

Session title : Freedom of Information Roundtable

Moderator/Panelists :

Colleen Murphy, Executive Director and General Counsel, Connecticut Freedom of Information Commission

Date and time : Wednesday December 11 2013, 10:45 am

Rapporteur : Simon Bérubé

Session Summary

The Newtown tragedy, which took place one year ago in Connecticut, raised a number of questions concerning the disclosure of criminal records, according to Ms. Murphy. This is the case, notably, with regards to calls to 911 and obligations related to the protection of victims. In this regard, the state's legislature adopted a new act governing the disclosure of certain elements, but it was necessary to form a working group which attempted to strike a balance between the right to privacy and the right to information. A new bill should be tabled shortly. Moreover, the existing federal law includes provisions protecting individuals against an invasion of their privacy.

The discussion that followed focused on the various exemptions contained in access to information acts. While some jurisdictions do not grant any exemptions whatsoever and consider that all documents from the government are in the public domain, others provide for exceptions. The same applies for reports and notes taken by police officers at crime scenes.

In Ontario, it is possible for people to have access to information concerning them. However, one cannot have access to a file concerning another person; this would be considered an invasion of privacy. There are certain occasions when it is in the public interest to waive the bias towards privacy, but this requires a rigorous process for evaluating the request. In this regard, the decision of the Ontario Commission may be overturned on appeal.

According to participants, agencies must manage the delicate balance between protection of privacy and the public's right to information. While in Canada the protection of privacy criterion appears to be favoured, in the United States, the right to information takes precedence, as the interventions indicated.

Concerning notice given to people who are the subject of a request for information, the Ontario Commission must demonstrate that it exercised due diligence in its search for a person who is difficult to trace. In most American states, this requirement does not exist, the initial presumption being that all documents must be public and that the person concerned must contest this publication, which requires the services of an attorney and may therefore prove costly.

Meetings of legislative and executive bodies were also on the table. A number of people pointed out that even though in principle everything should be open to the public, office holders often find ways to circumvent their obligations.

Costs related to information requests were also a subject of discussion. While certain agencies charge all costs for research-related resources, others ask for the cost of photocopies only. In certain places, services are free up to a certain number of hours. In Ms. Murphy's view, a balance between access to documents by virtue of the public's right to information and research-related costs must be maintained. She feels that when all is said and done, these documents belong to the public, and access to them should be guaranteed for rich and poor alike.