

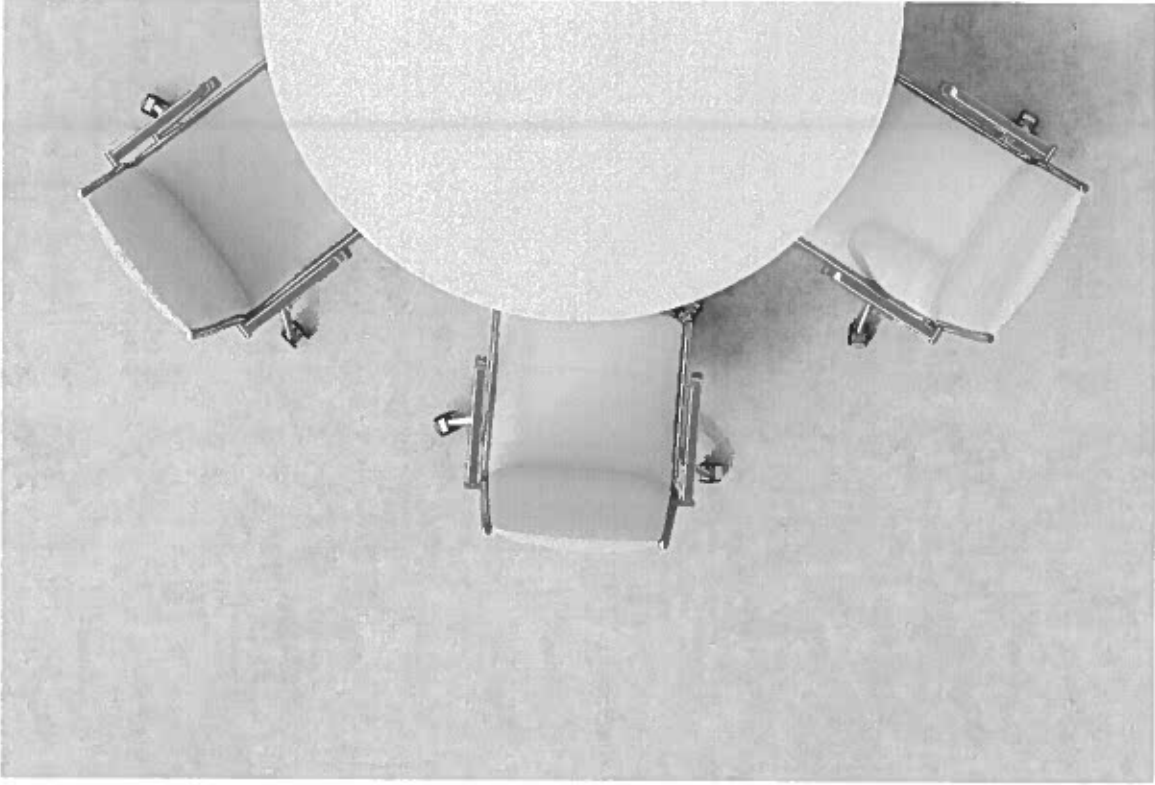


CLEARVIEW

Time for Change

**Municipal Freedom of Information
and Protection of Privacy Act**

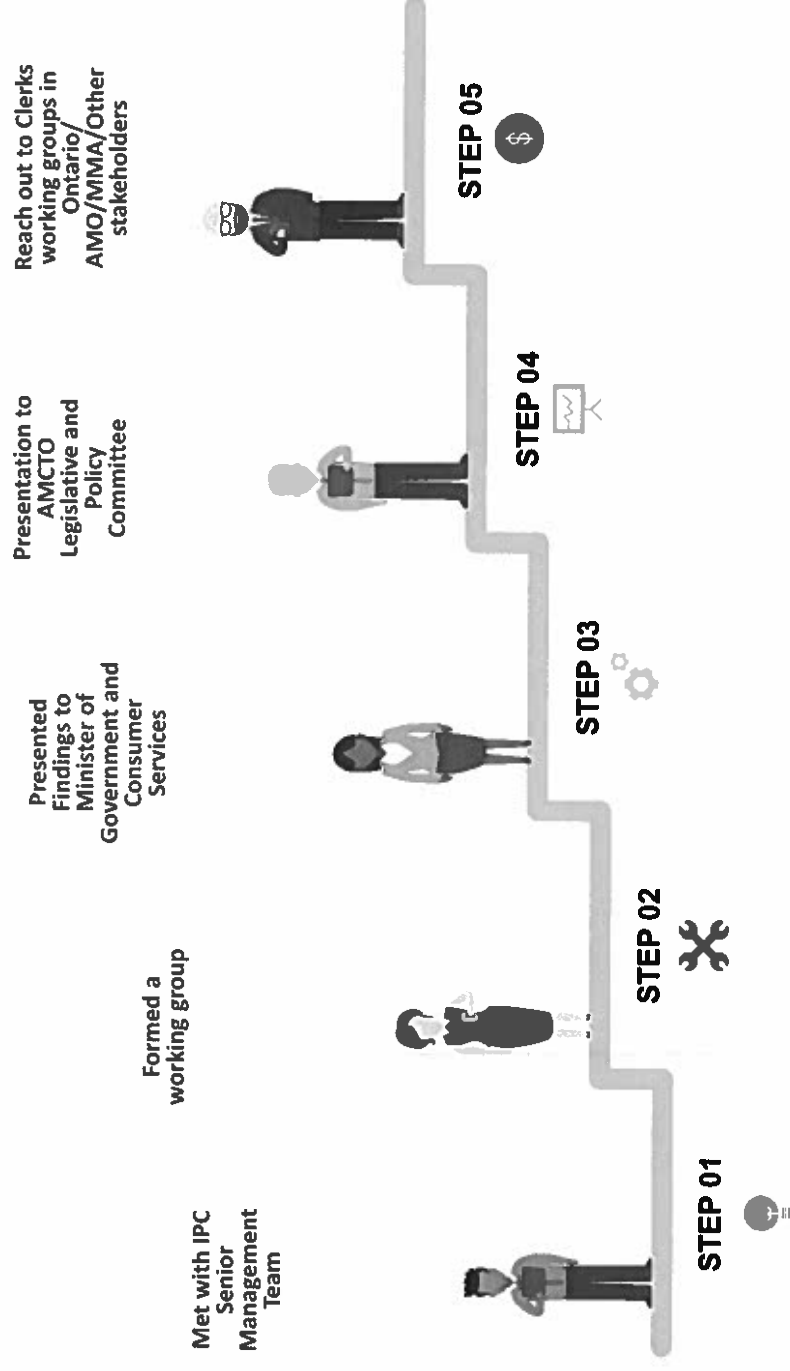


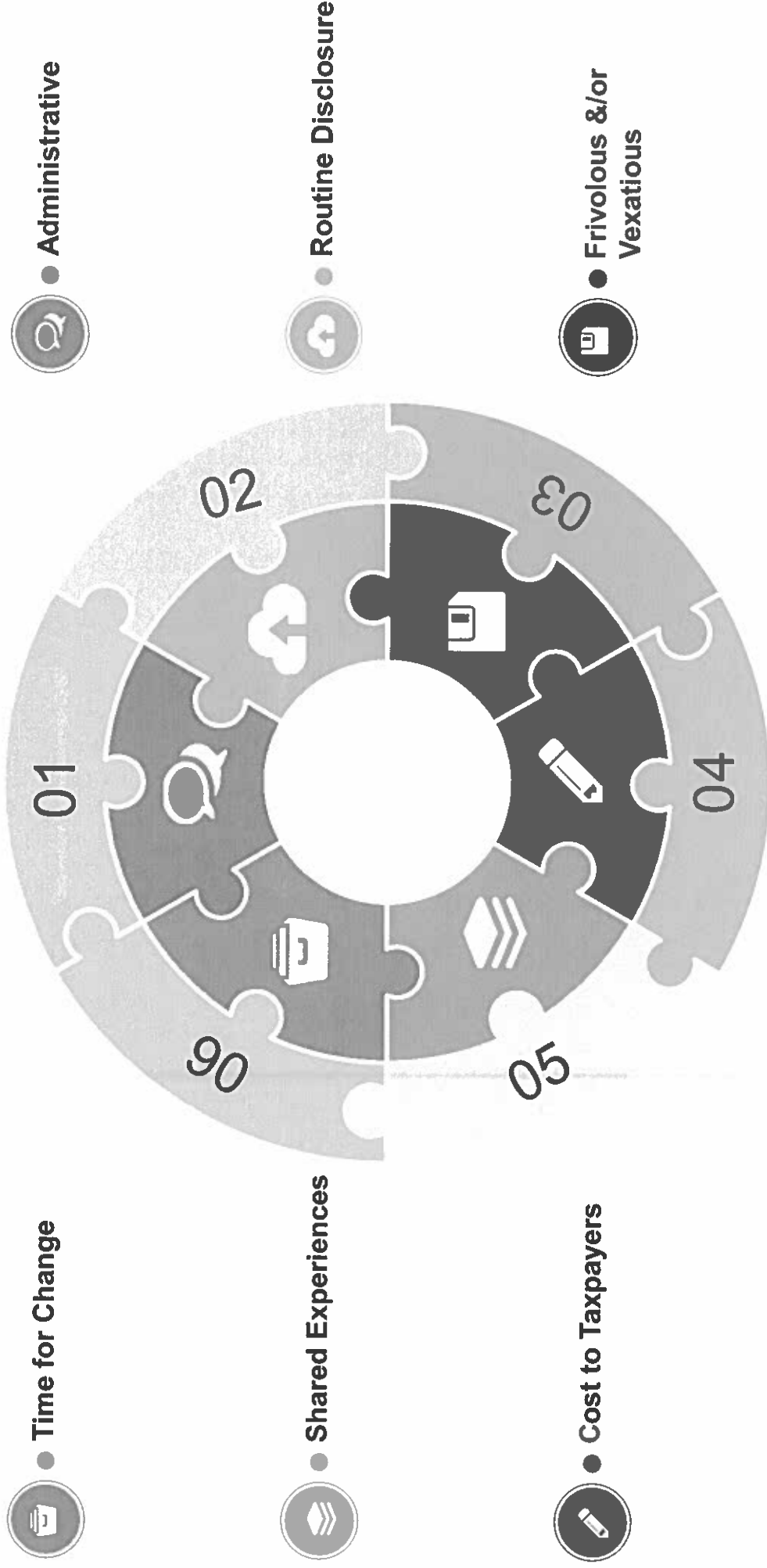


Committee Members

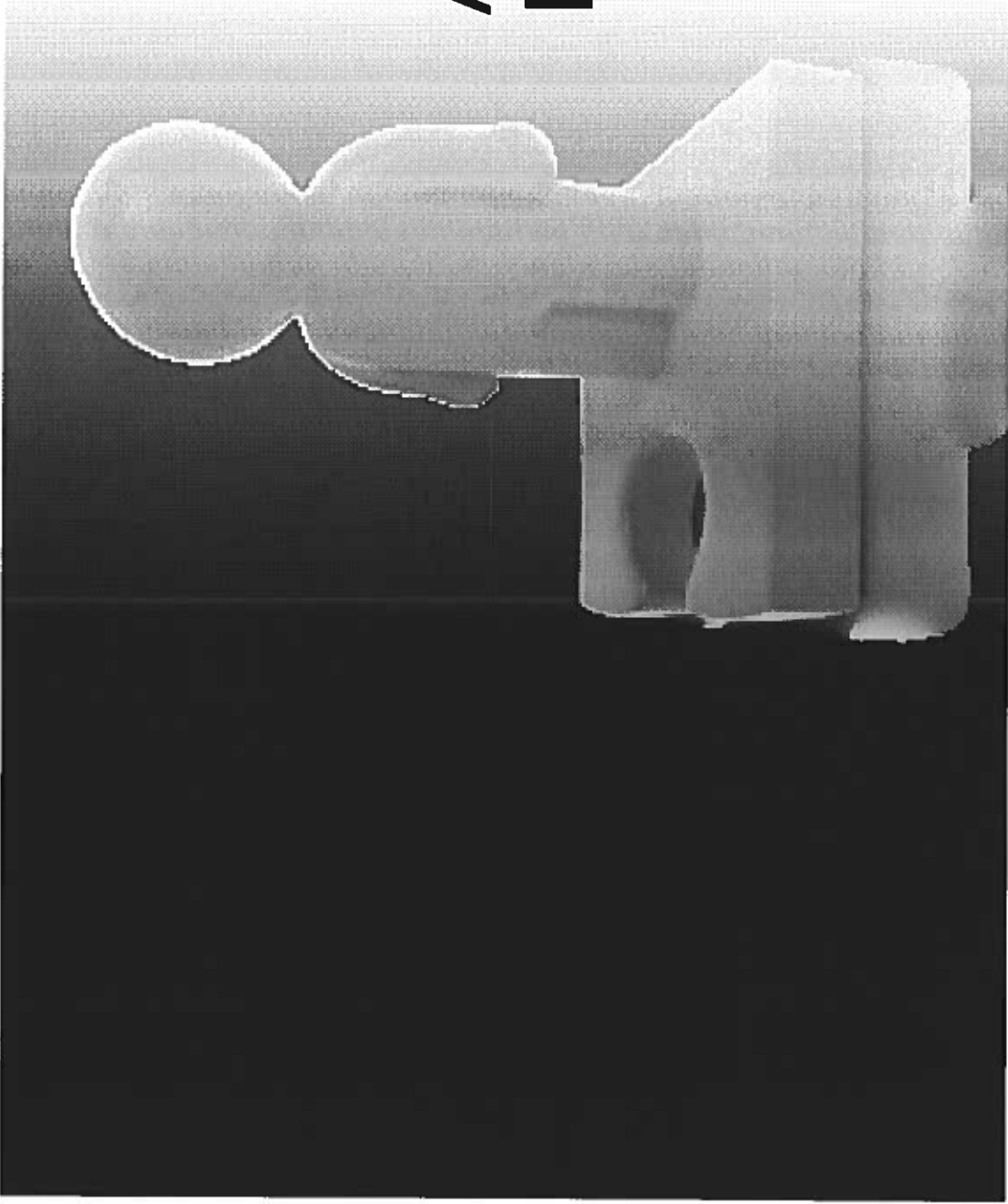
- **John Daly, Director, Statutory Services/Clerk**
 - County of Simcoe
- **Pamela Fettes, Director, Legislative Services/Clerk**
 - Township of Clearview
- **Dina Lundy, Director, Legislative Services/Clerk**
 - Town of Wasaga Beach
- **Karen Way, Clerk**
 - Township of Georgian Bay

How did we get here?

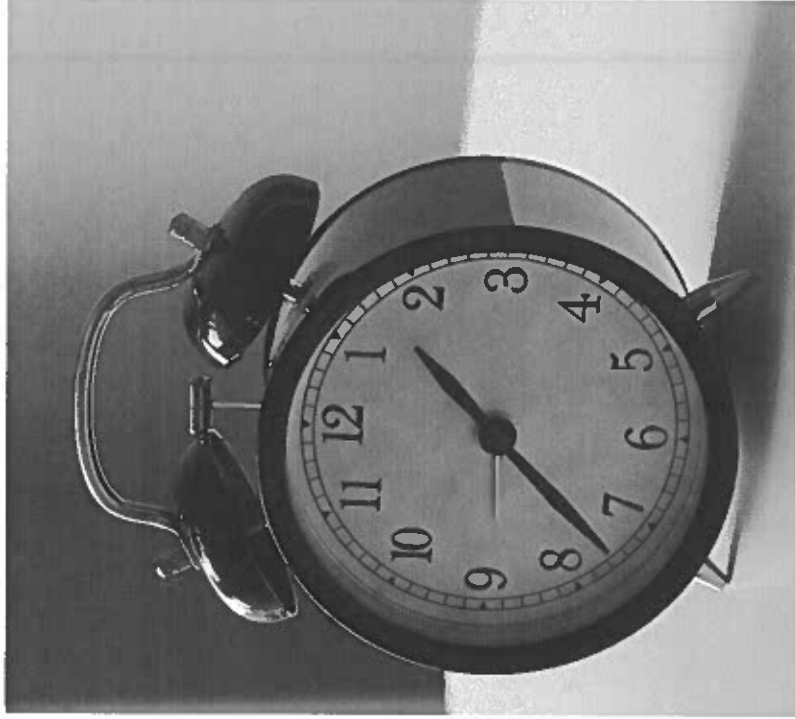




Administrative Efficiencies

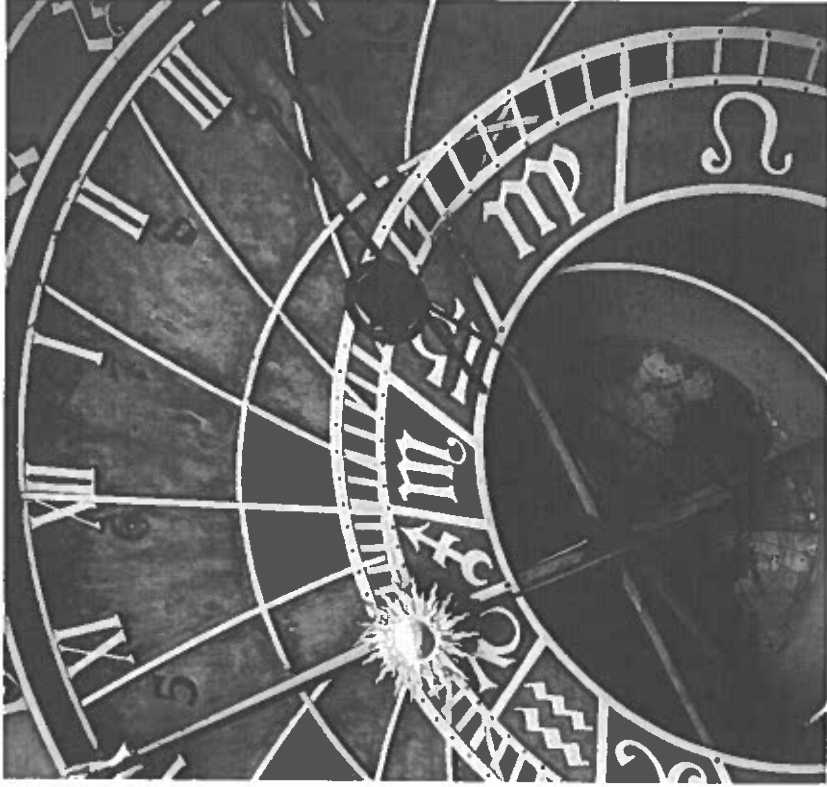


Age of Legislation – Time for Review



- Inception of legislation dates back 30 years.
- Government operations, public expectations and legislative parameters for accountability and transparency mandates have dramatically changed.
- The creation, storage and utilization of records has changed significantly.
- Reform is needed to address societal and technological changes in addition to global privacy concerns.

Forms and Communications



- **IPC Forms need to be updated:**
- Update form to include email address, preferred method of contact and include the fees charges outlined in Regulation 823.
- Requirement to fill out institution's designated form to ensure accuracy of all information including contact information.
- Update communication methods between all parties

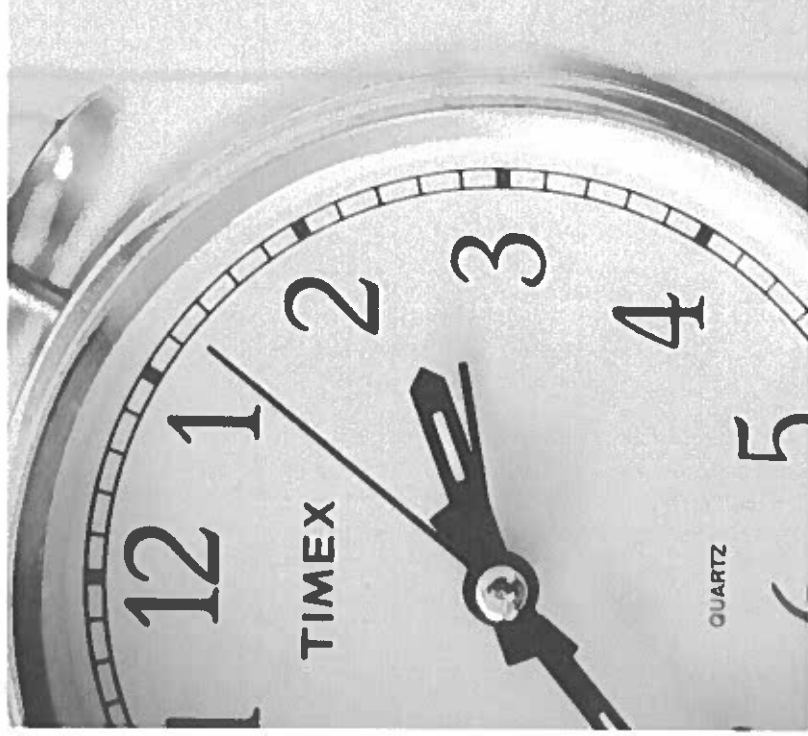
Communication Portal

- Current means of communication – telephone, fax or mail.
- Create a portal – Find out the status of your file! (similar to LPAT and MPAC)

Institution Name	Request Number	Appeal Number	Status	Assigned IPC Staff	Documents

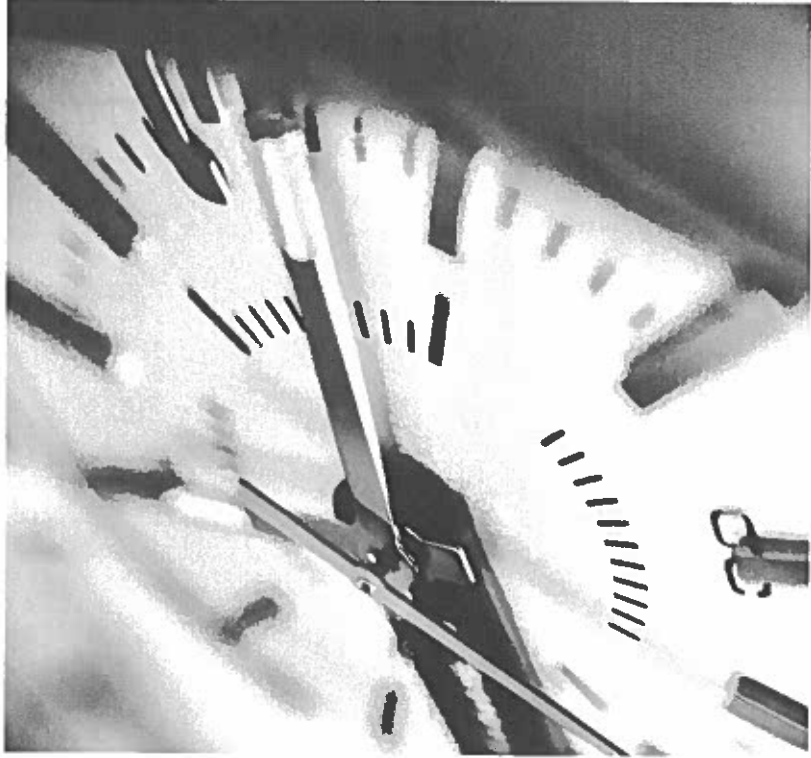
- Ease of access
- Continuity of service delivery
- Transfer files through encryption
- Determine status of various appeals
- Access documents sent by the IPC Office
- Save postage costs
- Modernization of government services

Head under the Act



- Under section 253(1) of the Municipal Act, 2001, as amended, the Clerk is responsible for all corporate records and public access to them.
- Municipal Clerk serves as a Corporate Officer and the responsibilities associated with the Corporate Officer position.
- Other provincial jurisdictions such as PEI and Nova Scotia, the role of “Head” rests with Officers of the corporation rather than the elected level.
- Removing the “political” reference to head reflects the nature of access to information from political to administrative.

Stakeholder Advisory Committee

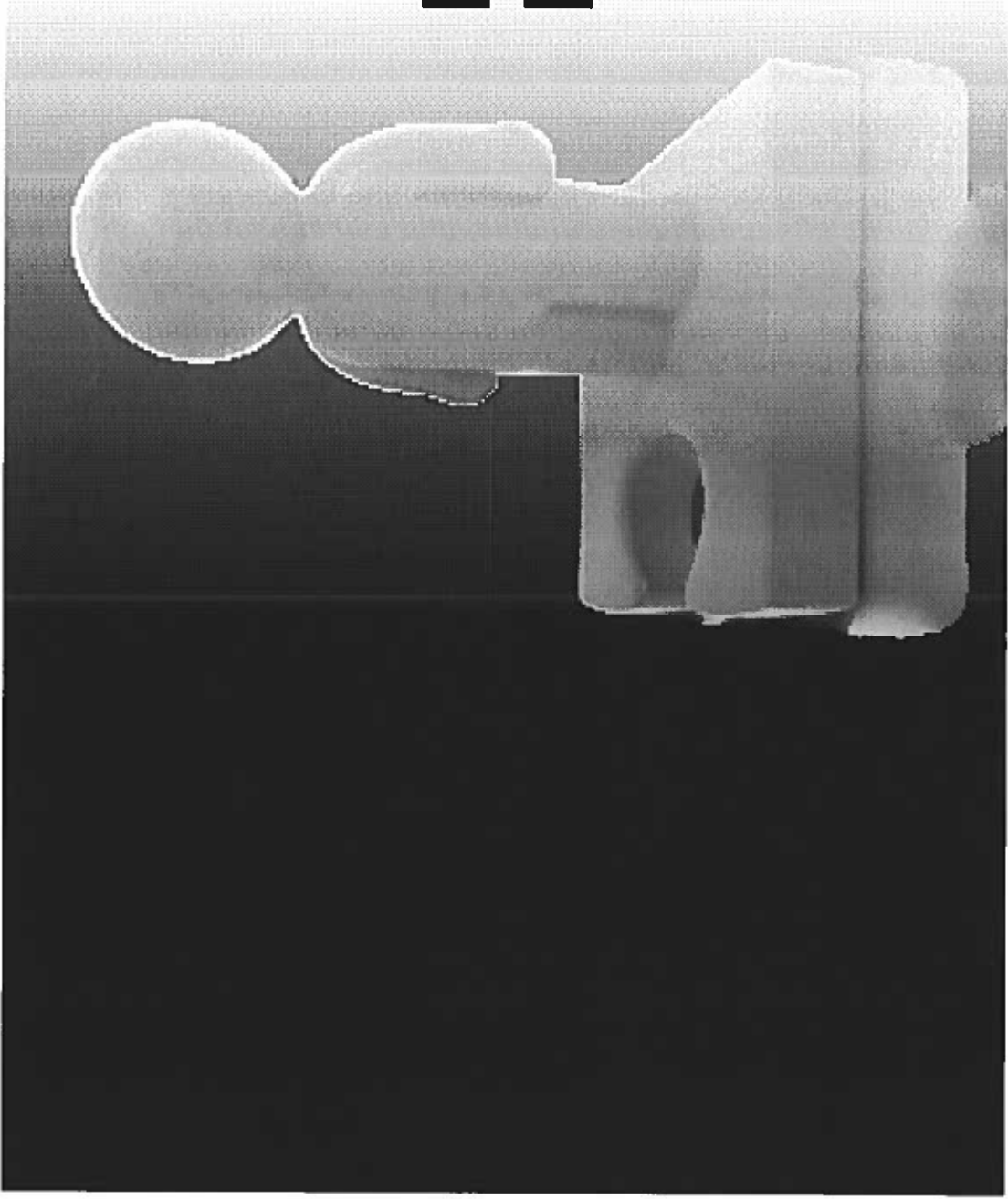


- Advisory board/committee be formed representing different interest groups to provide advice to the Commissioner on public education, policy and identifying any emerging issues affecting access and privacy.

Benefits:

- Offers different perspectives
- Act as ambassadors for IPC Office
- Serve as a viable connection between public institutions, interest bodies and IPC.

Routine Disclosures



Routine Disclosure

Many municipalities have developed their own routine disclosure policies.

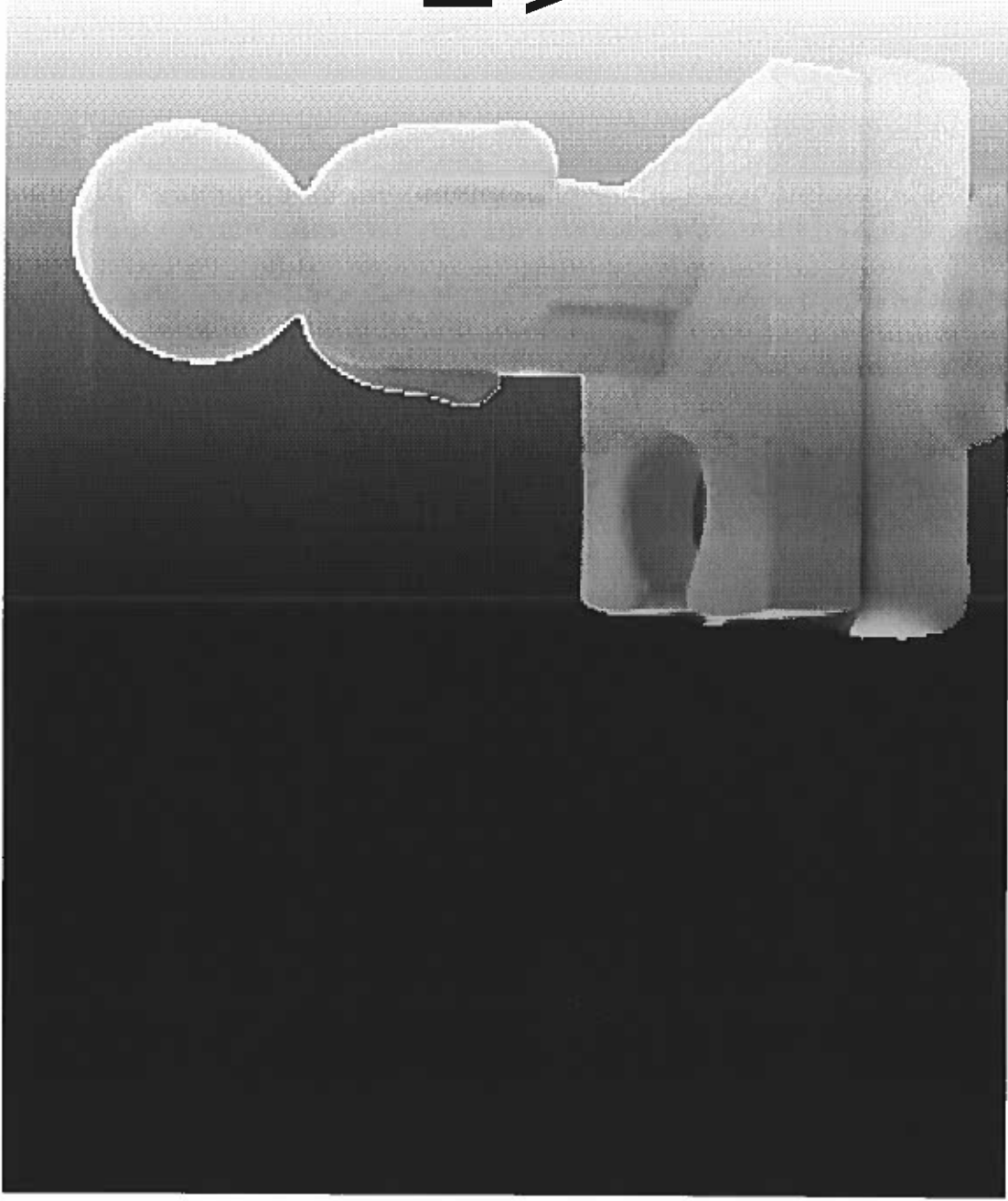
It is time for routine disclosure policies to exist in all municipalities across Ontario.

Encourage the IPC Office to work with AMCTO to offer a template of routine disclosure policy based on shared collective experience between both offices.

Better user experience

Transparent and accountable to all ratepayers across the Province

Frivolous and/or Vexatious



Frivolous and/or Vexatious - Threshold

- The threshold used to establish frivolous and vexatious is set out in M-850 and MO-2488. In the last case, the requester sent over 300 emails within a 6-month period in addition to submitting 54 requests with 372 parts over a two-year period. The requester submitted his access requests to the City of Vaughan.
- Requests similar in scope, even by division of $\frac{1}{2}$ or $\frac{1}{3}$ would place substantial strain or hardship on municipal operations.
- Disadvantages other requesters access to records and municipal operations.
- Specify a new reasonable threshold based on the municipal legislative framework.

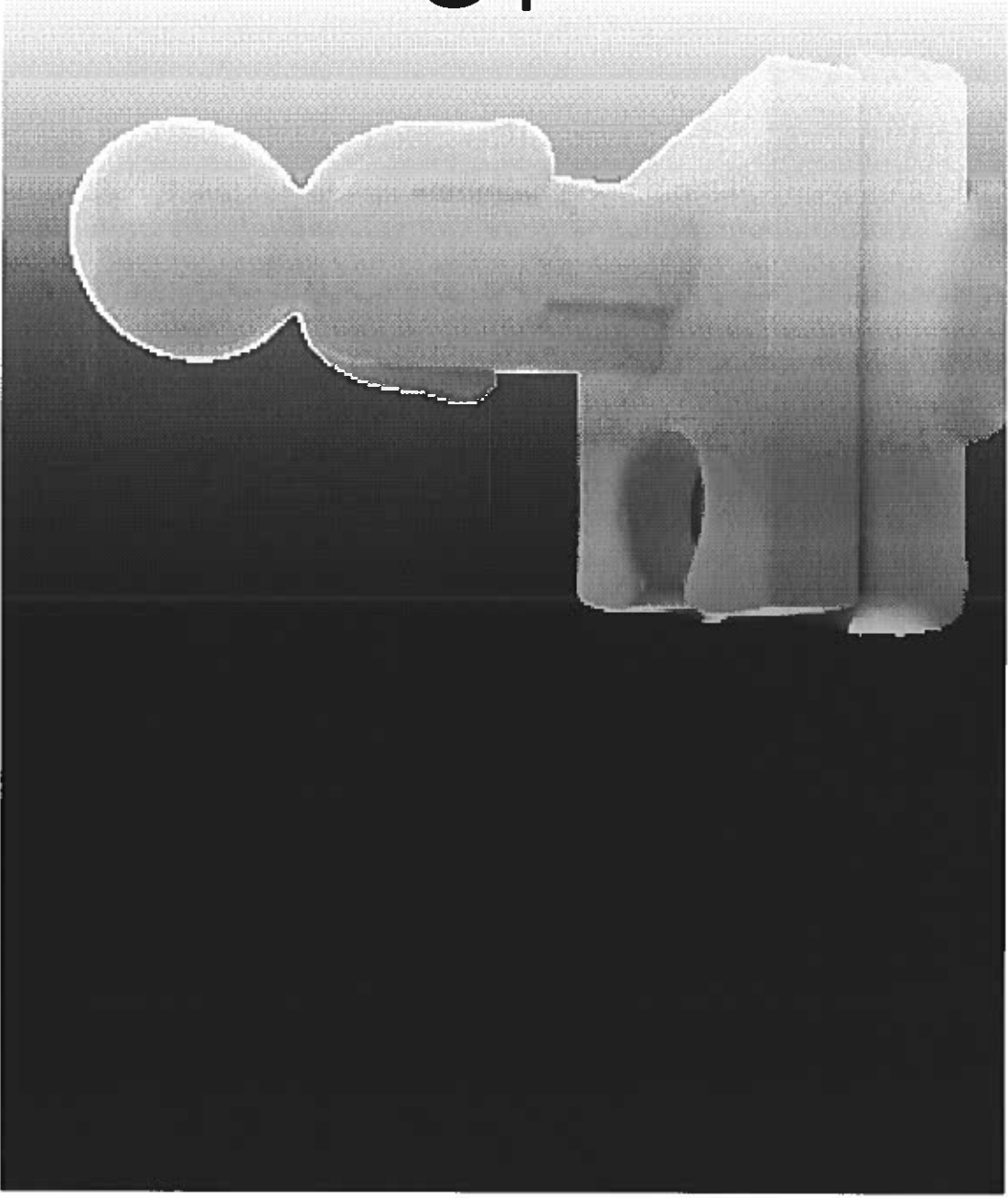
Frivolous and/or Vexatious – Appeal Process

- In Ontario, when a request is deemed frivolous and/or vexatious, the municipality is required to provide reasons for this designation.
- It is at the sole discretion of the requester to appeal the decision. Appeals can be labour intensive and costly to all taxpayers.
- In Alberta, Newfoundland and Quebec, the public body may apply directly to the “IPC office” to disregard a request made in bad faith or that would unreasonably interfere with the operations of the public body for various reasons.

Frivolous and/or Vexatious - Harassment

- Using requests to harass employee(s) performances.
- Contradicts anti-harassment and safe workplace legislation.
- If public institution does not process request based on the wording of the request, upon appeal it would be treated as a deemed refusal.
- In these circumstances, the municipality needs to make a decision to either support the staff person or process the request.

Costs to Taxpayers



FOI Request Process – Basic Request

Steps to Respond

- Acknowledgement Letter
- Notifies Relevant Staff
- Cursory Search
- Provide Fee Estimate
- Conduct Full Search
- Review for Personal Information
- Label and Number Records
- Responsive Documents List (index)
- Redact and Copy Records
- Notice of Decision
- Release

Steps with Recoverable Fees

- Acknowledgement Letter
- Notifies Relevant Staff
- Cursory Search
- Provide Fee Estimate
- Conduct Full Search
- Review for Personal Information
- Label and Number Records
- Responsive Documents List
- Redact and Copy Records
- Notice of Decision
- Release

* Does not include third party notification or appeal.

Unaccounted Fees and Charges



Length of process
and closure of files



Secondary
searches of records
from IPC



Allocation of staff
resources



Legal Fees

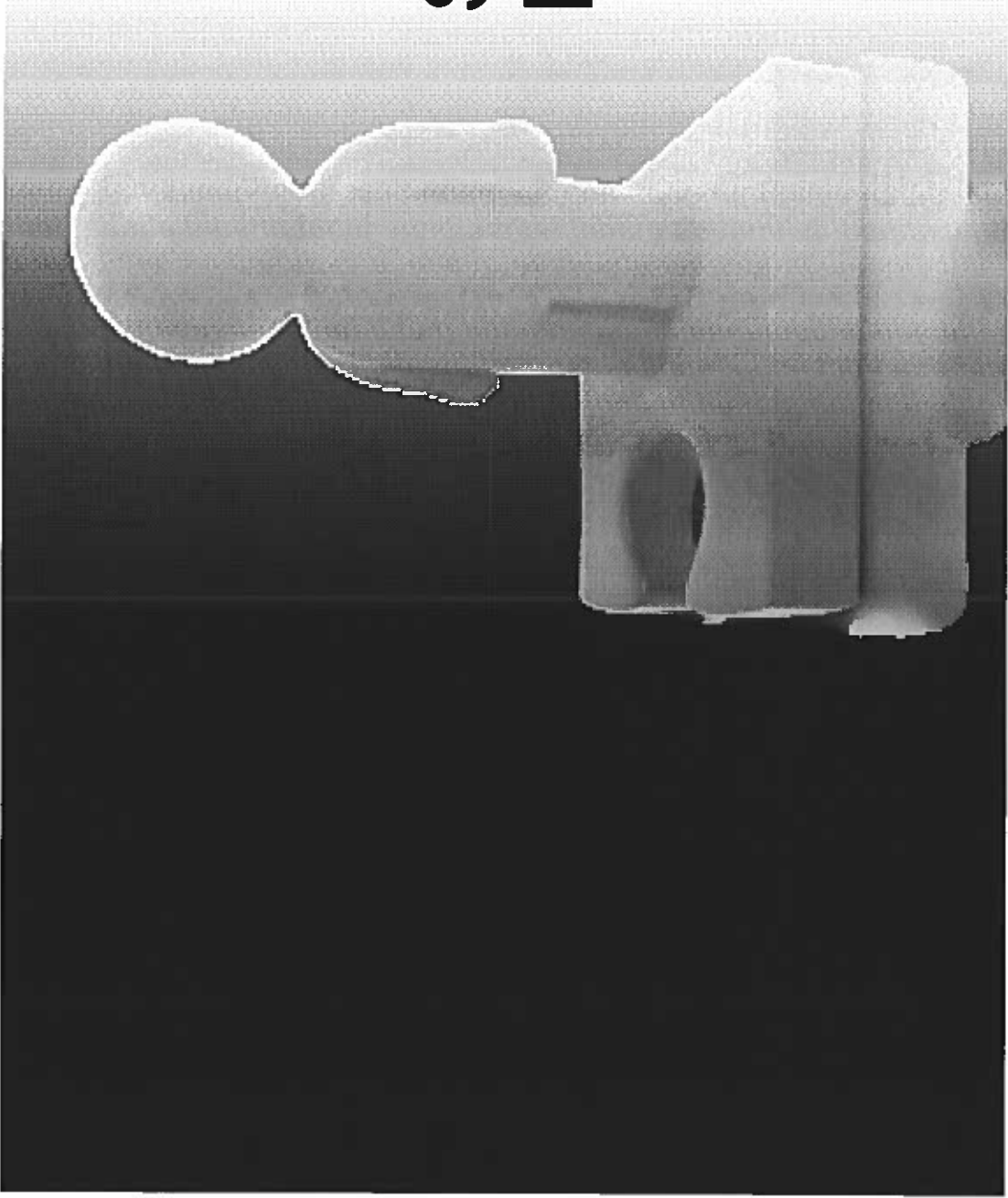


Records for future
litigation



Limited fee structure
places burden on
collective tax base

Shared Experiences



Length of Time to Resolve Appeals

- Case MA15-632 – Concerns Contentious and Heavily Litigated matter in the municipality.
- Between Staff time, Resources and Legal expenses, the Municipality has spent **\$25,000 +**
- The Township collected **\$1,035.00** (34.5 hours).
- The Appeal is yet to be resolved.
- No further fees can be collected through the appeal process.

Frivolous and/or Vexatious Requesters

- One Requester has asked for 790 since 2011 through the FOI Process.

Year	Requests	Collective items requested
2011	2	27
2012	2	46
2013	3	48
2014	8	124
2015	8	198
2016	2	25
2017	8	103
2018	7	56
2019	4	50
2020	11	113

Harassment

- Uses colourful language to provide his opinion of staff's intelligence, competency, professionalism and integrity.
- States there will be legal repercussions if we don't do the following....
- Has accused one of our staff of using his snow plow as a "weapon"
- In one FOI went to the staff directory and listed everyone from the CAO to public works employees requesting their Law Society of Upper Canada Registration Number.
- Has submitted costs for his time and effort to put together FOI's to submit.
- Follow up correspondence from Requests to staff, council, media, etc. suggests further complaints will be filed or have been filed with Attorney General, OPP, Minister of Municipal Affairs, etc. for "privacy issues and/or breaches" he alleges occurred by the Clerk or other staff/council members.

Madam – you are a disgrace to this community and to the civil service as a whole, it's no wonder that people have no respect for the staff at Clearview.

Have a great weekend

Is it Procedural or Procedural?

- Wanted a copy of the “Procedural by-law” not a copy of the “Procedure by-law”
- Explained it was the same document through mediation.
- Provided examples of how the terms are used interchangeably
- Provided an email where the appellant had called the “Procedural by-law” the “Procedural By-law” and quoted sections.
- The Appellant provided an email from the Clerk calling it the “Procedural By-law”
- Conclusion – did not meet the frivolous and/or vexatious test.

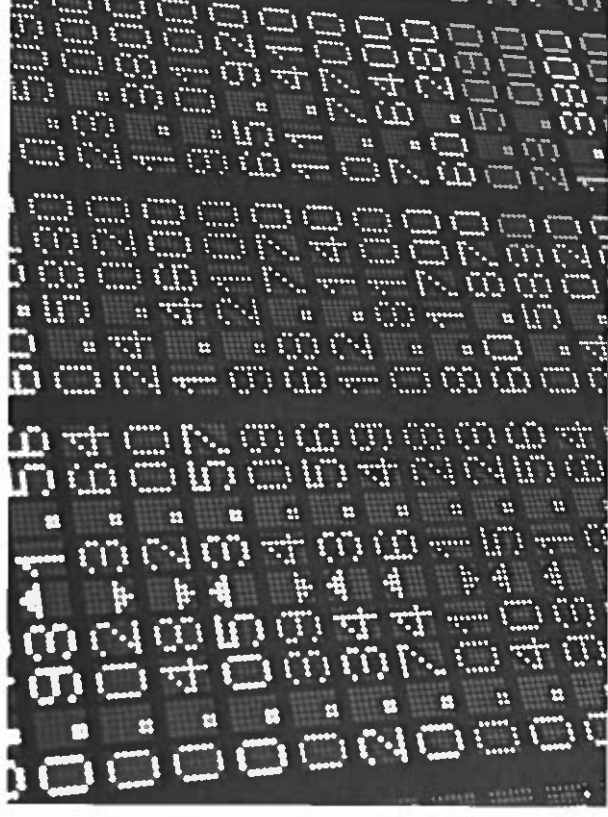


Private Investigation of Head

- Appellant conducted a substantial background check on Clerk
- Included information not easily obtained by a google search
- IPC accepted information
- Much of the information was inaccurate
- To defend the integrity of the Head, legal counsel was hired at the expense of other taxpayers to defend the Clerk and the integrity of their position as Head of MFIPPA to the IPC Office.

Appellant Decision to close the file

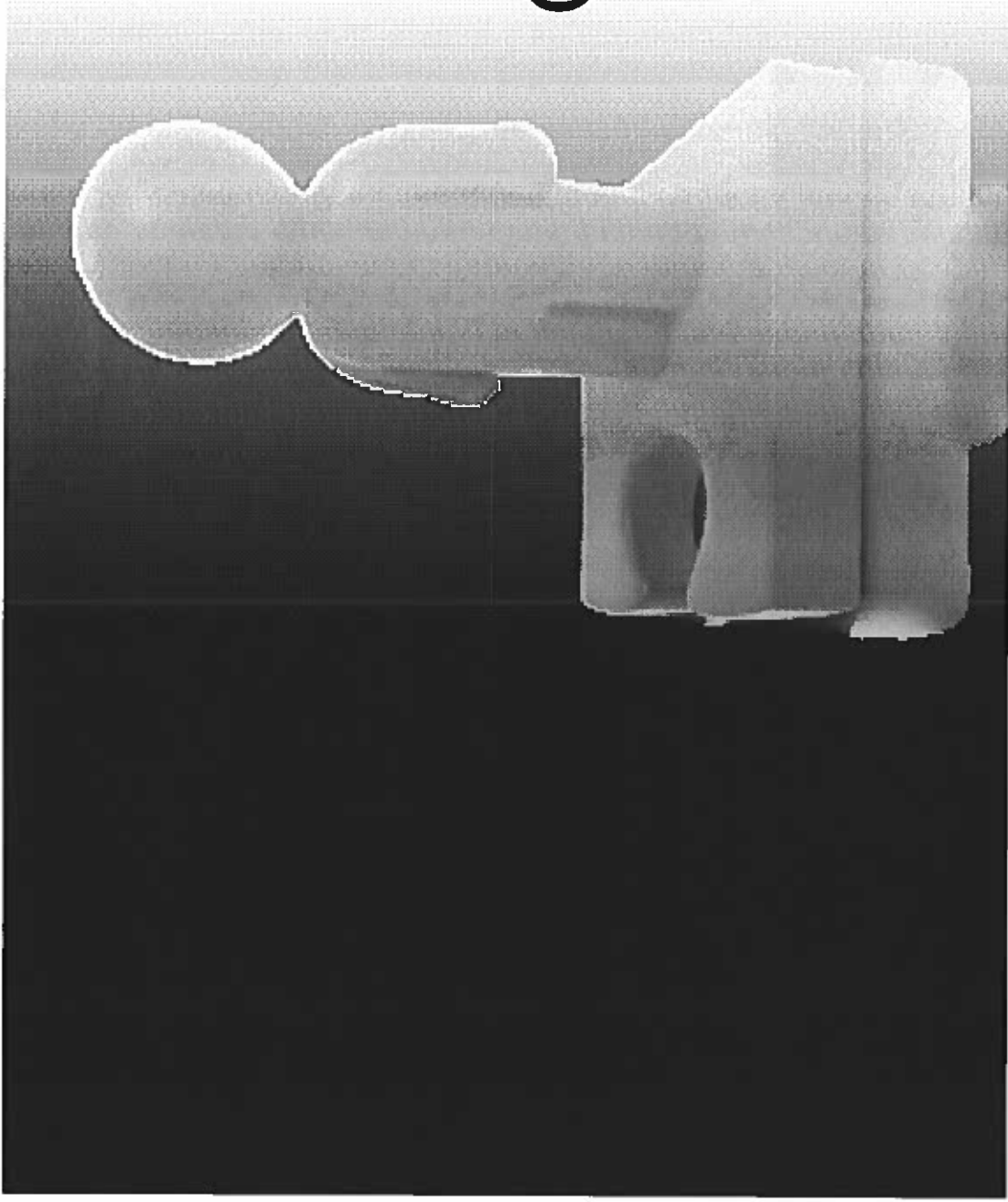
- Filed an appeal
- Municipality has done 3 searches
- Reverification of documents (no cost recovery)
- Per search 10-15 hours



Risk to Public Safety

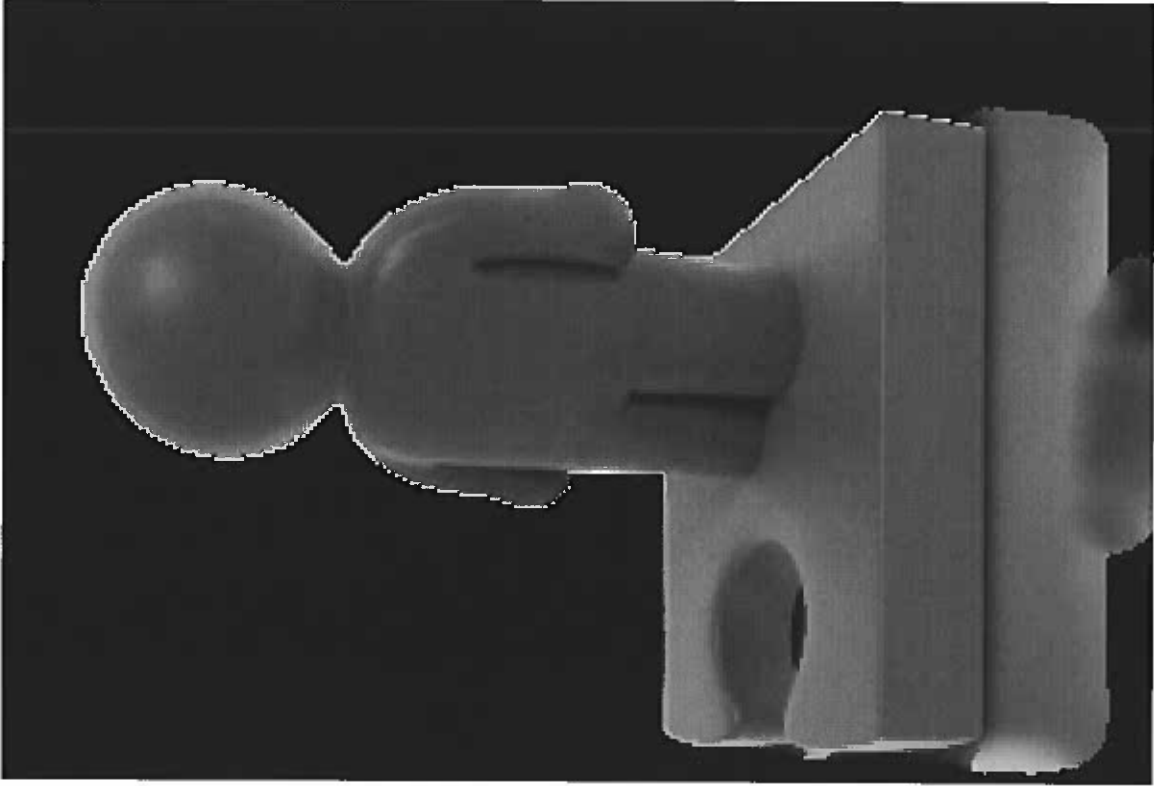
- Request for design of house of another resident
- Clerk denied based on security of the property
- Requester appealed decision and IPC wanted to release document
- No immediate or known threat to releasing floor plan of house due to no written threats but there was a history of conflict and confrontation between the two parties.
- Cannot always be imaginary and fanciful
- Under legislation could not release who was requesting the documents.

Further Considerations



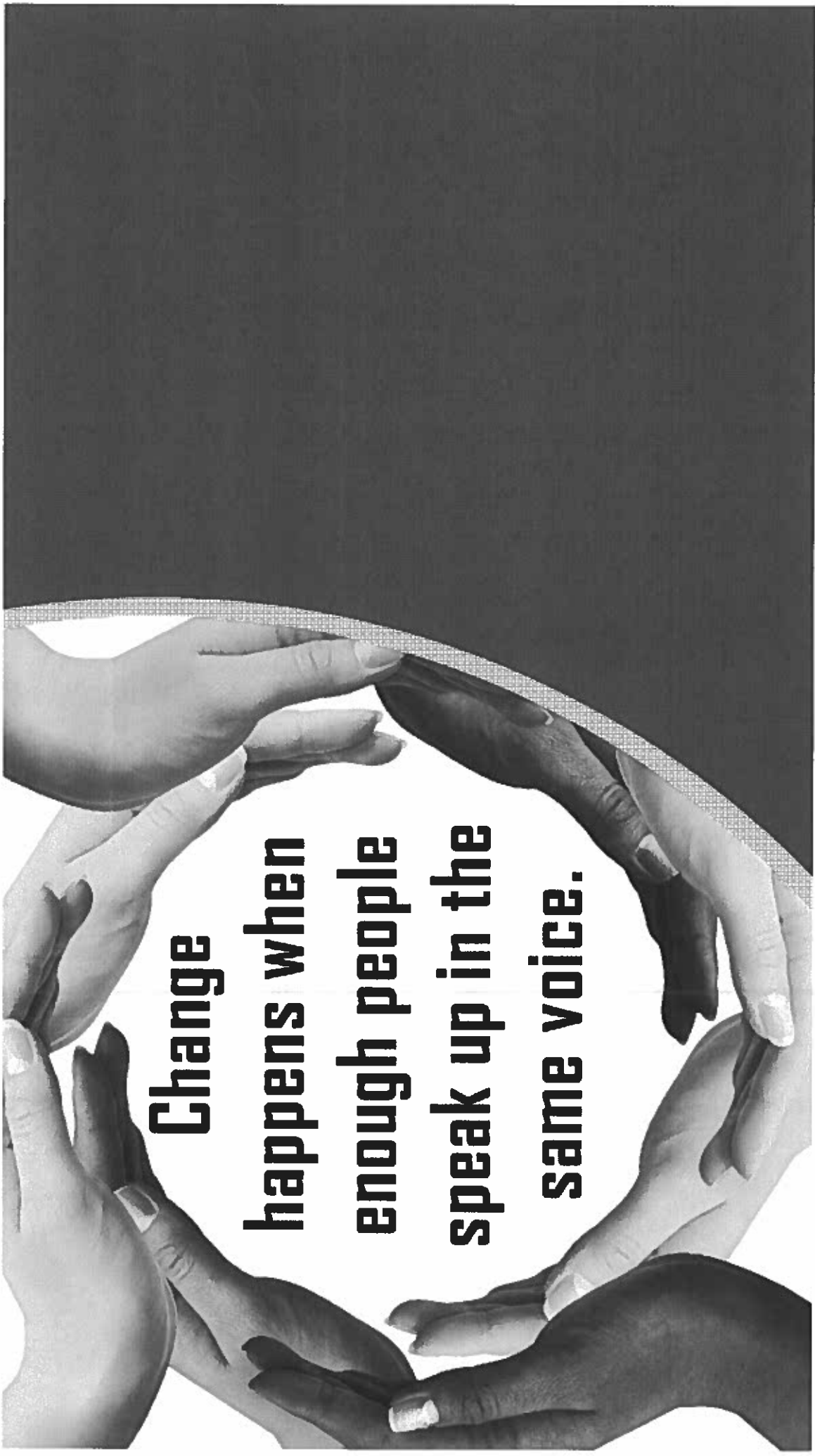
Further Consideration s

- Requester name should be public when asking for general records to match other legislation.
- IPC decisions that impact other legislation should be addressed across all Ministries.
- If a record has been destroyed in accordance with the retention policies should not be required to do additional searches of servers, etc for the record.

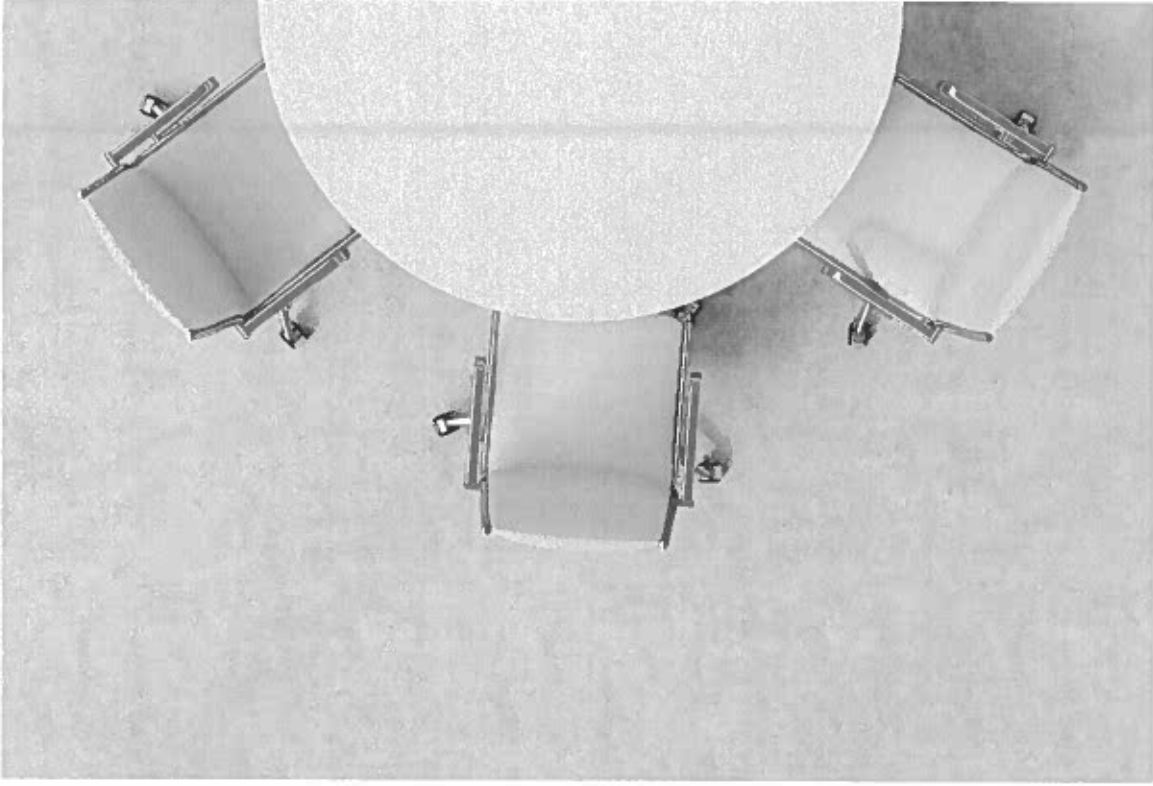


Time for Change

- The Province needs to hear from local Clerks directly. Please consider writing a letter of support to request a Provincial Review of this legislation.
- Ministry of Government and Consumer Services
- Ministry of Municipal Affairs
- Ministry of the Attorney General
- AMO
- AMCTO



**Change
happens when
enough people
speak up in the
same voice.**



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