

Date: 2020-11-18

Subject: **Annual Report on the Access to Information and Protection of Privacy Program for 2019**

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Report Number: Legislative Services-2020-460

Recommendations:

1. That the report titled: from **Annual Report on the Access to Information and Protection of Privacy Program for 2019**, to the City Council Meeting of Dec 9, 2020 be received.
2. That the Privacy Officer be delegated the powers and duties of the Head for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and the appropriate amendment be made to the Administrative Authority By-Law 216-2017, as amended.

Overview:

This report provides:

- **An overview of Brampton's Access to Information and Protection of Privacy Program; and,**
- **Statistical information on Brampton's Access to Information and Protection of Privacy Program for 2019, as reported to the Information and Privacy Commissioner of Ontario (IPC).**

Background:

Statutory Obligations

The *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* came into effect on January 1, 1991. The *Act* provides access to information rights balanced with privacy protection. It applies to all municipalities in Ontario and to various other local government institutions including the Brampton Public Library and Peel Regional Police Services. The *Act* does not apply to private companies, court records, records in

archives, credit bureaus, hospitals, doctors' records or to federal government institutions. There is a separate *Act* that applies to Ontario's Provincial Ministries and agencies.

The purposes of the *Act* are:

1. To provide a right of public access to information in the custody and under the control of a municipality, in accordance with the principles that,
 - i. information should be made available to the public,
 - ii. necessary exemptions from the right of access should be limited and specific, and
 - iii. decisions on the disclosure of information should be reviewed independently of the municipality controlling the information; and,
2. To protect individual personal information and allow an individual access to his/her own personal information held by the municipality.

The *Act* sets out legally binding requirements for:

1. Providing public access to information under municipal control through access to information requests (informally known as a freedom of information, or FOI requests); and,
2. The collection, use, disclosure and disposal of personal information.

Responsibility of the "Head"

Under *MFIPPA*, responsibility for compliance with the *Act* rests with the "Head" of an institution (for purposes of the legislation, a municipality is an "institution"). Council is the "Head" under the *Act* unless it designates to another individual within the institution. Council designated the powers and duties of the Head to the City Clerk by By-law No.102-90, subsequently included in Administrative Authority By-law 216-2017.

The responsibilities of the Head with respect to requests for access to information include:

- Receiving and clarifying requests to access records;
- Adhering to time limits and notification requirements;
- Considering representations from third parties;
- Determining if any legislated exemptions to disclosure apply and formulating a decision on access;
- Determining the method of disclosure;
- Calculating and collecting fees; and,
- Where necessary, defending decisions made under the *Act* at an appeal.

The responsibilities of the Head with respect to privacy protection include ensuring that:

- The City has both the legal authority to collect personal information and the consent of the affected individual(s) prior to collecting the information;

- The collection of personal information is minimized and only information necessary to the proper delivery of programs and services is collected;
- Once collected, personal information is retained for at least one year;
- Safeguards are in place to prevent unauthorized access or inappropriate destruction of the personal information; and,
- Individuals are provided with a process to access their own personal information, and to request correction of that information, where appropriate.

In addition, the Head is required to report annually to the Information and Privacy Commissioner of Ontario (IPC), providing statistical information on:

- i) The number and types of access requests received, the decisions made on those requests, and fees charged; and,
- ii) The number of requests to correct personal information received.

The Annual report for 2019 has been filed with the IPC.

Current Situation – Access to Information:

Program Overview

The Access to Information (also known as Freedom of Information, or FOI) program allows individuals to request access to City records that are not otherwise available to the public. When an individual requests access to a record, the legislation requires that the record be disclosed unless a legislated exclusion or exemption to disclosure applies. The purpose of the program is to make the City more open and transparent and to allow residents to more fully participate in the democratic process.

The program includes:

- Processing formal access to information requests
- Training staff across the organization on legislated requirements (in-person and e-Learning formats available)
- Coaching staff on the disclosure of particular records
- Assisting staff to develop sound processes for the routine and proactive disclosure of information

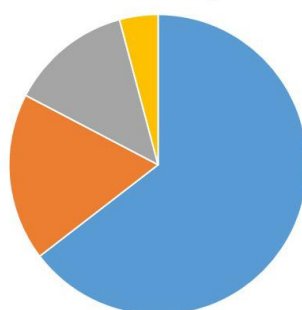
Annual Statistics

The City of Brampton received 145 new requests to access information under *MFIPPA* in 2019 and processed 144 requests (requests are not always processed in the calendar year in which they are received, particularly when the request is received late in the year).

Of the requests that were processed, ninety-three were received from individual members of the public, twenty-six were received from agents or representatives of the

requestors, nineteen were received from businesses and six were received from the media.

Source of Requests

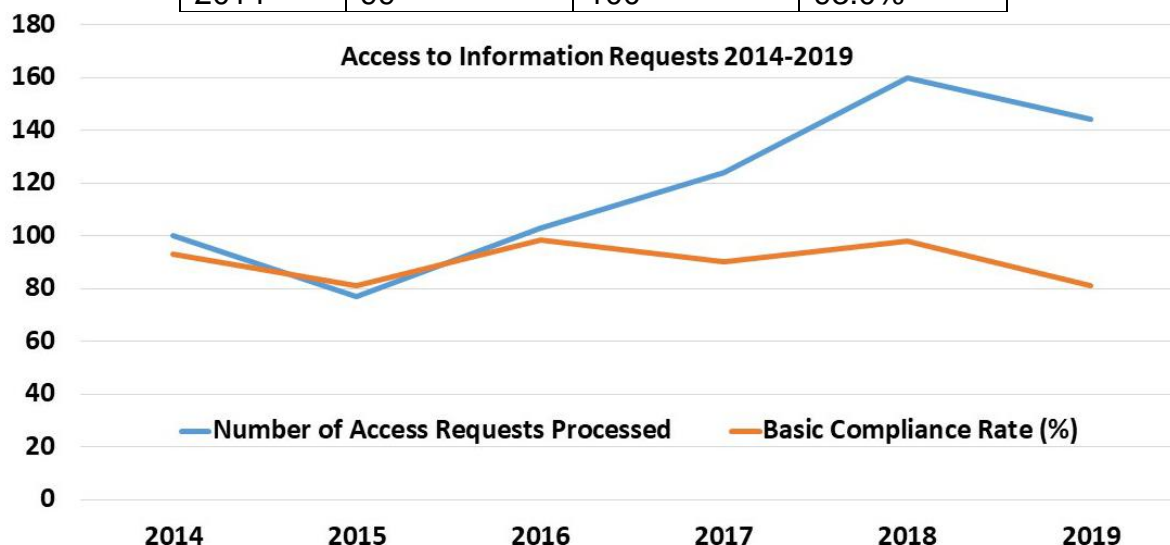


■ Individuals ■ Agents ■ Businesses ■ Media

MFIPPA requires that access to information requests be processed within thirty calendar days. The City's basic compliance rate in 2019 was 81.3%. The legislation permits time extensions for voluminous requests and where third party consultations are required. The City's extended compliance rate in 2019 (i.e. including permitted time extensions) was 84.0%.

The charts below compare 2019 with the previous 5 years:

Year	Access Requests Received	Access Requests Processed	Basic Compliance Rate
2019	145	144	81.3%
2018	165	160	98.1%
2017	125	124	90.3%
2016	108	103	98.3%
2015	78	77	81.3%
2014	99	100	93.0%



As required by *MFIPPA*, certain fees are prescribed and applied to access to information requests. In 2019, fees of \$4,159.00 were collected. *MFIPPA* also provides that fees can be waived in certain circumstances. In 2019, fees of \$2,113.20 were waived.

Since the start of 2015, indexes detailing records responsive to access to information requests (and any legislated exemptions to disclosure that may apply) are posted to the City's website for public reference.

Appeals:

A decision of the Head for the institution is appealable to the IPC by the requestor, and in some cases by an affected party. The IPC appeal process includes mediation as a first step to resolve an appeal, followed by adjudication, if necessary.

In September 2012, Council approved Recommendation CW223-2012 for the designated Head to report to Council information regarding any appeals to the IPC of decisions on *MFIPPA* access requests made by the Head.

Three appeals of City decisions were filed with the IPC in 2019. One appeal was dismissed at intake (i.e. the City's decision was upheld) and two were resolved at mediation.

One appeal of a City decision from 2018 remains active. A mediated resolution was not possible, so this appeal has moved to adjudication.

There are no active appeals from 2017 or earlier years.

Current Situation – Privacy:

Program Overview

As is the case in other municipalities, the role of a Privacy Officer is to lead the Freedom of Information and Privacy Protection Team. The Privacy Officer is responsible for the City of Brampton's compliance with all relevant privacy and information access legislation including the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The Privacy Officer is responsible for providing consultative support and advice on risk and obligations as the subject matter expert on privacy and access for the organization, especially as it pertains to MFIPPA.

Under *MFIPPA*, responsibility for compliance with the *Act* rests with the "Head" of an institution (for purposes of the legislation, a municipality is an "institution"). Designation of the powers and duties of the "Head" to the Privacy Officer is required to ensure compliance with the *Act*.

It is often necessary for the City to collect personal information (information that pertains to an identifiable individual) to provide programs and services to its residents. *MFIPPA* establishes that individuals have the right to control how their personal information is collected and used and restricts how the City may collect, use and disclose this information. The purposes of the City's privacy program are to:

- Ensure compliance with the legislation;
- Mitigate privacy-related risks; and,
- Build the public's trust and confidence in the City.

The program includes:

- Privacy Risk Assessments (PRAs)
- Privacy Impact Assessments (PIAs)
- Publishing Guidance Documents
- Training staff across the organization on legislated requirements (in-person and e-Learning formats available)
- Coaching staff on privacy-related matters
- Investigating privacy incidents and complaints

Annual Statistics – Privacy:

No requests to correct personal information in a City record were received in 2019.

Ten privacy incidents were reported to the Information Management team and investigated in 2019. Two of the incidents were determined to be minor privacy breaches. The remaining eight incidents were determined not to be privacy breaches. Where privacy breaches occurred, the Information Management team worked to contain and minimize potential harms. Where appropriate, remedial actions were implemented to improve processes and to prevent future privacy incidents. As both privacy breaches in 2019 were determined to be minor in nature, neither were reported to the IPC.

Privacy Impact Assessments (PIAs) are used by business units across all City departments to identify and reduce privacy-related risks and to ensure compliance with legislated responsibilities. Six PIAs were completed by the Information Management Team in 2018:

- Time Attendance and Scheduling software application (Enterprise)
- Pentanta software application (Internal Audit)
- Acella software application (Planning)
- The Supplier Diversity Program (Purchasing)
- Mobile 311 App (Service Brampton)
- Salesforce software application (United Way)

Privacy Risk Assessments (PRAs) are used to screen new and enhanced programs, technologies and services to determine if a (PIA) is required. The City's PRA process employs an electronic form and workflow tool. Sixty-one PRA's were reviewed by the Information Management Team in 2019.

Corporate Implications:

To ensure the municipality complies with its obligations under *MFIPPA*, the Privacy Officer will:

- Continue to work with all departments, and in consultation with Legal Services, to respond to access to information requests;
- Provide coaching and training on access and privacy to all departments; Conduct Privacy Impact Assessments on new and/or enhanced services, technologies, and/or systems that involve the collection or use of personal information; and,
- Investigate all privacy incidents and implement remedial processes as appropriate.

Financial Implications:

There are no financial implications associated with this report.

Other Implications:

Nil.

Strategic Plan:

MFIPPA promotes government accountability and transparency by providing a right of access to information while protecting the personal privacy of individuals. Access to information and protection of privacy is central to a customer-oriented corporate culture. This report achieves the Strategic Plan priority of Good Government by contributing to a climate of service excellence.

Conclusion:

The City is subject to *MFIPPA* and must comply with the legislation. The Privacy Officer will report to Council regularly to provide annual statistical information on the access to information and privacy program, information on appeals to the IPC, and program updates.

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