



4E: Legislative Labrynth

October 27, 2009

AGENDA

- **Your Questions**
 1. MFIPPA, FIPPA Nexus
 2. Emergency Disclosure
 3. Bill 168
 4. M/FIPPA Disclosure and Copyright
 5. Consent to Release Personal Information
 6. Complying with an Act, Treaty, etc...
 7. Litigation, Court, Tribunal Powers
 8. Rights of Deceased
 9. Rights of Young People
 10. Confidentiality Provisions

MFIPPA and FIPPA Nexus

Transferring, Forwarding Requests; FIPPA s. 25, MFIPPA s. 18

Each Act recognizes an “institution” under the other

- FIPPA s. 25(5); In this section,
- “institution” includes an institution as defined in section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. F.31, s. 25 (5).
- MFIPPA s. 18(1); In this section,
- “institution” includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act*.

Emergency Disclosure

FIPPA ss. 11 and 42(1)(h), MFIPPA ss. 5 and 32(1)(h)

11, 5: **MUST disclose** record where reasonable grounds to believe in public interest to do so and record reveals grave environmental, health or safety hazard to the public

42(1)(h): **May disclose** personal information “in compelling circumstances affecting the health or safety of an individual”

Each requires notice to affected person/individual

Sections are there to prevent harm. **PROMOTE** and **USE** them

- IPC “Practice Tool for Exercising Discretion”

- <http://www.ipc.on.ca/english/Resources/Discussion-Papers/Discussion-Papers-Summary/?id=812>

Bill 168 Workplace Violence, Harassment

Past 2nd reading, referred to Standing Ctee. on Social Policy
If passed, would amend *Occupational Health and Safety Act*,
codifying duties, including personal information disclosure.

S. 32.0.5, **Provision of information**

Employer or supervisor have duty to advise workers of risks,
including personal information “related to a risk of workplace violence
from a person with a history of violent behaviour if,”

(a) the worker can be expected to encounter that person in the
course of his or her work; and

(b) the risk of workplace violence is likely to expose the
worker to physical injury.

**Disclosure of personal information limited to; “reasonably
necessary to protect the worker from physical injury”.**

M/FIPPA DISCLOSURE & COPYRIGHT

COPYRIGHT ACT (FEDERAL)

- No infringement
- **32.1** (1) It is not an infringement of copyright for any person
- (a) to disclose, pursuant to the *Access to Information Act*, a record within the meaning of that Act, or to disclose, pursuant to any like Act of the legislature of a province, like material;
- So you can release copyright protected material under M/FIPPA
- But recipient must abide by copyright **after** release
- Consider possible actions of requester, subsequent recipients
- Consider copying copyright notice onto record to protect rights

Consent to Release

FIPPA s. 42(1)(b), MFIPPA s. 32(1)(b)

Permit disclosure of personal information

(b) where the person to whom the information relates has identified that information in particular and consented to its disclosure;

Consent must be:

SPECIFIC to the information being disclosed

CURRENT, INFORMED, GIVEN FREELY (not coercion/deception)

For FIPPA purposes, consent can be withdrawn **at any time**

Beware:

Old consents

Overly general consents

Consents of doubtful origin

Possible subrogated rights (eg. of insurance companies)

If in **ANY** doubt, ask the individual, give option to revoke consent

Complying with an Act, Treaty, etc...

FIPPA s. 42(1)(e), MFIPPA s. 32(1)(e)

Permit disclosure of personal information

(e) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;

(MFIPPA) ...under such an Act or a treaty;

“COMPLYING” interpreted to mean that disclosure is **REQUIRED** ...otherwise, you **CANNOT DISCLOSE** under this paragraph!!!
So, when disclosure is requested, check applicable law etc.

If uncertain, ask requesting party to show you why you **MUST** disclose the personal information.

Beware foreign legislation, orders, etc...is it effective **in Ontario?**

Complying with an Act, Treaty, etc... II

The following deem compliance with 42(1)(e) &/or 32(1)(e);

Regulatory Modernization Act s. 8

Occupational Health and Safety Act s. 68.1(3)

Christopher's Law (Sex Offender Registry) s. 10(4)

Photo Card Act s. 12(6)

Ministry of Correctional Services Act s. 10(4)

Vital Statistics Act s. 48.12(8)

Employment Standards Act s. 138.1(3)

Land Titles Act s. 163(0.1)

Police Services Act s. 41(1.3)

Highway Traffic Act s. 205.0.1(6)

Typical wording: ...any disclosure (of personal information) under section x shall be deemed to be in compliance with clause(s) 42(1)(e) of FIPPA / and 32(1)(e) of MFIPPA.

Litigation, Court, Tribunal Powers

FIPPA s.64, MFIPPA s. 51

- **Information otherwise available**

- **64.** (1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation. R.S.O. 1990, c. F.31, s. 64 (1).

- **Powers of courts and tribunals**

- **(2)** This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. R.S.O. 1990, c. F.31, s. 64 (2).

Preserve:

Availability of information in litigation, eg. discovery, disclosure

Powers of court or tribunal to compel testimony or production of a document, such as court orders, subpoenas, summonses etc.

These processes occur in parallel with M/FIPPA matters, but M/FIPPA do not impede or interfere with them

Rights of Deceased

FIPPA s.66(a), MFIPPA s. 54(a)

Right or powers under FIPPA may be exercised on behalf of Deceased individual, by the individual's "personal representative"

"personal representative" means an executor, an administrator, or an administrator with the will annexed.

As defined in s. 1. of *Estates Administration Act*

Interesting example...literary executorships

Information can only be released for the administration of the estate

So, usually narrower access than available to the living individual.

Rights of Young People

FIPPA s.66(c), MFIPPA s. 54(c)

Right or powers under FIPPA may be exercised on behalf of an individual less than sixteen years of age, by a person who has lawful custody of the individual.

(If joint custody, both parents, etc. – but check custody conditions!)

Section allows access to information of deceased under age 16

Full exercise of all rights/powers by person with custody **BUT**

On behalf of young person; usually the case,
BUT if in doubt, check...see Order P-673

Other rights may exist. For example, *Education Act* s. 266(3):

A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of such pupil.

Confidentiality Provisions

FIPPA s.67, MFIPPA s. 53.

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise...

s. 67 & 53 list confidentiality provisions that prevail over M/FIPPA

Unlisted confidentiality provisions only prevail if they specifically refer to FIPPA or MFIPPA

Many examples...contextual and sometimes difficult to find; eg.

Health Protection and Promotion Act s. 77.6(3)

Despite anything in the *Personal Health Information Protection Act, 2004* or the ***Freedom of Information and Protection of Privacy Act***, the information provided to the Chief Medical Officer of Health must only be used or disclosed to investigate, eliminate or reduce the risk and for no other purpose. 2007...

PRESENTER INFORMATION

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