

Municipality of Lakeshore - Report to Council

Legislative & Legal Services

Legislative Services



To: Mayor & Members of Council

From: Brianna Coughlin, Manager of Legislative Services
Kristen Newman, Director of Legislative & Legal Services

Date: March 19, 2021

Subject: Request to Update the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

Recommendation

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:

1. That MFIPPA be amended to require that Council appoint a Head under MFIPPA as is the case with other statutory officials;
2. That MFIPPA be updated to address current and emerging technologies;
3. That the Information and Privacy Commissioner work with municipal institutions to encourage consistent routine disclosure practices across institutions;
4. 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;
5. 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;
6. That administrative practices implied or required under MFIPPA, including those of the IPC, be reviewed and modernized; and
7. 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.

Background

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) was enacted in 1990. The purpose of the legislation is to protect the privacy of individuals with respect to their personal information, while also providing access to certain records and personal information under the custody or control of institutions. While recognized in the western world to be a leading piece of legislation at the time that it was passed, the Act is widely recognized to be out of date and requiring modernization to address new and emerging technologies, open data and best practices in relation to the protection of privacy and access to information.

Comments

The Municipality of Lakeshore has received correspondence from the Township of Guelph/Eramosa regarding advocacy for reform to MFIPPA. The correspondence is attached to this report.

Administration is in support of the recommendations for reform to the legislation. Municipal clerks across Ontario have been advocating for updating MFIPPA for several years and recently have received favourable response from both the Province and the Information and Privacy Commissioner on a number of these matters.

It is recommended that Council support the recommendations for reform at this time. Administration has provided recommendations specific to its MFIPPA expertise for consideration as well. The recommendation includes some general recommendations with respect to working on routine disclosure processes and modernization and some that are more specific.

Head as Statutory Official: The Head for the purposes of MFIPPA is Council; however, it is not practical or expedient for Council to meet to respond to access to information requests. As such, the Clerk is designated to carry out the functions of the Head of the institution for MFIPPA purposes for the Municipality of Lakeshore. Administration agrees with the recommendations from Municipal Clerks in other areas of the Province that it would be practical and reflective of the current realities of municipalities to amend MFIPPA to require Council to appoint a head for the purposes of MFIPPA, just as it is required to appoint a Clerk, Chief Building Official and Drainage Superintendent as statutory officials.

Revising the Fees: The fees associated with access to information requests have not changed since MFIPPA's inception. The fees are as follows:

- File an access to information request, \$5.00 per request.
- For photocopies and computer printouts, 20 cents per page.
- For records provided on CD-ROMs, \$10 for each CD-ROM.
- For manually searching a record, \$7.50 for each 15 minutes spent by any person.
- For preparing a record for disclosure, including severing a part of the record, \$7.50 for each 15 minutes spent by any person.
- For developing a computer program or other method of producing a record from machine readable record, \$15 for each 15 minutes spent by any person.
- The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

While municipal user fees authorized pursuant to the *Municipal Act, 2001* at least allow for cost recovery, the fees associated with MFIPPA are nowhere close to the cost recovery threshold thus forcing the Municipality to subsidize the cost of each individual request that is filed. The most significant amount of time in responding to a request is liaising with the various departments (there is no fee other than the general \$5.00 fee) and preparing the records for disclosure. Recovery of \$7.50 per 15 minutes does not cover the costs of an Administrative Assistant's time in preparing the records.

Revising the Frivolous/Vexatious Threshold: Lakeshore's experience has been relatively positive with respect to the nature of the requests. However, the access to information request process in many other municipalities has been rife with challenges whereby requesters have used the process to personally attack staff, advance versions of events that have no factual basis or other problematic situations.

Removal of Redundant and Routine Requests: The bulk of Lakeshore's requests in a year are typically associated with building permit documentation or requests relating to litigation proceedings. Administration supports a consistent approach across the Province to create routine disclosure processes, particularly for building permit-related and property-related Teraview/MPAC data licenced to municipalities.

Secondly, Administration recommends that records relating to pending or actual litigation be excluded from the application of MFIPPA. Litigation processes, particularly those in the civil, criminal and quasi-criminal/regulatory realm, have common law or statutory disclosure processes where a defendant or parties to the proceeding can access the information from a municipality. Often, municipalities are obliged to provide the same information through a litigation process as it produces in response to an access to information request. These are redundant processes which do not provide for a full cost recovery mechanism, thus putting the burden on the municipality to subsidize the cost twice for each process. As such, Administration supports removing the opportunity to allow for such redundant processes.

Financial Impacts

There is no financial impact as a result of the recommendation of support.

Attachments

1. Township of Guelph/Eramosa correspondence regarding Advocacy for Reform – MFIPPA Legislation
2. Township of Guelph/Eramosa Clerks Report 21-01 regarding Advocacy for Reform – MFIPPA Legislation

Report Approval Details

Document Title:	Request to Update MFIPPA Legislation.docx
Attachments:	- Township of Guelph Eramosa Advocay for Reform MFIPPA Legislation.pdf - Clerks Report 21-01 re Advocacy for Reform – MFIPPA Legislation.pdf
Final Approval Date:	Mar 31, 2021

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

Rosanna Pellerito

Truper McBride