



OFFICE OF THE INFORMATION
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FOR BRITISH COLUMBIA



ONE INFORMATION & PRIVACY COMMISSIONER'S PERSPECTIVE ON PRIVACY & ADMINISTRATIVE DECISIONS

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Information & Privacy Commissioner for British
Columbia

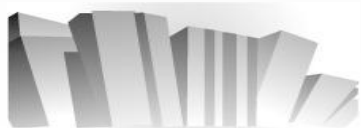
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POLICY CONSIDERATIONS

- Openness of justice should prevail absent compelling interests to the contrary
- The same principles that apply to courts should apply to tribunals
- Individual privacy presents countervailing considerations (corporate confidentiality is a different issue not covered here)



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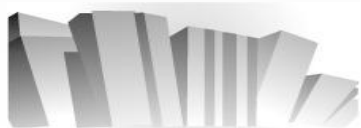
POLICY CONSIDERATIONS (cont'd)

- Internationally-accepted privacy principles are implicated—limited use or disclosure, necessity, original purpose, avoidance of harm, notice of use or disclosure, duty of accuracy and right to request correction
- Challenges are presented by the demise of practical obscurity occasioned by publication to the web



POLICY CONSIDERATIONS (cont'd)

- Persistence of web pages and increasingly powerful search engines confound efforts to protect individuals after the fact
- Once personal information is posted to the web, it's there forever and the harm may not be done for years or decades
- We may be at risk due to our “digital persona”, which accrete over time and won't die



PUBLIC SECTOR PRIVACY LAWS

- *Freedom of Information and Protection of Privacy Act* (FIPPA) is modelled after Ontario's FIPPA and similar laws exist in all Canadian jurisdictions
- Part 3 of FIPPA constrains collection, use and disclosure of personal information by public bodies
- FIPPA limits “personal information” to “recorded information about an identifiable individual”



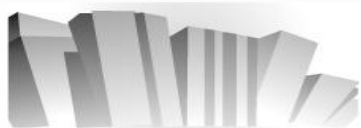
PUBLIC SECTOR PRIVACY LAWS (cont'd)

- FIPPA applies to administrative tribunals as public bodies (e.g., Human Rights Tribunal, Employment Assistance Appeal Tribunal)
- On its face, FIPPA constrains administrative tribunals in their collection, use and disclosure of personal information, including through publication of decisions



PUBLIC SECTOR PRIVACY LAWS (cont'd)

- Chris Berzins's paper has detailed review, emphasising Ontario
- BC's FIPPA has no equivalent to Ontario FIPPA's s. 37 (public record exception)
- No on-point BC FIPPA decisions on disclosure of personal information through paper or electronic publication of administrative tribunal decisions



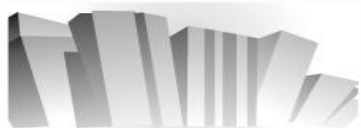
PUBLIC SECTOR PRIVACY LAWS (cont'd)

- BC analysis on disclosure could follow the original purpose or consistent purpose route
- The first would require finding that the tribunal's original purpose in collecting, notified at the time to the affected individuals, included publication of that personal information in its decision (s. 26, FIPPA)



PUBLIC SECTOR PRIVACY LAWS (cont'd)

- Barring that, tribunal would have to argue that disclosure was for a consistent purpose, *i.e.*, publication of its decision, which has a reasonable and direct connection to original purpose (ss. 33.1 and 34, FIPPA)



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ADMINISTRATIVE TRIBUNALS ACT

- Section 61 of BC's *Administrative Tribunals Act* (ATA) says FIPPA does not apply to certain information and records received by a tribunal
- This applies to “a decision of the tribunal for which public access is provided by the tribunal” (s. 61(2)(f), ATA)



ADMINISTRATIVE TRIBUNALS ACT (cont'd)

- Section 50(4) of the ATA requires a tribunal to “make its decisions accessible to the public”
- It's not clear beyond doubt that s. 61 of the ATA exempts tribunals from FIPPA's Part 3 rules about collection, use and disclosure of personal information in all respects

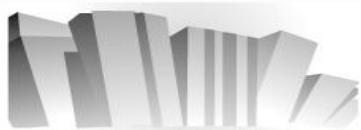


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ADMINISTRATIVE TRIBUNALS ACT (cont'd)

- For example, does the ATA, including in light of s. 11 power for tribunal to set rules, exclude FIPPA Part 3 as regards ADR by the tribunal or in relation to the conduct of the hearing process?
- Even if FIPPA did apply to all aspects of tribunal processes, it allows tribunals to collect, use and disclose personal information where authorized by an enactment and ATA fits this bill (s. 26, FIPPA)



ADMINISTRATIVE TRIBUNALS ACT (cont'd)

- Also, even if the ATA did not exclude FIPPA as regards tribunal decisions, FIPPA allows tribunals to disclose personal information “it is made available to the public in British Columbia under an enactment, other than this Act, that authorizes or requires the information to be made public” (s.33.1(1)(c.1), FIPPA)



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EXISTING OIPC SUGGESTIONS

- Collect only the personal information that is truly necessary to discharge the particular functions at hand. Apply the need-to-know rule
- Keep personal information confidential internally. Only those employees who need to know should know

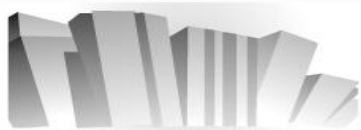


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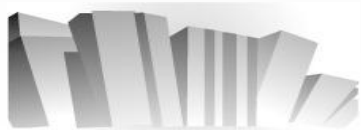
EXISTING OIPC SUGGESTIONS (cont'd)

- Keep personal information secure from inappropriate disclosure. Don't email or fax it to the wrong person. Don't let tribunal members keep sensitive personal information on unsecured laptops
- Create and implement appropriate retention rules (e.g., s. 31 creates one-year personal information retention requirement)



EXISTING OIPC SUGGESTIONS (cont'd)

- Decisions, even unpublished decisions, should contain only the personal information absolutely necessary to meaningfully explain the reasoning
- Consider concealing identities where sensitive personal information is involved (certainly for victims or witnesses, to avoid re-victimization)



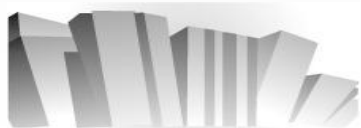
EXISTING OIPC SUGGESTIONS (cont'd)

- Even where personal information is anonymized through use of initials, consider not disclosing sensitive information (allude to its existence only)
- Consider providing full reasons to the parties and publishing an edited version for web or other publication (recognizing loss of control once reasons are given to the parties)



BC OIPC's INITIATIVE WITH TRIBUNALS

- OIPC recognizes issue of tribunal independence, so we are embarking on a pilot project with BC Human Rights Tribunal, in co-operation with BC Council of Administrative Tribunals
- Goal from OIPC's perspective is to publish on a template for tribunal policies and practices on collection, use and disclosure of personal information

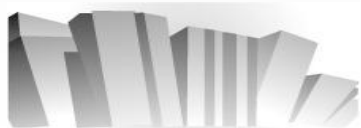


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BC OIPC's INITIATIVE WITH TRIBUNALS (cont'd)

- Major emphasis will be on privacy implications of publication of tribunal decisions
- Guidance from CJC, BC Court of Appeal, BC Supreme Court and other sources will be used

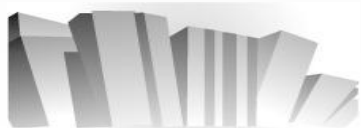


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BC OIPC's INITIATIVE WITH TRIBUNALS (cont'd)

- Major emphasis will be on privacy implications of publication of tribunal decisions
- Guidance from CJC, BC Court of Appeal, BC Supreme Court and other sources will be used
- Project outcomes will be published on OIPC website



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OIPC Website
<http://www.oipc.bc.ca>



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