

## **Municipality Of Chatham-Kent**

### **Corporate Services**

**To:** Mayor and Members of Council

**From:** Judy Smith, Director, Municipal Governance/Clerk

**Date:** June 2, 2023

**Subject:** Time for Change – Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

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### **Recommendation**

It is recommended that:

1. Council direct administration to write a letter to the Ministry of Government and Consumer Services requesting that they conduct a review of the Municipal Freedom of Information and Protection of Privacy Act.

### **Background**

In September 2020, the Minister of Government and Consumer Services received a presentation from the County of Simcoe and the District of Muskoka municipal clerks regarding the need for a review and change of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA); the presentation was named “Time for Change”.

The presentation noted some key areas 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;
- Communication methods, including forms, between Information Privacy Commissioner (IPC) and all parties need to be updated;
- Threshold used to establish Frivolous and/or Vexatious requests is unreasonably high;
- Routine Disclosure policies within all municipalities of Ontario
- Unaccounted Fees and Charges

Many other municipalities and associations have supported this request to review of the MFIPPA.

At the March 1, 2021 Council meeting, Council supported the following resolution:

“That the Ministry of Government and Consumer Services be requested to review the MFIPPA, and consider recommendations as follows:

1. That MFIPPA assign the Municipal Clerk, or designate to be the Head under the Act;
2. That MFIPPA be updated to address current and emerging technologies;
3. That MFIPPA regulate the need for consistent routine disclosure practices across institutions;
4. That the threshold for frivolous and/or vexatious actions be reviewed, and take into consideration the community and available resources in which it is applied;
5. That the threshold for frivolous and/or vexatious also consider the anonymity of requesters, their abusive nature and language in requests to ensure protection from harassment as provided for in Occupational Health and Safety Act;
6. That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process;
7. That administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized;
8. That the integrity of the Act be maintained to protect personal privacy and transparent governments.”

### **Comments**

As the challenges with the MFIPPA continue, administration is again recommending that communication be sent to the Ministry of Government and Consumer Services to conduct a review of the Act as outlined in Appendix A.

### **Areas of Strategic Focus**

This report supports the following areas of strategic focus:

			
<b>Economic Prosperity</b>	<b>Healthy &amp; Safe Community</b>	<b>People &amp; Culture</b>	<b>Environmental Sustainability</b>

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**Consultation**

No other departments were consulted.

**Communication**

Communication is proposed to be through the inclusion of this report on the Council agenda and related communications.

**Diversity, Equity, Inclusion and Justice (DEIJ)**

This report does not have implications related to diversity, equity, inclusion or justice. In fact, the recommendation encourages open, transparent, and accessible government operations for all individuals.

**Financial Implications**

At this time, there are no financial implications.

Prepared by:  
Judy Smith, CMO  
Director, Municipal Governance/Clerk

Reviewed by:  
Cathy Hoffman, MPA, CHRL  
General Manager, Corporate Services/Chief Human Resource Officer

Attachment: Appendix A

Appendix A

WHEREAS the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990 (MFIPPA) dates back 30 years;

AND WHEREAS municipalities, including the Municipality of Chatham-Kent, practice and continue to promote open and transparent government operations, actively disseminate information and routinely disclose public documents upon request outside of the MFIPPA process;

AND WHEREAS government operations, public expectations, technologies, and legislation surrounding accountability and transparency have dramatically changed and MFIPPA has not advanced in line with these changes;

AND WHEREAS the creation, storage and utilization of records has changed significantly, and the Municipal Clerk of the Municipality is responsible for records and information management programs as prescribed by the Municipal Act, 2001;

AND WHEREAS regulation 823 under MFIPPA continues to reference antiquated technology and does not adequately provide for cost recovery, and these financial shortfalls are borne by the municipal taxpayer;

AND WHEREAS the threshold to establish frivolous and/or vexatious requests is unreasonably high and allows for harassment of staff and members of municipal councils, and unreasonably affects the operations of the municipality;

AND WHEREAS the Act fails to recognize how multiple requests from an individual, shortage of staff resources or the expense of producing a record due to its size, number or physical location does not allow for time extensions to deliver requests and unreasonably affects the operations of the municipality;

AND WHEREAS the name of the requestor is not permitted to be disclosed to anyone other than the person processing the access request, and this anonymity is used by requesters to abuse the MFIPPA process and does not align with the spirit of openness and transparency embraced by municipalities;

AND WHEREAS legal professionals use MFIPPA to gain access to information launch litigation against institutions, where other remedies exist;

AND WHEREAS there are limited resources to assist administrators or requestors to navigate the legislative process;

AND WHEREAS reform is needed to address societal and technological changes in addition to global privacy concerns and consistency across provincial legislation;

BE IT RESOLVED THAT the Ministry of Government and Consumer Services be requested to review the MFIPPA, and consider recommendations as follows:

1. That MFIPPA assign the Municipal Clerk, or designate to be the Head under the Act;

2. That MFIPPA be updated to address current and emerging technologies;
3. That MFIPPA regulate the need for consistent routine disclosure practices across institutions;
4. That the threshold for frivolous and/or vexatious actions be reviewed, and take into consideration the community and available resources in which it is applied;
5. That the threshold for frivolous and/or vexatious also consider the anonymity of requesters, their abusive nature and language in requests to ensure protection from harassment as provided for in Occupational Health and Safety Act;
6. That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process;
7. That administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized;
8. That the integrity of the Act be maintained to protect personal privacy and transparent governments.