
Title:	Access and Privacy Policy
Number:	GOV-97-01
Approved By:	City Council
Administered By:	Legislative Services
Effective:	1997
Revised:	December 2022

1.0 Purpose/ Background

The objectives of this Policy are to:

- Ensure fair and equitable access to Official Records.
- Ensure that necessary exemptions from the right of access are limited and specific.
- Identify Employee roles and assign responsibility regarding the Use and Disclosure of Official Records.
- Commit to protecting the privacy of individuals with respect to Personal Information held by the City, and provide individuals with the right of access to their own Personal Information.
- Establish guidelines for processing requests for Information within the timeline restrictions imposed by the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended* (M.F.I.P.P.A.).
- Communicate offences and liabilities as stated in M.F.I.P.P.A..

2.0 Policy Statement

The purpose of this Policy is to provide fair and equitable access to Official Records and Information in the Custody and/or Control of the Corporation of the City of Oshawa, in accordance with M.F.I.P.P.A.; as well as to ensure the protection of Personal Information collected, used, disclosed and/or disposed of by the City.

3.0 Scope/Application

This Policy applies to all Employees (including Employees of the Oshawa Senior Community Centres), Volunteers, Students, Agents and/or Contracted Service Providers of the Corporation of the City of Oshawa; as well as Members of all committees and boards and Members of Council. It also applies to all Records in the Custody and/or under the Control of the City.

Effective: 1997	Revised: December 1, 2022	Page 2 of 20	Number: GOV-97-01
------------------------	----------------------------------	---------------------	--------------------------

This Policy shall be interpreted in a manner that is consistent with the City's obligations under M.F.I.P.P.A..

4.0 Definitions

Active Dissemination means the periodic release or publication of municipal Records and Information in the absence of a formal request.

Affected Party means any person, group of persons or organization whose interest might be affected by Disclosure. Where the affected party is an individual their right may, in some cases, be exercised by another person. Also referred to as "third party".

Agent means an individual or corporate entity representing the City of Oshawa during a business transaction (e.g. legal representation, real estate transactions, etc.).

Branch means any grouping of City of Oshawa Employees who are part of an outlet of the organization that does not constitute a separate entity but is responsible for a type of work.

City means the Corporation of the City of Oshawa.

City Business means a core, central or basic function of the City, as related to the City's mandate and functions.

Collection means the Collection of Personal Information from or about the individual to whom the Information relates, including unintended or unprompted receipt.

Consistent Purpose means Personal Information collected by the City is used for the purpose for which it was collected or similar consistent purposes when carrying out City Business. The individual to whom the Information relates might reasonably expect the Use/Disclosure of their Personal Information for those consistent purposes.

Contracted Service Provider means an individual or business that undertakes a contract or agreement with the City in order to perform a service on a continuing basis (e.g. Security Guard Services, Marriage Officiants, etc.).

Control means contents of the Record as it relates to City Business and the City's power or authority to make a decision about the Use or Disclosure of its Records.

Council means Oshawa City Council as a whole.

Council Member means an individual member of Council, including the Mayor.

Custody means the storage, preservation, or security of a Record for a legitimate business purpose, wherein the City could obtain a copy of the Record upon request. While physical possession of a Record may not always constitute custody, it is the best evidence of custody.

Disclosure means the release of Personal Information by any method (e.g. sharing Information by any means such as verbally, sending an email, posting online) to any entity or person.

Destruction means the physical or electronic disposal of Records or data by means of shredding, recycling, deletion or overwriting. This also includes the destruction of Records or data residing on computers and electronic devices supplied or paid for by the City.

Employee means all full-time, part-time, temporary, seasonal and staff hired on a contract basis for a defined period of time, of the City of Oshawa, as well as students.

Fee Estimate means a notice, or portion of a notice, sent from the City to a requester to inform them of the estimated fees to process their request.

F.O.I. means a formal “freedom of Information” request as received under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended. An F.O.I. refers to a request for access to, or copies of, a Record which is submitted in writing detailing the requested Records, is dated and signed by the requester. The mandatory \$5.00 application fee must accompany the request.

Frivolous Request means the request has no serious purpose or value or may have little merit and be trivial and is part of a pattern of conduct that amounts to an abuse of the right of access, interferes with the operations of the institution, or is made in bad faith or for a purpose other than to obtain access.

Instant Messaging Tools means tools that allow electronic, written messages to be shared in real time, including:

- (a) Short Message Service (S.M.S.) or Multimedia Message Service (M.M.S.) text messages;
- (b) BlackBerry Messenger or iMessage (including Personal Identification Number protocol or “PIN-to-PIN” communications);
- (c) Internal instant messaging systems, such as Skype or Microsoft Teams;
- (d) Online instant messaging applications like WhatsApp, Facebook Messenger or Google Hangouts; and/or,
- (e) Any other similar application that allows for real time, written communication.

I.P.C. means the Information and Privacy Commissioner of Ontario. The Commissioner is appointed by the Lieutenant Governor in Council, and is independent of the government. The I.P.C. is responsible for adjudicating and issuing binding orders related to appeals, conducting privacy investigations, and has powers relating to the protection of personal privacy.

Informal Records Request means a verbal or written request for access to a Record or Information, other than a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended. May also be referred to as an over-the-counter request. All requests should begin informally and requesters should only formally submit a request after other avenues for access have been explored.

Effective: 1997	Revised: December 1, 2022	Page 4 of 20	Number: GOV-97-01
------------------------	----------------------------------	---------------------	--------------------------

Information means knowledge communicated or received concerning a particular fact or circumstance; knowledge gained through study, communication, research, instruction, etc.; or the act or fact of informing.

M.F.I.P.P.A. means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

Member means a member of any committee or board which reports to, or on behalf of, the City of Oshawa, including, but not limited to, Advisory Committees, Committee of Adjustment and Oshawa Senior Community Centres (OSCC55+).

Official Record means a Record that provides evidence of a business transaction, ongoing business value, required to support business operations or are required by legislation. These Records must be retained and managed in accordance with government policies, standards.

Personal Information means "Recorded Information about an identifiable individual," as defined in Section 2(1) of the Municipal Freedom of Information Protection of Privacy Act including:

- (a) Information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- (b) Information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or Information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, telephone number, fingerprints or blood type of the individual;
- (e) the personal opinions or views of the individual except if they relate to another individual;
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual; and,
- (h) the individual's name if it appears with other Personal Information relating to the individual or where the Disclosure of the name would reveal other Personal Information about the individual.

Personal Information Bank means a collection of personal information that is organized and capable of being retrieved using an individual's name or an identifying number or particular assigned to the individual.

Privacy Breach means the unauthorized Use or Disclosure of Personal Information, including it being stolen, lost or accessed by unauthorized persons, in contravention of the privacy policies, procedures or practices implemented by the City, or agreements that the City has entered into with external Contracted Services Providers.

Privacy Breach Response Policy and Procedure means the City's Policy that outlines the steps that shall be followed when a suspected Privacy Breach is reported.

Record means any Record of Information however recorded, whether in printed form, on film, by electronic means or otherwise as defined in section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990 and includes:

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof; and,
- (b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other Information storage equipment and technical expertise normally used by the institution.

Records Retention By-law means By-law 32-2021 passed by City Council to standardize the classification of Records of the Corporation of the City of Oshawa, and to authorize their Disposition following specified Retention Periods.

Retention means the keeping and maintaining of Information in the Custody or Control of the City.

Routine Disclosure means the routine or automatic release of certain types of administrative and operational Records in response to requests made informally.

Student means an individual at least 15 years of age and registered in an educational program at a high school, college or university level.

Use means to take, hold, or deploy as a means of accomplishing a purpose or achieving a result.

Vexatious Request means a request that is pursued in a manner that is malicious, intended to inconvenience, embarrass and/or harass the City, or is part of a pattern of conduct that amounts to the misuse of the right of access.

Volunteer means an individual who volunteers their services, from time to time, to assist in areas of the City.

5.0 Responsibilities

5.1 Director, Legislative Services/City Clerk

The Director, Legislative Services/City Clerk has responsibility for administrative duties for purposes of M.F.I.P.P.A.. Many of the duties in relation to this Policy have been assigned to the Information, Access and Privacy Officer; however, the Director, Legislative Services/City Clerk remains accountable for actions taken and decisions made under M.F.I.P.P.A.. The Director, Legislative Services/City Clerk is responsible for the following:

- Responding to access requests;
- Ensuring time limits under M.F.I.P.P.A. are met and procedures are properly followed;
- Determining or waiving of fees;
- Making decisions relative to Disclosure;
- Administering the privacy protection provisions of M.F.I.P.P.A.; and,
- Representing the City and defending its decisions.

5.2 Information Access and Privacy Officer

The Information Access and Privacy Officer is responsible for the daily administration of M.F.I.P.P.A. and assists the departments in meeting the requirements of the legislation.

Responsibilities include, but are not limited to, the following:

- Maintain a thorough knowledge of this Policy and F.O.I. access request procedures;
- Receive requests and coordinate these requests with Employees, Contracted Service Providers and Members of Council to comply with legislated time requirements;
- Communicate with requesters to clarify requests, issue notices and respond to inquiries;
- Communicate with Employees to respond to inquiries and seek clarification and direction regarding appeals;
- Seek legal advice from the City Solicitor, or designate, respecting Disclosure decisions and I.P.C. appeals, as required;
- Make decisions relative to Record Disclosure and fees, to be signed and approved by the Director, Legislative Services/City Clerk;

- Conduct training and orientation on M.F.I.P.P.A.;
- Develop and maintain inter-departmental procedures relative to this Policy;
- Liaise with the I.P.C. for appeal purposes; including preparation of representations, as required; and,
- General maintenance of the Personal Information Bank index.

5.3 Supervisor, Records and Information Management

The Supervisor, Records and Information Management may be required to fulfill the responsibilities of the Information Access and Privacy Officer in their absence including, but not limited to the following:

- Maintain a thorough knowledge of this Policy and F.O.I. access request procedures;
- Receive requests and coordinate these requests with Employees, Contracted Service Providers and Members of Council to comply with legislated time requirements;
- Communicate with requesters to clarify requests;
- Seek legal advice from the City Solicitor or designate respecting Disclosure decisions and I.P.C. appeals, as required;
- Make decisions relative to Record Disclosure and fees, to be signed and approved by the Director, Legislative Services/City Clerk;
- Liaise with the I.P.C. for appeal purposes; including preparation of representations, as required.

5.4 Records and Information Analysts

The Records and Information Analysts may assist the Information Access and Privacy Officer in meeting the requirements of the legislation.

Responsibilities include, but are not limited to, the following:

- Maintain a thorough knowledge of this Policy and F.O.I. access request procedures;
- Assist the Information Access and Privacy Officer by communicating with Employees, Contracted Service Providers and Members of Council to respond to inquiries and seek clarification and direction regarding appeals;
- Assist the Information Access and Privacy Officer in conducting training and orientation on M.F.I.P.P.A., as required;

- Assist in developing and maintaining inter-departmental procedures relative to this Policy;
- Assist the Information Access and Privacy Officer with general maintenance of the Personal Information Bank index.

5.4 City Solicitor

The City Solicitor (or designate) assists the City in any appeals associated with a request for Records under M.F.I.P.P.A., legal proceedings or appeals to Divisional Court involving Freedom of Information Requests. As well, when required, the City Solicitor (or designate) may also advise on Disclosure decisions.

5.5 Service Oshawa

Service Oshawa is responsible for receipt of F.O.I. access requests, and processing payment of the mandatory \$5.00 application fee. The Information Access and Privacy Officer or the Records and Information Analysts are required to pick up new requests for processing from Service Oshawa daily. Service Oshawa will also retain responsive Records packages, as prepared by the Information Access and Privacy Officer, until the requester is able to attend to pay any outstanding fees related to the request.

5.6 F.O.I. Branch Representative(s)

A representative is appointed by each Branch to coordinate responses within the Branch, prepare responsive Records, and to liaise with the Information Access and Privacy Officer.

Responsibilities include, but are not limited to, the following:

- Determine if Record exists;
- Prepare Fee Estimate;
- Recommend time extension;
- Locate Records;
- Review documents and make copies/scan of Records in response to request; and,
- Review forms for Personal Information for compliance.

All documents responsive to the request must be collected and supplied to the Information Access and Privacy Officer by the specified due date, unless an extension to the department has been granted.

5.7 Employees, Volunteers, Students, Agents and/or Contracted Service Providers

Employees, Volunteers, Students, Agents and/or Contracted Service Providers are not directly permitted to grant or deny access to a Record requested under M.F.I.P.P.A.. If an Employee, Volunteer, Student, Agent and/or Contracted Service Provider receives a request for Official Records under M.F.I.P.P.A., they will immediately forward the request to Service Oshawa or to the Information Access and Privacy Officer. Employees, Volunteers, Students, Agents and/or Contracted Service Providers shall report any suggestions for Routine Disclosure to their respective Branch representative, or to the Information Access and Privacy Officer.

5.8 Members of Council

Where a Council Member, acting in the capacity of Member of Council, seeks access to the Personal Information of an Affected Party (e.g. an Employee or a constituent), they may only obtain the Personal Information if Disclosure is specifically authorized under section 32 of M.F.I.P.P.A..

Examples of authorized Disclosure are:

- With consent of the individual;
- In compelling circumstance affecting the health or safety of an individual;
- In compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased; or
- Where Disclosure to Council as a whole (e.g. in Council or Committee meetings) or to the individual Council Member, if required to fulfil a duty as an officer under the *Municipal Act, 2001* or other relevant legislation.

Council Members who have received access to Personal Information or other confidential Information in the performance of their duties have a responsibility to protect this Information while it is in their possession. Council Members must, therefore, ensure that the privacy of the individual to whom the Information relates is protected at all times, and must keep the Information physically secure so as to avoid unauthorized Disclosure or Destruction.

The provisions of M.F.I.P.P.A. cover Records that are in the Custody and/or under the Control of the City. Council Members' Records are not subject to M.F.I.P.P.A. where they are not related to the discharge of the Council Member's responsibilities as a Member of Council, or they are not in the Custody and/or Control of the municipality. However, Records relating to constituency matters may be accessible if a consideration of the factors leads to the conclusion that they are in the Custody and/or Control of the institution.

In order to determine if the Records of a Council Member are in the Custody and/or Control of the Institution in accordance with M.F.I.P.P.A., the following factors may be considered:

- Whether the Record was created by an Employee of the institution;
- Whether the Council Member is an officer or Employee of the City and, if not, whether the Records are in the Custody and/or under the Control of the City;
- The original intended Use for the Record;
- Whether the City has the duty to carry out an activity that is a result of the creation of the Record and whether the activity is related to City Business;
- Whether the Record is held by an Employee in order to perform assigned duties;
- Whether the City has the right to retain the Record, and the authority to regulate its content, Use and disposal;
- If the Record relates to any other Records held by the City; and,
- The City's practices in relation to the Control of Records similar to the one being reviewed.

If it is determined that the Record is not held by the City and is in the direct Custody and/or Control of the Council Member, the following two part test may be administered in order to determine whether the Record is subject to the access to Information provisions of M.F.I.P.P.A.:

1. Does the content of the Record relate to the municipalities business?
2. Could the institution reasonably expect to obtain a copy of the Record upon request?

In considering the above two-part test, if the response to either part is 'yes' the Record is in the Control of the City, and the Record may be released as part of an F.O.I. request under M.F.I.P.P.A.. For more information, refer to the "The Municipal Freedom of Information and Protection of Privacy Act and Councillors' records" fact sheet from the Information and Privacy Commissioner of Ontario.

There may be circumstances in which a Council Member, who is not acting within their official capacity as Member of Council, requests access to Information. The Council Member may submit a formal request under M.F.I.P.P.A.. In this case, the Council Member has the same status as any member of the public when requesting this Information and Legislative Services staff will apply M.F.I.P.P.A. in the normal manner to determine whether access may be granted.

5.9 Members of Committees and Boards

Members who have received access to Personal Information or other confidential Information in the performance of their duties have a responsibility to protect this Information while it is in their possession.

Effective: 1997	Revised: December 1, 2022	Page 11 of 20	Number: GOV-97-01
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As per the provisions in M.F.I.P.P.A., Records created by Members related to City Business are under the Custody and/or Control of the City and may be subject to release under M.F.I.P.P.A..

6.0 Legislative Overview

6.1 *Municipal Act, 2001, S.O. 2001, c. 25, as amended*

Section 254(1) of the *Municipal Act, 2001* refers to the Retention of Records by municipalities. It states, “A municipality shall retain and preserve the Records of the municipality and its local boards in a secure and accessible manner.”

For specific Information regarding the City’s Records Retention, refer to By-law 32-2021.

6.2 *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended*

The *Municipal Freedom of Information and Protection of Privacy Act* (M.F.I.P.P.A.) came into effect on January 1, 1991. This Act extends freedom of Information and protection of privacy principles to all municipalities in Ontario and to various other institutions, such as local boards and commissions.

The purposes of M.F.I.P.P.A., set out in section 1, are as follows:

- a) To provide a right of access to Information under the Control of the City in accordance with the principles that:
 - Information should be available to the public,
 - Necessary exemptions from the right of access should be limited and specific,
 - Decisions on the Disclosure of Information should be reviewed independently of the institution controlling the Information, and
- b) 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.

M.F.I.P.P.A. applies to all Records in the Custody and/or under the Control of the City and includes Records that were created both before and after M.F.I.P.P.A. came into force.

6.3 Organization of M.F.I.P.P.A.

M.F.I.P.P.A. is divided into four parts as follows:

Part 1 Freedom of Information (Sections 4 to 26)

- Deals with the right of access to Records, exemptions to access, and access procedures.

Part 2 Protection of Individual Privacy (Sections 27 to 38)

- Concerns the Collection, Use and Disclosure of Personal Information and deals with an individual's right of access to their own Personal Information and the right to request correction of that Information.

Part 3 Appeal (Sections 39 to 44)

- Deals with the right to appeal and the procedure involved in appealing a decision made by an institution.

Part 4 General (Sections 45 to 55)

- Covers general matters including the charging of fees, offences, regulations and the powers and duties of the Information and Privacy Commissioner.

6.4 Offences and Liabilities

Section 48(1) of M.F.I.P.P.A. states that no person shall,

- a) willfully disclose Personal Information in contravention of this Act;
- b) willfully maintain a Personal Information Bank that contravenes this Act;
- c) make a request under this Act for access to or correction of Personal Information under false pretenses;
- c.1) alter, conceal or destroy a Record, or cause any other person to do so, with the intention of denying a right under this Act to access the Record or the Information contained in the Record;
- d) willfully obstruct the Commissioner in the performance of his or her functions under this Act;
- e) willfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- f) willfully fail to comply with an order of the Commissioner.

Under Section 48(2), the penalty for contravention of subsection 48(1) is a fine not exceeding \$5,000. However, section 49(2) protects the institution, or any person acting on behalf of the institution, from liability for damages from the Disclosure or non-Disclosure in good faith of a Record or any part of a Record under M.F.I.P.P.A..

7.0 Access to Information

7.1 Right of Access

Every person or entity has a right of access to a Record, or part of a Record, in the City's Custody and/or Control unless the release of the Record is prohibited under M.F.I.P.P.A., or the Director, Legislative Services/City Clerk determines that an exemption for withholding all or part of the Record applies.

7.2 Types of Requests

There are three types of requests for Official Records:

1. Routine Disclosure refers to the routine, proactive or automatic release of certain categories of administrative and operational Records to the public at large, as a form of Active Dissemination of Information (e.g. any Records posted on the City's public website). Employees may suggest new categories of Records for Routine Disclosure to the Information Access and Privacy Officer. For more information regarding Routine Disclosure, refer to the City's Routine Disclosure and Active Dissemination Policy.
2. Informal Records Request refers to a verbal or written request for access to an Official Record or Information, other than a formal request under M.F.I.P.P.A.. May also be referred to as an over-the-counter request (e.g. requests from property owners for Records related to their own property, copies of development agreements, etc.). All requests should begin informally and requesters should only formally submit a request after other avenues for access have been explored.
3. F.O.I. refers to a formal "freedom of information" request as received under M.F.I.P.P.A.. This type of request is for access to an Official Record, which is submitted in writing, and includes details regarding the requested Record(s), and is dated and signed by the requester. Typically, an F.O.I. request is submitted by a requester upon completion of the Application for Access to or Correction of Records Form either on the City's website, by mail, or in-person. The mandatory \$5.00 application fee must accompany the request, as per the provisions of M.F.I.P.P.A.. This submission of this type of request is not advised until after an Informal Records Request has been attempted.

If City Employees are unsure whether a request should be fulfilled using an informal or formal process, they should contact Legislative Services for assistance.

7.3 Custody and Control

Under section 4(1) of M.F.I.P.P.A., every person has a right of access to a Record or a part of a Record in the Custody or under the Control of the City. Accordingly, whenever an F.O.I. request is fulfilled by the City, the responsive Records must be under the Custody and/or Control of the City.

Effective: 1997	Revised: December 1, 2022	Page 14 of 20	Number: GOV-97-01
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The I.P.C. has developed a list of factors to consider in determining whether a Record is in the Custody and/or Control of an institution.

- Was the Record created by an officer or employee of the institution?
- What Use did the creator intend to make of the Record?
- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the Record?
- Is the activity in question a “core”, “central” or “basic” function of the institution?
- Does the content of the Record relate to the institution’s mandate and functions?
- Does the institution have physical possession of the Record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
- If the institution does have possession of the Record, is it more than “bare possession”?
- If the institution does not have possession of the Record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
- Does the institution have a right to possession of the Record?
- Does the institution have the authority to regulate the Record’s content, Use and disposal?
- Are there any limits on the Use to which the institution may put the Record, what are those limits, and why do they apply to the Record?
- To what extent has the institution relied upon the Record?
- How closely is the Record integrated with other Records held by the institution?
- What is the customary practice of the institution and other similar institutions in relation to possession or Control of Records of this nature, in similar circumstances?

7.4 Exemptions

Mandatory exemptions prohibit the City from disclosing particular Information. The City must withhold Information falling under a mandatory exemption as per sections 9, 10 and 14 of M.F.I.P.P.A..

The mandatory exemptions include:

- Personal privacy;
- Inter-governmental relations; and,
- Third party commercial Information.

Discretionary exemptions allow the City to withhold Information at the discretion of the Director, Legislative Services/City Clerk, as per sections 6, 7, 8, 11, 12, 13 and 15 of M.F.I.P.P.A..

The discretionary exemptions include:

- Draft by-laws, reports, and closed meeting Records;
- Advice or recommendations;
- Law enforcement;
- Danger to health and safety;
- Economic or other interests;
- Limitations on access to one's own Personal Information;
- Solicitor-client privilege; and,
- Public or soon to be published Information.

7.5 Exclusions

Section 52(3) of M.F.I.P.P.A. outlines categories of Records to which M.F.I.P.P.A. does not apply. Exclusions include:

- Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.
- Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.
- Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

7.6 Clarification

Section 17(2) of M.F.I.P.P.A. provides that if the original request does not sufficiently describe the Record(s) being sought, the City must inform the requester and offer assistance in reformulating the request.

Requests for clarification may be done by mail or email. If a verbal clarification is provided, it must be followed up in writing. If the requester does not wish to confirm in writing, details of the newly clarified request should be sent to the requester either by mail or email asking the requester to contact the City within a specified time period if the details provided are incorrect.

In the event of an appeal, it is important that the City has written confirmation from the requester that the City's interpretation of the request is correct.

7.7 Involvement of Other Institutions

When a request for Records is received and the Records are not in the Custody and/or under the Control of the City, the City is obligated under section 18 of M.F.I.P.P.A. to make reasonable inquiries to determine whether another institution (municipality or provincial ministry) has Custody and/or Control of the Records, and to either forward or transfer the request.

The request must be forwarded to the other institution within 15 days of receipt, and the requester must be advised accordingly.

Another provision in M.F.I.P.P.A. is the transfer of a request or a portion of a request to another institution, if it is determined that another institution has a "greater interest" in the Record(s). A greater interest is established if:

- a) the Record was originally produced in or for the other institution; or
- b) if the Record was not originally produced in or for the City, another institution was the first institution to receive the Record or a copy of it.

The greater interest provision does not apply in the case of a continuum of communication; meaning during an exchange of letters or emails between the City and another municipality or provincial ministry, the City's letters as well as the letters written to the City would be considered under the City's Custody and Control.

7.8 Frivolous or Vexatious Request

Under section 20.1(1) of M.F.I.P.P.A., an institution who refuses to give access to a Record or a part of a Record because the institution is of the opinion that the request for access is frivolous or vexatious, shall state in the notice given under section 19,

- a) that the request is refused because the institution is of the opinion that the request is frivolous or vexatious;
- b) the reasons for which the institution is of the opinion that the request is frivolous or vexatious; and,
- c) that the person who made the request may appeal to the I.P.C. under subsection 39 (1) for a review of the decision.

The Director, Legislative Services/City Clerk or designate may determine that an F.O.I. request is Frivolous and/or Vexatious in accordance with section 20.1 of M.F.I.P.P.A. and the above definitions. If such a determination is reached, the requester will be notified of the decision, and provided the right to appeal the decision to the I.P.C..

In the instance that an F.O.I. request has been identified as Frivolous and/or Vexatious, the application of section 20.1 of M.F.I.P.P.A. is a part of the legislated process and is not covered under the purview of the City's Frivolous, Vexatious or Unreasonable Requests or Complaints Policy. For more information, refer to the "Frivolous and Vexatious Requests" fact sheet from the Information and Privacy Commissioner of Ontario.

7.9 Appealing the City's Decision

Any requester who is dissatisfied with the City's decision to withhold documents or to release documents only in part, or any Affected Party who is dissatisfied with the City's decision to release documents may appeal to the I.P.C.. Appellants do not need to inform the City that they have filed an appeal.

7.10 Electronic Records and Instant Messaging Tools

For the purposes of M.F.I.P.P.A., all forms of electronic communications are Records regardless of the tool or service used to create them, including but not limited to: text messages, voicemails, audio and video recordings, instant messages and emails. As such, any electronic communications used by Employees may be released as responsive to an F.O.I. request, if the Record has been used to communicate City Business. For more information about the acceptable use of City-owned devices, refer to AG1099 Computer and Internet User Corporate Policy.

All Records created during the course of conducting City Business that are sent and/or received through Instant Messaging Tools or personal email accounts, are subject to the access and privacy provisions of M.F.I.P.P.A. For example, text messages sent and/or received on personal devices may be subject to M.F.I.P.P.A. if the communications involved an Employee receiving directions for action from their Supervisor and/or Manager.

The use of Instant Messaging Tools to conduct City Business can cause difficulties in reaching compliance with M.F.I.P.P.A., as well as the record-keeping requirements of the *Municipal Act, 2001, S.O. 2001, c. 25*. The I.P.C. recommends that institutions discourage or prohibit the use of Instant Messaging Tools or personal email accounts when conducting City Business. However, if it is necessary to use these tools, the City must reach compliance with M.F.I.P.P.A. by implementing policies, procedures, and technical risk mitigation strategies.

For more information about the appropriate use of Instant Messaging Tools, refer to the I.P.C. guidance document entitled "Instant Messaging and Personal Email Accounts: Meeting Your Access and Privacy Obligations."

7.11 Social Media Use

A City social media account is not considered to be part of the official City website, but does represent the City's presence on the internet at large, as hosted by an external provider. The City is committed to protecting Personal Information while ensuring that the appropriate access rights are in place by efficiently and effectively managing the City's Information holdings.

All Information shared on City social media accounts may be subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* and/or a legal discovery requests. This means that social media Information may be accessed and disclosed in response to a request under M.F.I.P.P.A. or a legal proceeding.

To protect their own privacy and the privacy of others, Employees shall not include Personal Information in comments or any other content posted on a Social Media account registered to the City, unless prior written consent from the Affected Party has been obtained by the City. Personal Information in this instance includes photographs and video containing images of identifiable individuals, and any other Information consisting of Personal Information as defined within this document.

8.0 Protection of Privacy

8.1 Personal Information

The City is responsible for all Personal Information that is collected, retained, used, disclosed, and/or disposed of in the course of conducting City Business.

8.2 Collection of Personal Information

Under section 29(2) of M.F.I.P.P.A., Personal Information must be collected directly from the individual, with limited exceptions, for a lawfully authorized activity. At the point of Collection of any Personal Information, a Notice of Collection must be provided to the individual, either in writing or verbally, containing:

- a) The legal authority for the Collection of the Information;
- b) The principle purpose(s) for its intended Use; and,
- c) Contact Information for questions about the Collection.

8.3 Use and Disclosure of Personal Information

The City shall Use Personal Information exclusively for the purpose for which it was obtained and/or compiled, or for a Consistent Purpose where the individual has identified that Information and consented to its Use. The City shall not disclose Personal Information in its Custody and/or under its Control except pursuant to section 32 of M.F.I.P.P.A.. All questions or concerns from Employees about the Use and/or Disclosure of Personal Information should be directed to Legislative Services for clarification.

8.4 Retention of Personal Information

Personal Information that has been collected and/or used by the City shall be retained after Use, in accordance with Records Retention By-law 32-2021, to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to Personal Information, or to request a correction to the Information.

8.5 Right of Access and Correction

Every individual has a right to access their own Personal Information in the Custody and/or under the Control of the City. The City is not permitted to charge fees for search in requests for Personal Information. This holds true even if the individual is represented by another party, with the proper consent.

Generally, there are very few exceptions to deny an individual access to their own Personal Information. One exception would be if the release of the Information would result in an unjustifiable invasion of the personal privacy of another person. M.F.I.P.P.A. provides for a full or partial denial of access of this nature under section 38(b).

Under section 36(2) of M.F.I.P.P.A., every individual has the right to request the correction of their Personal Information in the Custody and/or under the Control of the City, where the individual believes there has been an error or omission in the Information at issue.

8.6 Personal Information Banks

Under section 34(1) of M.F.I.P.P.A., the City must make available for inspection by the public an index of all Personal Information Banks in the Custody and/or under the Control of the institution, including:

- a) Its name and location;
- b) The legal authority for its establishment;
- c) The types of Personal Information maintained in it;
- d) How the Personal Information is used;
- e) To whom the Personal Information is disclosed;
- f) The categories of individuals about whom Personal Information is maintained; and,
- g) The policies applicable to the Retention and disposal of the Personal Information.

The Director, Legislative Services/City Clerk or designate will prepare an index of Personal Information Banks by referring to the requirements of section 34(1) of M.F.I.P.P.A., in conjunction with the current Records Retention By-Law. The index will be available for review by members of the public on the City's website, or by contacting Legislative Services.

8.7 Privacy Breach Management

A Privacy Breach occurs when Personal Information is accidentally, or purposefully, collected, retained, used, disclosed, and/or disposed of in ways that are not in accordance with the provisions of M.F.I.P.P.A. The most common Privacy Breach on the part of Employees is the unauthorized access and/or Disclosure of Personal Information, contrary to section 32 of M.F.I.P.P.A..

In the case of a suspected Privacy Breach, refer to the City's Privacy Breach Response Policy and Procedure.

9.0 Monitoring and Evaluation

Legislative Services monitors compliance, engagement and awareness of this Policy through the following:

- Reviewing results of audits;
- Conducting training and education session evaluations; and
- Conducting Employee surveys.

This Policy is reviewed by the Director, Legislative Services/City Clerk or designate at least every three years to ensure its effectiveness and compliance with legislation and current business processes or as required based on legislative changes.

The Director, Legislative Services/City Clerk is authorized to make minor or housekeeping amendments to this Policy, as required.

For further information regarding this Policy, please contact Legislative Services at 905-436-3311 or clerks@oshawa.ca.

10.0 References

AG1099 Computer and Internet User Corporate Policy

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended.

Frivolous and Vexatious Requests Access Fact Sheet from the Information and Privacy Commissioner of Ontario.

The Municipal Freedom of Information and Protection of Privacy Act and Councillors' records FOI Fact Sheet 1 from the Information and Privacy Commissioner of Ontario.

Instant Messaging and Personal Email Accounts: Meeting Your Access and Privacy Obligations from the Information and Privacy Commissioner of Ontario.