

## **FIPPA – Some Basics**

### **I      What is FIPPA?**

The Freedom of Information and Protection of Privacy Act is an act of the provincial legislature that has been in force for many years. It became effective for universities on June 10, 2006.

There are two main governing principles behind FIPPA:

- With a few notable exclusions and specific exemptions, the records of public institutions should be available to members of the public.
- The privacy of individuals should be protected.

### **II     General Impact**

Many of the provisions of FIPPA are very similar to provisions already in place in the University's Guidelines on Access to Information and Protection of Privacy. The University makes a great deal of information publicly available and has established criteria for situations in which access needs to be restricted. Similarly, the University already has policies and practices in place to protect the personal information of faculty, staff and students.

In terms of access to information, there is no need for faculty and staff to restrict access to information that would have been readily available prior to June 10 and we should continue to respond to informal requests as we have always done. However, if information is sought that would normally not be given out, or the records contain personal information about someone other than the person making the query, a formal access request may be required. Information about how to make a formal access request can be found on the privacy website [www.uwo.ca/privacy](http://www.uwo.ca/privacy).

With respect to the privacy provisions of FIPPA, again, we should proceed for the most part on a "business as usual" basis. For instance, there is no need to suddenly restrict access to personal information among university units that have shared information in the past for particular purposes or where the sharing of information is needed to accomplish a legitimate university business task.

However, we will need to adapt some policies and procedures with respect to privacy of personal information, particularly in dealing with student information, and there are some provisions of the Act that are pertinent for faculty. Following is a summary of some of the key issues.

### III Issues

#### A. Definitions

To begin, a couple of definitions may be helpful:

##### 1. *Record (section 2.1 of the Act)*

*“record” means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,*

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material regardless of physical form or characteristics, and any copy thereof, and*
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution.*

Note the breadth of this definition. Any recorded information that is within the ambit of the Act is captured by the Act. There is no distinction between official and unofficial records, and the means by which the information is recorded does not affect whether it is covered by the Act. For example, handwritten notes (or post-it notes) that you might keep in your course file with respect to a discussion with a student, critical comments taken down during student presentations in class, e-mail or voice-mail messages from or to students that relate to their performance or refer to personal information would all be captured by the Act.

##### 2. *Personal Information (section 2.1 of the Act)*

*“personal information” means recorded information about an identifiable individual, including,*

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,*
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information related to financial transactions in which the individual has been involved,*
- (c) any identifying number, symbol or other particular assigned to the individual,*
- (d) the address, telephone number, fingerprints or blood type of the individual,*
- (e) the personal opinions or views of the individual except where they relate to another individual,*
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,*
- (g) the view or opinions of another individual about the individual, and*

- (h) *the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.*

Again, this is very broad. Note particularly the references to information regarding education history, identifying numbers (such as a student number) and personal opinions of or about an individual.

## B. Some Specific Issues

### *1. Communicating Grades to Students*

Nowhere in the Act does it say explicitly that you may not post individual students marks in a public place or site. However, a student's mark is clearly covered by the definition of personal information as is his/her student number. This means that posting a student's mark along with his/her name or name and student number will clearly be a contravention of the Act and should not be permitted.

Less clear is whether posting student marks by student number only would be deemed to be a contravention of the Act if individual students are not able to be identified as a result. Universities in jurisdictions covered by similar legislation have continued to permit posting of marks by student number, but have put limits on how it can be done. In determining how to proceed, the focus should be on protecting the identity of individual students. For a small class (fewer than 15), public posting of the marks by student number is not advisable. For a large class, if the list of marks with student numbers is presented in a randomized fashion (as opposed to, for example, in the alphabetical order of the class list) it may be acceptable to post marks in hard copy in the department or on an instructor's door. An additional precaution for such postings is to use only the last five digits of the student numbers. That way, students who may have older student numbers will have their identities protected. It is not advisable to post marks electronically except through WebCTVista. Information about effective use of WebCTVista and other instructional tools can be obtained from ITS at <http://www.uwo.ca/its/itrc/resources>.

We will not have a definitive answer on this issue until there is a specific order from the provincial Information and Privacy Commissioner.

### *2. E-mail*

As noted above, the means by which information is received makes no difference as to whether it is subject to FIPPA. Personal information provided through e-mail correspondence must be treated in the same way as if it were provided in paper format.

Personal information that is provided to you by students via e-mail and that is used in any way by you must be retained for a minimum of one year. An example would be a student asking by e-mail for an extension on a paper because of a personal issue. You do not

need to retain the e-mail itself, but you must retain the information. In such cases, the best course of action may be to print off the e-mail and put it in the appropriate paper file. Personal information that you receive via e-mail that is unsolicited and/or that you do not use can be deleted.

E-mail correspondence can be problematic because the medium is not secure. It is important, therefore, that, where possible you do not use e-mail for obtaining, sharing or discussing sensitive personal information. Again, as an example, do not require students to submit requests for extensions electronically given that such requests are bound to contain information about a student's private situation. Similarly, unless you have the explicit permission of the student, you should not provide evaluative opinions of a student's academic performance or letters of reference through e-mail.

A final point with respect to e-mail addresses: often faculty members will provide students in a class with a list of the e-mail addresses for all those enrolled in order to facilitate group work or out-of-class discussions. You should not do this without first asking students' permission. An even more secure approach is to ask students to share this information voluntarily with their classmates when they are in their assigned groups. In that way, students who might feel uncomfortable saying "no" to an instructor can decide whether to share their contact information.

For answers to some commonly-asked questions about e-mail, please see <http://www.uwo.ca/its/email/ManagingEmail.htm>

### 3. *Teaching Materials and Course Notes*

One of the amendments made to the Act to adapt it to the university context was to exclude teaching materials from coverage by the Act. The intent of the amendment is to protect the intellectual property of those responsible for developing and teaching courses. However, FIPPA does not provide a very precise definition of what "teaching materials" are. After consultation with universities in other jurisdictions that have been under similar legislation for some time, a working definition is:

*Materials created and maintained by faculty members to produce and deliver a course, such as: lesson plans, lecture notes, reading lists, reading schedule, assignment topics, overhead slides, case studies, exercises, assignments, quizzes, tests, and other instructional material.*

Note, however, that the answers in completed assignments, exercises, exams, etc., are considered to be the personal information of the student. Such materials that are not returned to the student must be retained for a minimum of one year. Other course-related materials, such as notes that you may have made about student performance throughout the course, or notes of discussions you may have had with a student about progress in the course must also be retained for a minimum of one year. Again, the important thing is to retain the information. The format in which it is retained does not matter. Electronic

materials may be downloaded and filed in paper format or paper records can be scanned and stored electronically.

#### *4. Research Materials*

A similar amendment as for teaching materials was made to the Act with respect to research materials. Again, the Act is not very helpful in terms of defining “research materials”, it simply says that it does not apply to them. However, we do know that the subject matter of a research project and the amount of funding it has received will not be excluded from the Act’s provisions.

### **IV Where to go for help**

Each faculty and school has appointed an individual to act as the FIPPA Liaison Officer. A list of liaison officers can be found at [www.uwo.ca/privacy/liaison.html](http://www.uwo.ca/privacy/liaison.html).

The University’s interim FOIP Co-ordinator is Terry Morrissey in the University Secretariat. She can be reached at [tmorris@uwo.ca](mailto:tmorris@uwo.ca) or at extension 84543.

Western’s Privacy Office (University Secretariat, Room 290, SLB) has set up a website with information and links about the Act, Western’s implementation plan and a frequently-asked-questions page. It can be found at [www.uwo.ca/privacy](http://www.uwo.ca/privacy).

If you are at all in doubt, please ask.