

**Date:** 2022-05-18

**Subject:** Annual Report on the Access to Information and Protection of Privacy Program for 2021

**Contact:** Uzma Ashraf, Privacy Officer, Legislative Services  
[Uzma.Ashraf@brampton.ca](mailto:Uzma.Ashraf@brampton.ca)

**Report Number:** Legislative Services-2022-409

**Recommendations:**

1. That the report titled: **Annual Report on the Access to Information and Protection of Privacy Program for 2021**, to the Council Meeting of May 18, 2022 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 2021, 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.

Key principles of *MFIPPA* require the City to provide the public a right of access to information under its control, while protecting personal information held by the City. In safeguarding personal information, the City is required to apply necessary exemptions from the right of access. However, such exemptions are required to be limited and specific.

*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 2021 was filed with the IPC on March 30, 2022.

## **Current Situation:**

### 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:

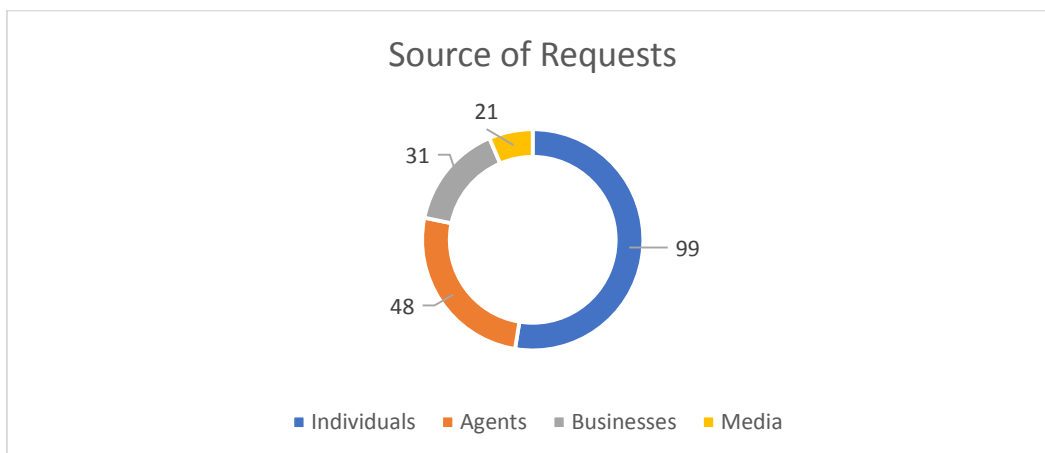
- Processing formal access to information requests
- Training staff across the organization on legislated requirements
- Coaching staff on the disclosure of particular records
- Assisting staff to develop sound processes for the routine and proactive disclosure of information.

## Annual Statistics

The City of Brampton received 182 new requests to access information under *MFIPPA* in 2021 and processed 199 requests of the same year.

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 received in 2020 while it adjusted to the new normal. These requests were carried over into 2021.

Of the requests that were processed, 99 were received from individual members of the public, 48 were received from agents or representatives of the requestors, 31 were received from businesses and 21 was processed from the media.

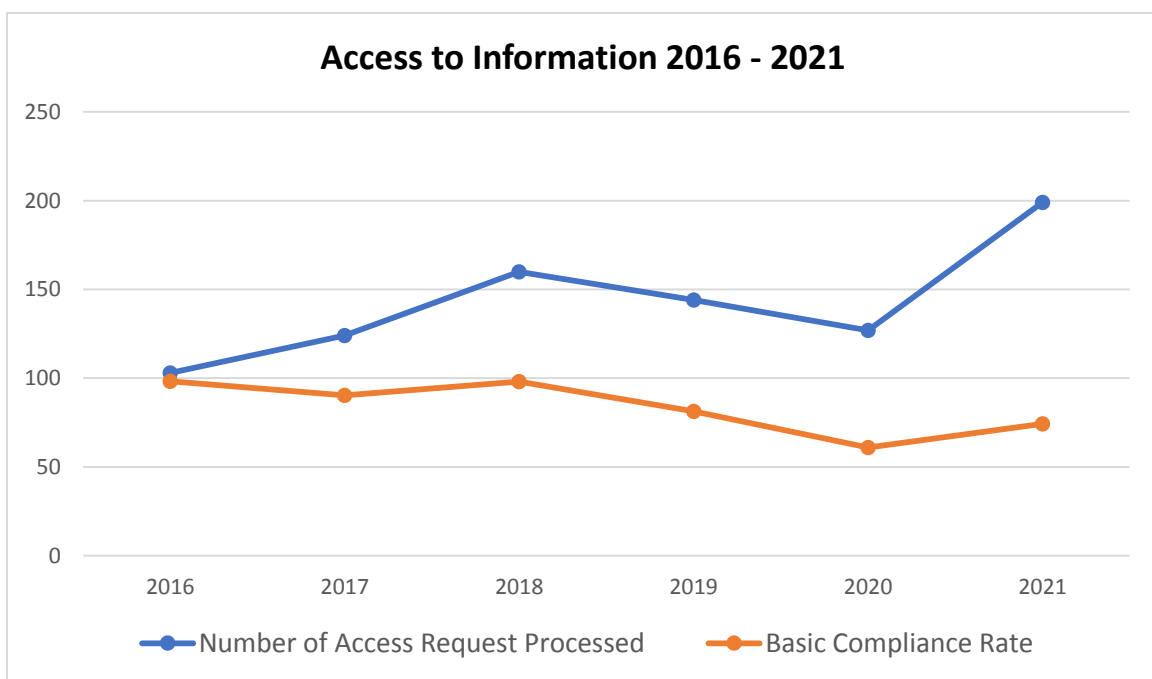


*MFIPPA* requires that access to information requests be processed within 30 calendar days.

The City's basic compliance rate in 2021 was 74.37%. 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 88.44%.

The charts below compare 2021 with the previous 5 years:

Year	Access Request Received	Access Request Processed	Basic Compliance Rate
2021	182	199	74.37%
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%



As required by *MFIPPA*, certain fees are prescribed and applied to access to information requests. In 2021, fees of \$4,037.50 were collected. *MFIPPA* also provides that fees can be waived in certain circumstances. In 2021, fees of \$5,346.10 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.

Seven (7) appeals of the City's decisions were filed with the IPC for 2021 requests. Two (2) appeals were abandoned as the requester failed to meet IPC's deadline. Two (2) were withdrawn by the requestor. Four (4) were resolved at mediation.

One (1) appeal from 2020 remains active. A mediated resolution was not possible, so this appeal has moved to adjudication. Representations have been made, and an order to disclose the records were made. However, a reconsideration request was made by the affected party to IPC. The City awaits a decision from the IPC (status will be updated in the next report). So far in 2022, there is one (1) active appeal.

## **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 2021.

Of 39 PRAs which were submitted in 2021, two (2) resulted in formal PIAs, while the remaining requests either did not require any PIA because projects were not collecting personal information; projects were at the RFP stage and information required to complete the PIA, including processes and procedures, were not yet drafted; projects had been suspended; or PIAs were in the course of being completed.

Four (4) privacy incidents were reported to the Information Management/Access and Privacy team in 2021. One (1) incident was determined not to be a privacy breach. Three (3) incidents were deemed to be privacy breaches. One (1) of these breaches was reported to the IPC and is currently under consideration. The remaining breaches were minor in nature, and remedial actions were implemented to improve processes.

### **Corporate Implications:**

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

- Continue working with all departments in response 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.

Authored by:

Reviewed by:

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Tosin Adeyemi, Access and Privacy Coordinator  
Uzma Ashraf, Privacy Officer,  
City Clerk's Office

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Peter Fay, City Clerk,  
Legislative Services

Approved by:

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Diana Soos, Commissioner,  
Legislative Services

**Attachments:** Nil