

Municipality of Lakeshore – Report to Council

Legal and Legislative Services

Legislative Services



To: Mayor & Members of Council

From: Brianna Coughlin, Division Leader – Legislative Services

Date: January 8, 2024

Subject: AMCTO Submission to the Province of Ontario – Modernize the *Municipal Freedom of Information and Protection of Privacy Act*

Recommendation

Support the submission by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) entitled “Looking Ahead: A Proactive Submission to Modernize the *Municipal Freedom of Information and Protection of Privacy Act*”, as presented at the January 30, 2024 Council meeting.

Background

The Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) is an organization that provides professional development, engagement opportunities, advocacy and leadership in the Ontario municipal sector.

As part of its advocacy work, AMCTO is involved in the ongoing improvement of processes relating to the modernization of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). This legislation was created to provide a right of access to information under the control of institutions, with limited and specific exemptions, and to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

AMCTO has recently made a submission to the Province of Ontario entitled “Looking Ahead: A Proactive Submission to Modernize the *Municipal Freedom of Information and Protection of Privacy Act*”. The submission is attached as Appendix A to this report.

Comments

MFIPPA legislation was first enacted in 1990; the types of information that municipalities send and receive have changed significantly in the past 33 years. Municipalities are increasingly requesting the Province to update the legislation in order to capture

updates in technology, provide more effective customer service relating to records and to reduce reporting burdens.

In 2021, Council passed the following resolution:

Resolution #123-04-2021

Support the Township of Guelph/Eramosa in its advocacy for reform of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA); and

Request that the Ministry of Government and Consumer Services review MFIPPA and consider the following:

- That MFIPPA be amended to require that Council appoint a Head under MFIPPA as is the case with other statutory officials;
- That MFIPPA be updated to address current and emerging technologies;
- That the Information and Privacy Commissioner work with municipal institutions to encourage consistent routine disclosure practices across institutions;
- That the threshold for frivolous and/or vexatious threshold be reviewed, and take into consideration the community and available resources in which it is applied;
- That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process or attempting to access records despite the fact that records are accessible through other processes;
- That administrative practices implied or required under MFIPPA, including those of the IPC, be reviewed and modernized; and
- That the integrity of MFIPPA be maintained to protect personal privacy and transparent governments; and

Send a copy of the resolution and a copy of this report to the Minister of Government and Consumer Services, the Information and Privacy Commissioner, the local MPPs, the Association of Municipalities of Ontario and all other Ontario municipalities.

At that time, AMCTO created a working group to support municipalities in their advocacy for MFIPPA reform. Lakeshore Administration has participated in providing feedback to AMCTO on these issues, including a survey in early 2023 as reference in Appendix A.

The AMCTO submission includes the following recommendations:

1. Provide principles-based guidance on data governance, including regarding the use of information between organizations and open data
2. Require municipalities to adopt a Routine Disclosure and Active Dissemination (RD/AD) Policy
3. Consider integrating the Personal Information Bank (PIB) with another existing accountability and transparency measure such as Routine Disclosure or Active Dissemination procedures
4. Provide minimum standards for privacy management and breach protocols
5. Designate clerks as heads of municipalities under the Act
6. Include a provision in the Act for regular (five-year) review of the Act and General Regulation to:
 - a. Ensure that the Act is reflective of recent IPC Orders and guidance
 - b. Update the Act to reflect new and emerging technology
7. Enhance frivolous and vexatious provisions and expand definition and provide a 'test' for administrators to utilize
8. Add a mechanism to confirm that requests with offensive and inappropriate language may be refused
9. Add a provision to the Act to permit municipalities to adopt a bulk-user policy
10. Limit use of the Act to its intended purposes to prevent misuse and ensure that institutions are not the go-to source for information accessed through the legal system
11. Ensure the Act is consistent with other applicable legislation. Where the Act is not consistent, provide guidance on which legislation prevails
12. Provide clarity throughout the Act that days are computed as business days
13. Modify definition of a record to exclude automated records, and to provide clarity on email records, instant message chats and digital recycling bins
14. Provide clarity in the Act regarding records of members of council
15. Provide clarification on circumstances when third-party notification is required

16. Ensure fees are reflective of current processes, and keep pace with inflation
17. Review the Act to “clean-up” references to outdated processes and technology
18. Offer institutions updated training and guidance materials on MFIPPA on an annual basis targeted to both municipal staff and elected officials
19. Revise annual reporting, as required in the Act, to ensure that data being collected is relevant. Consider replacing IPC reporting with requirements that municipalities report to their councils
20. Provide more transparency on IPC processes and include in the Act timelines for IPC processing

Administration is in support of these recommendations. While work continues on procedural framework such as routine disclosure, open data and records management as a whole, having consistent approaches between municipalities in respect to access to information will be helpful and potentially reduce the time required to respond to inquiries or reduce burden on staff.

Administration recommends that Council support the submission by AMCTO to the Province of Ontario entitled “*Looking Ahead: A Proactive Submission to Modernize the Municipal Freedom of Information and Protection of Privacy Act*”. This is consistent with Council’s strategic objectives of Modernizing and Enhancing Municipal Function (records management) and Modernizing Resident-Centered Service (resident-service standards plan).

Financial Impacts

There are no financial impacts associated with the recommended support of the submission by AMCTO.

Attachments

Appendix A: *Looking Ahead: A Proactive Submission to Modernize the Municipal Freedom of Information and Protection of Privacy Act* (AMCTO)

Report Approval Details

Document Title:	AMCTO Submission to the Province of Ontario - Modernize MFIPPA.docx
Attachments:	- MFIPPA Submission - AMCTO.pdf
Final Approval Date:	Jan 18, 2024

This report and all of its attachments were approved and signed as outlined below:

Prepared by Brianna Coughlin

Submitted by Susan Hirota

Approved by Justin Rousseau and Truper McBride