipal *Act* covers local government organizations, such as municipalities; police, library, health and school boards; public utilities; and transit commissions.

Freedom of information refers to public access to general records relating to government activities, ranging from administration and operations to legislation and policy. The underlying objective is open government and holding elected and appointed officials accountable to the people they serve.

Privacy protection, on the other hand, refers to the safeguarding of personal information – that is, data about individuals held by government organizations. The *Acts* establish rules about how government organizations may collect, and disclose personal data. In addition, individuals have a right to see their own personal information and are entitled to have it corrected, if necessary.

The mandate of the IPC is to provide an independent review of government decisions and practices concerning access and privacy. To safeguard the rights established under the *Acts*, the IPC has five key roles:

- resolving appeals when government organizations refuse to grant access to information;
- investigating privacy complaints about government-held information;
- ensuring that government organizations comply with the *Acts*;
- conducting research on access and privacy issues and providing advice on proposed government legislation and programs;
- educating the public about Ontario's access and privacy laws and access and privacy issues.

In accordance with the legislation, the Commissioner has delegated some of the decision-making powers to various staff. Thus, the Assistant Commissioner and selected staff have been given the authority to assist her by issuing orders, resolving appeals and investigating privacy complaints. Under the authority of the Commissioner, government practices are reviewed, and proposed programs and legislation commented upon.

## ***POWERS AND DUTIES OF THE COMMISSIONER***

### ***Conducting Access Inquiries***

In resolving appeals of the decisions of government institutions relating to access to information or the correction of personal information in their custody or control, the *Acts* provide the Commissioner with specific powers, including:

- requiring the production of any record and examining any record that is in the custody or under the control of an institution;
- entering and inspecting any premises occupied by an institution for the purposes of carrying out the investigation;
- summoning and examining on oath any person who, in the opinion of the Commissioner,

may have information relating to the inquiry.

### ***Additional Powers***

The legislation set out additional powers for the Commissioner. These include:

- offering comment on the privacy protection implications of proposed legislative schemes or government programs;
- after hearing from the head of an institution, ordering it to cease collection practices, and destroy collections of personal information, that contravene the *Acts*;
- in appropriate circumstances, authorizing the collection of personal information otherwise than directly from the individual;
- engaging in or commissioning research into matters affecting the carrying out of the purposes of the *Acts*;
- conducting public education programs and providing information concerning the *Acts* and the Commissioner's role and activities; and
- receiving representations from the public concerning the operation of the *Acts*.

Since inception, the IPC has handled roughly 10,000 appeals and issued some 3,000 orders (one order may cover several appeals) – the rest of the appeals were successfully resolved through mediation or were abandoned, withdrawn, or dismissed. Further, the Commission has conducted approximately 1,600 privacy investigations.

In order to promote both the application and the spirit of the legislation, the IPC has developed guidelines on issues such as indirect collection, drafting data sharing agreements, and a set of *Best Practices for Protecting Individual Privacy in Conducting Survey Research*. The IPC also produces a wide number of other publications and educational resources, all of which are available from our Web site at: [www.ipc.on.ca](http://www.ipc.on.ca).