

**Date:** 2021-11-05

**Subject:** Annual Report on the Access to Information and Protection of Privacy Program for 2020

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**Report Number:** Legislative Services-2021-973

**Recommendations:**

1. That the report titled: **Annual Report on the Access to Information and Protection of Privacy Program for 2020**, to the Committee of Council Meeting of November 17, 2021 be received.

**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 2020, as reported to the Information and Privacy Commissioner of Ontario (IPC).

**Background:**

Statutory Obligations:

In line with the principles of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* and the Information and Privacy Commissioner, the City of Brampton is committed to increased transparency in communication throughout a number of means.

A key principle of *MFIPPA* is that information should be available to the public and that necessary exemptions from the right of access should be limited and specific, a principle which is reinforced by the Information and Privacy Commissioner's publication titled *Access by Design* (Schedule Two) which encourages access as the default standard.

*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 boards including the Brampton Public Library and Downtown Brampton BIA. The *Act* does not apply to private companies, court records, records in archives, credit bureaus, hospitals, and doctors' records. Separate, yet similar legislation applies to the federal government and provincial governments, including their respective agencies and institutions.

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 their 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 and reaffirmed at the January 27, 2021 City Council Meeting.

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 prescribed 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 not retained longer than necessary to fulfil the stated purpose as identified in the Records Retention By-Law 272-2014 (amended by By-Law 183-2015), except where required by legislation.
- 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 2020 was filed with the IPC on March 30, 2021.

## **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 better 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 online especially since 2020 due to the pandemic)
- Coaching staff on the disclosure of particular records
- Assisting staff to develop sound processes for the routine and proactive disclosure of information.

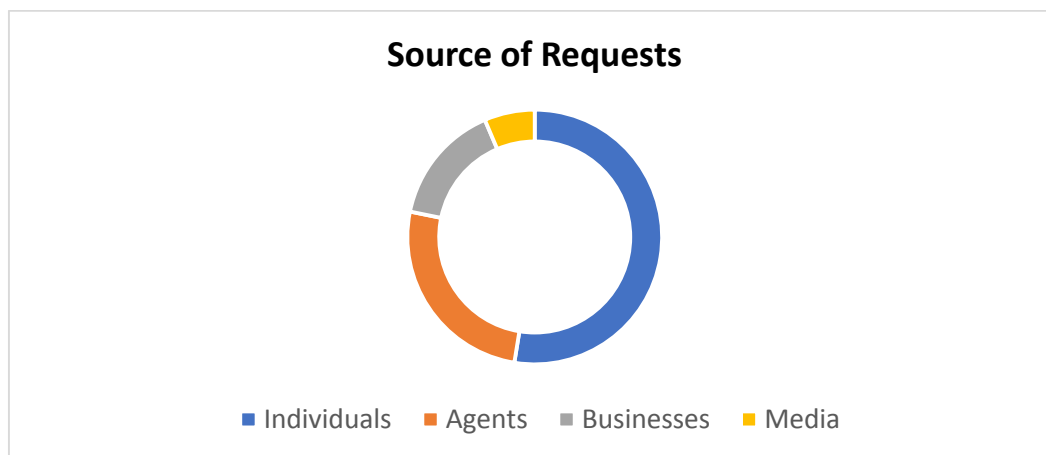
### Annual Statistics

The City of Brampton received 158 new requests to access information under *MFIPPA* in 2020 and processed 127 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. Also, due to COVID -19 and staff changes, the City experienced delays in processing requests while it adjusted to the new normal.

Of the requests that were processed, 67 were received from individual members of the public, 36 were received from agents or representatives of the requestors, 23 were received from businesses and 1 was processed from the media.'

- ❖ 31 of the remaining 2020 requests were processed in 2021 (2 withdrawn in consultation with the requester, 15 from individuals, 1 from a business, 4 from agents of the requestor and 9 from the media).



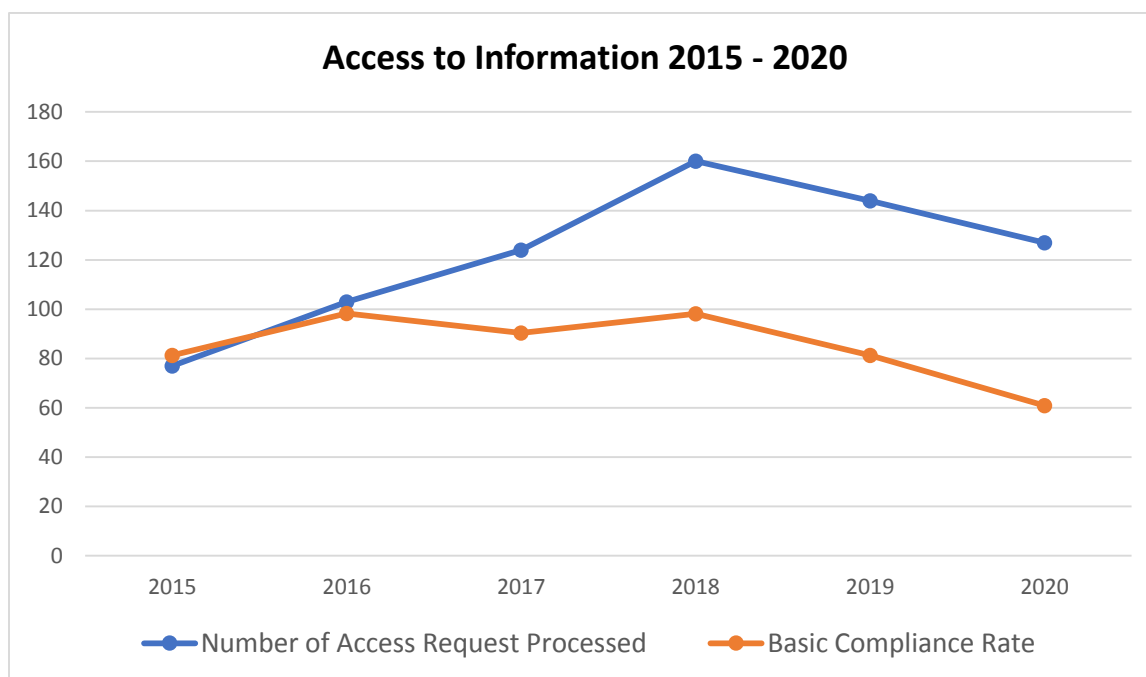
*MFIPPA* requires that access to information requests be processed within 30 calendar days.

The City's basic compliance rate in 2020 was 60.9%. The legislation permits time extensions for voluminous requests and where third party consultations are required. The City's extended compliance rate in 2020 (i.e. including permitted time extensions) was 72.7%. The primary reason for the low compliance rate can be attributed to COVID-19.

The charts below compare 2020 with the previous 5 years:

Year	Access Request Received	Access Request Processed	Basic Compliance Rate
2020	158	127	60.9%
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%
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As required by *MFIPPA*, certain fees are prescribed and applied to access to information requests. In 2020, fees of \$1,634.80 were collected. *MFIPPA* also provides that fees can be waived in certain circumstances. In 2020, fees of \$2,763.25 were waived, majority of which were due to changes in the way fees were collected because of the pandemic and delay in processing requests.

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.

Five (5) appeals of the City's decisions were filed with the IPC for 2020 requests. One (1) appeal was abandoned as records were provided before the appeal was assigned. Three (3) were resolved at mediation.

One (1) appeal remains active. A mediated resolution was not possible, so this appeal has moved to adjudication. Representations have been made, and the City is awaiting a decision from IPC. (status will be updated in the next report)

There are no active appeals from 2019. So far in 2021, there are four (4) appeals, one (1) of which was closed at mediation. One (1) is still in mediation. The remaining two (2) are waiting for assignment by IPC.

## **Current Situation – Privacy:**

### Program Overview

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*.

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, complaints and breaches

### Annual Statistics – Privacy:

No requests to correct personal information in a City record were received in 2020.

Four (4) privacy incidents were reported to the Information Management/ Access and Privacy team, which were investigated in 2020. Two (2) of the incidents were determined to be privacy breaches. The remaining two (2) incidents were determined not to be privacy breaches. Where privacy breaches occurred, the Information Management/ Access and Privacy team worked to contain and minimize potential harms. Where appropriate, remedial actions were implemented to improve processes and to prevent future privacy incidents.

One (1) of the two (2) privacy breaches of 2020 was categorized as significant as it was deliberate and not a result of inadvertent actions. The IPC was immediately notified and the City responded to inquiries and complied with all requests. The IPC did not make any recommendations. An extensive investigation was conducted by the City's Chief

Information Officer (CIO), the CIO's team, the City Solicitor, and the City's Privacy Officer. A decision was made to refer the privacy breach to Peel Regional Police (PRP). After working closely with PRP, on May 23, 2021, a former employee was arrested and charged with one count of Interception of Communication contrary to Section 184(1) of the *Criminal Code*. The matter is still before the courts.

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. No PIAs were completed by the Information Management Team in 2020. The lack of PIAs is likely a result of the deceleration in the implementation of programs and systems, caused by provincial COVID-19 restrictions, which directly impacted the City at an operational level.

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. Forty-nine (49) PRAs were reviewed by the Information Management/ Access and Privacy Team in 2020.

### **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, 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.

### **Term of Council Priorities:**

*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 Term of Council Priority of a Well-run City by contributing to a climate of government accountability and service excellence.

## Conclusion:

The City is subject to *MFIPPA* and must comply with the legislation. The City Clerk is appointed by Council as Head under *MFIPPA* and exercises the powers and duties of the Head in accordance with the *Act*. The City Clerk will continue to 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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