



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA REGULAR AND ELECTRONIC MAIL

August 11, 2015

The Honourable Ted McMeekin, M.P.P.
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Dear Minister McMeekin,

Re: Municipal Legislation Review

Thank you for your invitation to comment on the Ministry of Municipal Affairs and Housing's review of the *Municipal Act*, the *City of Toronto Act*, the *Municipal Conflict of Interest Act*, and the *Municipal Elections Act*. I want to applaud the Ministry for openly engaging the public and other stakeholders as part of this review. Open engagement is essential to the fulfillment of the Ontario government's open government commitment and the comprehensive discussion guides developed by the Ministry will facilitate an informed consultative process.

As you know, my office is responsible for overseeing Ontario public sector access and privacy legislation which promotes accountability and transparency of provincial and municipal governments. The *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* provide the people of Ontario with rights of access and privacy protection related to records held by government institutions. Government transparency and access to information are vital for a free and functioning democracy because they allow for meaningful participation in the democratic process and the accountability of elected officials.

I note that the Ministry's municipal legislation review will be focusing on three main themes, namely, accountability and transparency, municipal financial sustainability, and responsive and flexible municipal government. These three themes will help the Ministry "identify priority areas and opportunities for exploring change."

In the context of this important review, I ask the Ministry to study possible amendments to *MFIPPA* relating to the coverage of municipal councillors' records to further the goal of improving accountability and transparency in local government.

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The question of whether councillor records are covered by *MFIPPA* is not a new issue. In decisions dating back to 1996, my office has thoroughly analyzed the legislation and concluded that, absent unusual circumstances, individual members of municipal councils (except for the Mayor) are not officers or employees of the municipality. As a result, unless municipal councillors' records are found to be in the "custody or control" of the municipality, they are not subject to *MFIPPA*.

This issue received elevated public attention with a series of decisions from my office in 2012 that considered access requests for records held by Toronto city councillors. These decisions involved requests for access to certain records held by municipal councillors that our adjudicators found were not within the custody or control of the city, and thus, were not accessible under *MFIPPA*. We wrote to the former Ministers of Municipal Affairs and Housing and Government Services in February of 2013 recommending that a review of these issues be undertaken. Our 2013 Annual Report included a call for amendments to address the need for clarity relating to these types of records. At that time, we noted that the status quo does not meet the public's demand for transparency and accountability.

The municipal legislation review provides an excellent opportunity to ensure that information about municipal business is made publicly available to Ontarians. I recommend that an amendment be introduced to expand the scope of the records captured by *MFIPPA* to ensure that records created when carrying out the business of municipalities are covered, even when in the possession of councillors.

I recommend that the following be added as section 2(3.1) and (3.2) of *MFIPPA*:

(3.1) A record in the custody or under the control of a member of the council of a municipality is deemed to be in the control of a municipality for the purposes of this Act, if it was created in the course of the member acting in relation to the civil or municipal affairs of a municipality as set out in the *Municipal Act, 2001*, or the *City of Toronto Act, 2006* in relation to a member of Toronto City Council.

(3.2) Subsection (3.1) does not apply to a personal record of a member or a record associated primarily with the member's interest as a politician and not the interest of the municipality.

My office would welcome the opportunity to discuss this matter further with you and your staff.

On a final note, as you continue to review municipal legislation, I ask that you consult with my office regarding any proposals or recommendations for reform that involve new collection, use or disclosure of personal information or personal health information so that we may provide our comments on these initiatives.

My office supports the Ontario government's open engagement initiatives. Consistent with the spirit of openness reflected in this review process, we will be posting this letter on our website.

Sincerely,

A handwritten signature in dark ink, appearing to read 'B Beamish', with a stylized, cursive script.

Brian Beamish
Commissioner

cc: The Honourable David Oraziotti, Ministry of Government and Consumer Services