



**Corporation of the Municipality of Temagami
Memorandum to Council**

Memo No.
2021-M-017

Subject: Advocacy for Reform - MFIPPA Legislation

Agenda Date: February 11, 2021

Attachments:

RECOMMENDATION

That that the following motions be passed in support of a request to review and reform of the Municipal Freedom of Information and Protection of Privacy Act:

WHEREAS the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990 (MFIPPA) dates back 30 years;

AND WHEREAS municipalities, including the Municipality of Temagami, practice and continue to promote open and transparent government operations, actively disseminate information and routinely disclose public documents upon request outside of the MFIPPA process;

AND WHEREAS government operations, public expectations, technologies, and legislation surrounding accountability and transparency have dramatically changed and MFIPPA has not advanced in line with these changes;

AND WHEREAS the creation, storage and utilization of records has changed significantly, and the Municipal Clerk of the Municipality is responsible for records and information management programs as prescribed by the Municipal Act, 2001;

AND WHEREAS regulation 823 under MFIPPA continues to reference antiquated technology and does not adequately provide for cost recovery, and these financial shortfalls are borne by the municipal taxpayer;

AND WHEREAS the threshold to establish frivolous and/or vexatious requests is unreasonably high and allows for harassment of staff and members of municipal councils, and unreasonably affects the operations of the municipality;

AND WHEREAS the Act fails to recognize how multiple requests from an individual, shortage of staff resources or the expense of producing a record due to its size, number or physical location does not allow for time extensions to deliver requests and unreasonably affects the operations of the municipality;

AND WHEREAS the name of the requestor is not permitted to be disclosed to anyone other than the person processing the access request, and this anonymity is used by requesters to abuse the MFIPPA process and does not align with the spirit of openness and transparency embraced by municipalities;

AND WHEREAS legal professionals use MFIPPA to gain access to information launch litigation against institutions, where other remedies exist;

AND WHEREAS there are limited resources to assist administrators or requestors to navigate the legislative process;

AND WHEREAS reform is needed to address societal and technological changes in addition to global privacy concerns and consistency across provincial legislation;

BE IT RESOLVED THAT the Ministry of Government and Consumer Services be requested to review the MFIPPA, and consider recommendations as follows:

1. That MFIPPA assign the Municipal Clerk, or designate to be the Head under the Act;
2. That MFIPPA be updated to address current and emerging technologies;
3. That MFIPPA regulate the need for consistent routine disclosure practices across institutions;
4. That the threshold for frivolous and/or vexatious actions be reviewed, and take into consideration the community and available resources in which it is applied;
5. That the threshold for frivolous and/or vexatious also consider the anonymity of requesters, their abusive nature and language in requests to ensure protection from harassment as provided for in Occupational Health and Safety Act;
6. That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process;
7. That administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized;
8. That the integrity of the Act be maintained to protect personal privacy and transparent governments.

AND FURTHER THAT The Corporation of Temagami send a letter to Premier of Ontario Doug Ford, Honourable Lisa Thompson, Minister of Government and Consumer Services , Honourable Steve Clark, Minister of Municipal Affairs and Housing, Patricia Kosseim, Information and Privacy Commissioner of Ontario, Gradon Smith, President, Association of Municipalities of Ontario, AMCTO Legislative and Policy Advisory Committee and Local MPP's Office acknowledging the need for a review and change of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

INFORMATION

Many clerks across Ontario have been expressing their frustrations and remarking on their experiences with MFIPPA legislation over the years, and have been looking for a mechanism to affect change.

A meeting was held with the Information and Privacy Commissioner (IPC) Senior Management Team to understand their successes and appreciate their challenges, and in September of 2019, a committee formed with the support of the Simcoe County Clerks & Treasurer's Association (SCCTA). The committee determined a mandate to seek changes to MFIPPA, improve interactions with the Information and Privacy Commissioner's Office, and improve public education on the legislation.

The members of the committee include:

Pam Fettes, Director, Legislative Services/Clerk, Township of Clearview
John Daly, Director, Statutory Services/Clerk, County of Simcoe
Dina Lundy, Director, Legislative Services/Clerk, Town of Wasaga Beach
Karen Way, Clerk, Township of Georgian Bay

This committee has worked diligently over the past 14 months to examine the legislation, identify the problems that are faced by administrators and taxpayers, and come up with recommendations for reform. A presentation of our findings was developed and delivered before the Honourable Lisa Thompson, Minister of Government and Consumer Services in early October. The presentation was positively accepted, and we were encouraged to continue our advocacy locally and through other agencies and associations.

Throughout the past two months, the presentation has been delivered to the Association of Municipal Clerks and Treasurers (AMCTO) Legislative and Policy Committee, and several municipalities and Counties across Ontario. As we continue to deliver the presentation, we continue to gain support, and hear of further experiences and frustrations that confirm our findings.

DISCUSSION

The legislation dates back 30 years, and in this time we have seen drastic changes in government operations, public expectations, accountability and transparency measures, technology, and other legislations. MFIPPA has not been revised to keep up with the progressions that have occurred over the years.

The committee is advocating for the following changes:

1. Create a Communication Portal to provide a connection between the IPC and institutions to enhance communication, facilitate requests for documentation, process enquiries, and track status of appeals. (similar to those of the Local Planning Appeal Tribunal and the Municipal Property Assessment Corporation).
2. Designate the Clerk as the 'head' under the Act. Few municipalities do not have the clerk designated. It makes sense that the statutory officer responsible for the municipality's records, is also the person that would make determinations on access based on the legislation. In our research, PEI and Nova Scotia have already made this change.
3. Create a Stakeholder Advisory Committee representing different interest groups to provide advice to the Information and Privacy Commissioner on public education, policy and identifying emerging issues affecting access and privacy.
4. Require Routine Disclosure Policies be adopted, and develop a template through coordination of the IPC office, and AMCTO to share collective expertise, allowing for a level of consistency across the province.
5. Update the threshold for frivolous and vexatious actions and take in to consideration the community and available resources, as well as that the anonymity of requestors, their abusive nature and language to ensure protection from harassment as provided for in the Occupational Health and Safety Act.
6. The application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process. Currently there are only two steps in the process that are recoverable – searching and preparing records for disclosure. Appeals can be lengthy and costly and yet those costs are not recoverable.
7. The regulation be updated to address current and emerging technologies. Most computers do not support CD-ROMs.
8. The administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized.

CONCLUSION

Modernization of the legislation, with open and transparent processes, resources for administrators and requestors, communication and technology improvements, administrative practice improvements, and respect and accountability for the taxpayer are desperately needed. The Time for Change is now. Should Council adopt the recommendation put before you today, it will be circulated to clerks across the province, local MPPs, the Minister of Consumer Services, the Minister of Municipal Affairs and Housing, the Information and Privacy Commissioner of Ontario, the Association of Municipalities of Ontario (AMO), and the Association of Clerks and Treasurers of Ontario (AMCTO).

Respectfully Submitted:
Suzie Fournier
Municipal Clerk