

October 27, 2023

Hon. Doug Ford
Premier of Ontario
Premier's Office
Room 281
Legislative Building, Queen's Park
Toronto, ON M7A 1A1
premier@ontario.ca

Re: Resolution in Support of Updating the *Municipal Freedom of Information and Protection of Privacy Act*

On behalf of Elgin County Council, I am writing to urge the Ontario Government to consider updating and modernizing the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). At its meeting on October 24, 2023, Elgin County Council considered a staff report prepared in response to a resolution circulated by the Town of Bracebridge lobbying for the need to update and modernize MFIPPA and passed the following resolution:

"Moved by: Deputy Warden Jones
Seconded by: Councillor Hentz

RESOLVED THAT County Council hereby supports revisions to the *Municipal Freedom of Information and Protection of Privacy Act* as outlined in the report from the Director of Community and Cultural Services and Director of Legal Services titled "Resolution in Support of Updating the *Municipal Freedom of Information and Protection of Privacy Act*"; and

THAT the Warden on behalf of Elgin County Council issue a letter to the Premier of Ontario; Minister of Municipal Affairs and Housing; Minister of Public and Business Service Delivery; Member of Provincial Parliament for Elgin-Middlesex-London; local municipal partners in the County of Elgin; and the Association of Municipal Managers, Clerks and Treasurers of Ontario; and

THAT the resolution from the Town of Bracebridge "Time for Change – *Municipal Freedom of Information and Protection of Privacy Act*" dated September 15, 2023 be received and filed.

Motion Carried."

Elgin County Council supports the efforts to update and modernize MFIPPA and strongly urges the Ontario Government to consider the following improvements proposed by the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO):

1. Strengthen municipal accountability and transparency:
 - MFIPPA should provide clarity on the sharing and use on information across institutions.
 - Provide guidance regarding open data.
- 2 Adoption of a Routine Disclosure and Active Dissemination Policy.
3. Consider integrating the Personal Information Bank with another existing accountability and transparency measure such as Routine Disclosure or Active Dissemination procedures.
4. Provide minimum standards for privacy management and breach protocols.
5. Designate clerks as heads of municipalities under the Act.
6. Include a provision in the Act for regular (5 year) review of Act and General Regulation that will:
 - Ensure that the Act is reflective of recent orders and guidance of the Office of the Information and Privacy Commissioner of Ontario (IPC);
 - Update the Act to reflect new and emerging technology
7. Enhance frivolous and vexatious provisions, expand the definition and provide a statutory legal test for administrators to utilize.
8. Add mechanisms to confirm that requests with offensive and inappropriate language may be refused.
9. Add a provision to the Act to permit municipalities to adopt a 'bulk user' policy.
10. Ensure that the Act is consistent with other applicable legislation. Where the Act is not consistent, provide guidance on which legislation prevails.
11. Define timelines within MFIPPA as business-days so that municipalities have the necessary time to effectively respond.
12. Modify the definition of a record to include electronic mail, instant message chats and voicemails, while clarifying the scope of disclosures required within these records (e.g. only last email on email thread necessary).
13. Provide clarity in the Act regarding the application of the Act to records of Members of Council. More specifically, provide a statutory legal test for determining whether a record is a municipal record.
14. Ensure fees are reflective of current processes, and keep pace with inflation, to accurately capture administration fees and reduce burden on local ratepayers.
15. Review the Act to "clean-up" references to outdated processes and technology.
16. Offer institutions updated training and guidance materials on MFIPPA on an annual basis targeted to both municipal staff and elected officials to ensure municipal staff have capacity to deal with increasing complexity of privacy and information matters, and that they have the support of their elected leadership.

17. Revise annual reporting, as required in the Act, to ensure that data being collected is relevant. Consider replacing IPC reporting with requirements that municipalities report to their councils.

18. Provide more transparency on IPC processes and include in the Act timelines for IPC processing (e.g. timelines for resolution of IPC adjudication).

A copy of the staff report and the resolution from the Town of Bracebridge is attached for your information.

Yours truly,



Warden Ed Ketchabaw

warden@elgin.ca

519-619-8432

cc Hon. Paul Calandra, Minister of Municipal Affairs and Housing
Hon. Todd McCarthy, Minister of Public and Business Service Delivery
Hon. Rob Flack, Member of Provincial Parliament for Elgin-Middlesex-London
Elgin County Municipalities
Association of Municipal Managers, Clerks and Treasurers of Ontario



REPORT TO COUNTY COUNCIL

FROM: Brian Masschaele, Director of Community and Cultural Services

Nicholas Loeb, Director of Legal Services

DATE: September 27, 2023

SUBJECT: Resolution in Support of Updating the *Municipal Freedom of Information and Protection of Privacy Act*

RECOMMENDATION:

THAT County Council hereby supports revisions to the *Municipal Freedom of Information and Protection of Privacy Act* as outlined in the report from the Director of Community and Cultural Services and Director of Legal Services titled "Resolution in Support of Updating the *Municipal Freedom of Information and Protection of Privacy Act*"; and,

THAT the Warden on behalf of Elgin County Council issue a letter to the Premier of Ontario; Minister of Municipal Affairs and Housing; Minister of Public and Business Service Delivery; Member of Provincial Parliament for Elgin-Middlesex-London; local municipal partners in the County of Elgin; and the Association of Municipal Managers, Clerks and Treasurers of Ontario; and,

THAT the resolution from the Town of Bracebridge "Time for Change – *Municipal Freedom of Information and Protection of Privacy Act*" dated September 15, 2023 be received and filed.

INTRODUCTION:

The Town of Bracebridge has circulated the attached item for discussion lobbying for the need to update and modernize the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA). The Director of Community and Cultural Services recently served on a taskforce through the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) which is also recommending updates to MFIPPA. This report recommends that County Council issue a letter of support to the Government of Ontario citing specific improvements as outlined in this report.

DISCUSSION:

Staff recommend that Council support efforts to update and modernize MFIPPA. Staff are generally supportive of the resolution from the Town of Bracebridge, save and

except recitals pertaining to the anonymity of requestors and the ability of legal professionals to submit applications under the Act. Staff feel that anonymity should be protected and that legal professionals should be able to utilize the process like any other individual. With these exceptions, staff are generally supportive of the resolution from the Town of Bracebridge.

At the same time, the Association of Municipal Managers, Clerks and Treasurers of Ontario is also lobbying for updates to MFIPPA. Staff generally endorse AMCTO's efforts, including:

1. Strengthen municipal accountability and transparency:
 - MFIPPA should provide clarity on the sharing and use on information across institutions.
 - Provide guidance regarding open data.
- 2 Adoption of a Routine Disclosure and Active Dissemination Policy.
3. Consider integrating the Personal Information Bank with another existing accountability and transparency measure such as Routine Disclosure or Active Dissemination procedures.
4. Provide minimum standards for privacy management and breach protocols.
5. Designate clerks as heads of municipalities under the Act.
6. Include a provision in the Act for regular (5 year) review of Act and General Regulation that will:
 - Ensure that the Act is reflective of recent orders and guidance of the Office of the Information and Privacy Commissioner of Ontario (IPC);
 - Update the Act to reflect new and emerging technology
7. Enhance frivolous and vexatious provisions, expand the definition and provide a statutory legal test for administrators to utilize.
8. Add mechanisms to confirm that requests with offensive and inappropriate language may be refused.
9. Add a provision to the Act to permit municipalities to adopt a 'bulk user' policy.
10. Ensure that the Act is consistent with other applicable legislation. Where the Act is not consistent, provide guidance on which legislation prevails.
11. Define timelines within MFIPPA as business-days so that municipalities have the necessary time to effectively respond.
12. Modify the definition of a record to include electronic mail, instant message chats and voicemails, while clarifying the scope of disclosures required within these records (e.g. only last email on email thread necessary).

13. Provide clarity in the Act regarding the application of the Act to records of Members of Council. More specifically, provide a statutory legal test for determining whether a record is a municipal record.

14. Ensure fees are reflective of current processes, and keep pace with inflation, to accurately capture administration fees and reduce burden on local ratepayers.

15. Review the Act to “clean-up” references to outdated processes and technology.

16. Offer institutions updated training and guidance materials on MFIPPA on an annual basis targeted to both municipal staff and elected officials to ensure municipal staff have capacity to deal with increasing complexity of privacy and information matters, and that they have the support of their elected leadership.

17. Revise annual reporting, as required in the Act, to ensure that data being collected is relevant. Consider replacing IPC reporting with requirements that municipalities report to their councils.

18. Provide more transparency on IPC processes and include in the Act timelines for IPC processing (e.g. timelines for resolution of IPC adjudication).

Further explanation of these recommendations is outlined through AMCTO’s draft submission on pages 52-73 of the following: <https://www.amcto.com/media/1091>.

FINANCIAL IMPLICATIONS:

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Serving Elgin	Growing Elgin	Investing in Elgin
<input type="checkbox"/> Ensuring alignment of current programs and services with community need. <input type="checkbox"/> Exploring different ways of addressing community need. <input checked="" type="checkbox"/> Engaging with our community and other stakeholders.	<input type="checkbox"/> Planning for and facilitating commercial, industrial, residential, and agricultural growth. <input type="checkbox"/> Fostering a healthy environment. <input type="checkbox"/> Enhancing quality of place.	<input type="checkbox"/> Ensuring we have the necessary tools, resources, and infrastructure to deliver programs and services now and in the future. <input checked="" type="checkbox"/> Delivering mandated programs and services efficiently and effectively.

LOCAL MUNICIPAL PARTNER IMPACT:

The County's local municipal partners may choose to endorse County Council's recommendations and are being circulated on this report.

COMMUNICATION REQUIREMENTS:

Staff are recommending that the Warden issue a letter to the Premier and relevant Ministers of the Government of Ontario in support of revisions to MFIPPA and in response to efforts by other municipalities in this regard.

CONCLUSION:

County Council recently updated the County's [Access to Information and Privacy Policy](#) which incorporates many of the recommendations being made in this report.

All of which is Respectfully Submitted

Approved for Submission

Brian Masschaele
Director of Community and Cultural
Services

Don Shropshire
Chief Administrative Officer/Clerk

Nicholas Loeb
Director of Legal Services

September 15, 2023

Re: Item for Discussion - Item for Discussion – Time for Change - Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

At its meeting of September 13, 2023, the Council of the Corporation of the Town of Bracebridge ratified motion 23-GC-184, regarding the Item for Discussion – Time for Change - Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), as follows:

“WHEREAS the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990 (MFIPPA) came into force and effect on January 1, 1991;

AND WHEREAS municipalities, including the Town of Bracebridge, 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 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 MFIPPA 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 to launch litigation against institutions, where other remedies exist;

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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;

NOW THEREFORE BE IT RESOLVED THAT the Ministry of Public and Business Service Delivery be requested to review MFIPPA, and consider recommendations as follows:

1. That MFIPPA assign the Municipal Clerk, or their 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 the 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 MFIPPA, including those of the Information and Privacy Commissioner (IPC), be reviewed and modernized;
8. That the integrity of MFIPPA be maintained to protect personal privacy and transparent governments; and
9. And that this resolution be sent to the Premier of Ontario; Minister of Municipal Affairs and Housing; Minister of Public and Business Service Delivery; and Member of Provincial Parliament for Parry Sound-Muskoka; Muskoka and Area Indigenous Leadership Table (MAILT); and all Ontario Municipalities."

In accordance with Council's direction, I am forwarding you a copy of the resolution for you reference.

Please do not hesitate to contact me if I can provide any additional clarification in this regard.

Yours truly,

A handwritten signature in black ink, appearing to read 'Lori McDonald', written in a cursive style.

Lori McDonald
Director of Corporate Services/Clerk