

Policy Title: Accessing City Information

Policy Number: 03-02-13

Section: **Corporate Administration**

Effective Date: **November 30, 2023**

Approved by:

Leadership Team

Subsection: **Records Management**

Last Review Date: **N/A**

Owner Division/Contact:

**Deputy Clerk, Legislative Services,
Corporate Services**

Policy Statement

The City of Mississauga is committed to openness and transparency by ensuring Information in its custody and under its control is made available both internally and to the public to the greatest extent possible while ensuring legislative and contractual obligations are met.

Purpose

The purposes of this policy are to:

1. Articulate the City's commitment to openness and transparency
2. Empower staff to make information available internally and to the public to the greatest extent possible, while ensuring that privileged information, personal information and confidential information is appropriately protected
3. Prioritize the proactive and routine disclosure of information where possible
4. Provide guidance to staff on providing information to Law Enforcement and Authorized Agencies, and
5. Articulate that a formal Freedom of Information Request is only appropriate when the information being sought is not otherwise available

Scope

This policy applies to:

1. All Information in the custody or under the control of the City, and
2. All employees, contractors, citizen members of committees and volunteers

This policy does not apply to Constituency Records created, received and/or maintained by elected officials.

The Mayor, as Head of Council, is considered an "officer" of the City. The Mayor's Records that relate to mayoral duties, as opposed to constituency or personal papers, may be considered to be in the City's custody or control and therefore subject to this policy.

Related Policies

Refer to Corporate Policy and Procedure – Privacy for guidance on the appropriate collection, use, disclosure, retention and disposal of Personal Information.

Refer to Corporate Policy and Procedure – 03-02-07 - Access to Employee Records for guidance on accessing personnel Records.

Refer to Corporate Policy and Procedure – 03-02-11 – Data Handling for guidance on the handling and classification of data.

Refer to Corporate Policy and Procedure – 03-12-02 – Open Data Program for details on the City’s Open Data program.

Legislative Requirements

This policy is written in compliance with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

Definitions

For the purposes of this policy:

“Authorized Agency” is any agency that is permitted or required by law to access information under the custody or control of the City, including Personal Information.

“Confidential Information” means any secret, sensitive information, proprietary information, or Third Party Information that is under the custody or control of the City, including, but not limited to scientific, technical, commercial, financial or labour relations information or trade secrets.

“Constituency Record” means a Record which relates to a member of Council acting in the capacity of an elected representative of a constituent and relates to the member’s mandate and function as an elected representative only.

“Disclosure Request” is a request to obtain a copy of the evidence that may be used in the prosecution of a provincial offence.

“Exemptions” refers to legislative provisions limiting the public’s general right of access to City Records established in MFIPPA. MFIPPA includes two types of exemptions:

1. Mandatory Exemptions, where the City is required to deny access to the requested Record(s) and/or part(s) of the Record(s), and
2. Discretionary Exemptions, where the City must make a determination on whether to permit access to requested Record(s) or parts of the Record(s) based on careful consideration of all relevant circumstances, including Orders issued by the Information and Privacy Commissioner of Ontario and case law

“Freedom of Information Request” or “FOI Request” is a written request, submitted along with the application fee prescribed in MFIPPA, by a person seeking access to a City Record.

“Information” means facts (whether recorded or unrecorded) about City programs, services and procedures, structured and unstructured data and Records.

“Law Enforcement Agency”, as defined by MFIPPA, is any agency whose policing and/or investigations could lead to court or tribunal proceedings.

“Personal Information” or “PI”, also known as personally identifiable information (PII) or personal data, is information (whether recorded or unrecorded) relating to an identified or identifiable individual in their personal capacity. Personal Information includes but is not limited to:

- Race, national or ethnic origin, religion, age, gender, marital or family status
- Education, medical, criminal or employment history
- An individual’s financial transactions
- Identifying numbers and addresses, including personal email addresses
- Biometric information, including fingerprints and facial recognition
- An individual's personal opinions except where they relate to another individual, and
- Correspondence sent to the City that is implicitly or explicitly of a private or confidential nature (and replies to the correspondence, if the replies would reveal the nature of the original correspondence)

For greater clarity, information is about an identifiable individual if:

- It is about the individual in a personal capacity; that is, it reveals something of a personal nature about the individual, and
- It is reasonable to expect that an individual could be identified through the use of that information, alone or in combination with other information

Notes:

1. Personal Information does not include an individual’s name, work address, work telephone number or position when acting in their business or professional capacity.
2. Personal Information does not include information about an individual who has been dead for more than thirty years.

“Privileged Information” means any Information that is subject to solicitor-client privilege or prepared by or for counsel employed or retained by the City for use in giving legal advice or in contemplation of or for use in litigation.

“Proactive Disclosure”, also known as active dissemination, is the periodic (often scheduled) release of Information in the absence of a request.

“Record” means recorded information regardless of physical form or characteristics, whether in printed or electronic form, that is made or received by the City to conduct its business and may include, but is not limited to, correspondence, memoranda, minutes, books, plans, maps, drawings and email.

“Routine Disclosure” is the release of Information in response to an informal request (rather than a formal FOI request).

“Third Party Information” means trade secrets and scientific, technical, commercial, financial or labour relations information that is supplied to the City in confidence (usually by a commercial or professional enterprise) and could reasonably be expected to cause harm if disclosed.

Accountability

Directors

Directors are accountable for:

- Ensuring all applicable managers/supervisors are aware of this policy and of any subsequent revisions, and
- Ensuring appropriate procedures are in place for making information available internally and to the public, while ensuring that Privileged Information, Personal Information and Confidential Information is appropriately protected

City Clerk

The City Clerk is accountable for:

- Performing the duties of head of the institution, as required by MFIPPA, and
- Access decisions in response to FOI Requests

Managers/Supervisors

Managers/supervisors with staff that receive, create, use, maintain or disclose Information are accountable for:

- Ensuring applicable staff in their respective business units are aware of and trained on this policy and any related procedures, as well as any subsequent revisions, with respect to their specific job function
- Ensuring appropriate Routine Disclosure and/or Proactive Disclosure practices are developed and implemented in their respective business unit
- Providing the Access and Privacy Unit with a list of all Information that is routinely and/or proactively disclosed annually
- Authorizing the release of documents to Law Enforcement or other Authorized Agencies
- Maintaining Records of Information requests from Law Enforcement Agencies or other Authorized Agencies and Records of subsequent disclosures, and
- Providing copies of Records in response to a FOI Request to the Access and Privacy Unit, Legislative Services Division

Access and Privacy Unit

The Access and Privacy Unit, Legislative Services Division, is responsible for:

- Providing guidance and support to assist directors, managers and/or supervisors in developing appropriate practices related to Routine Disclosure and/or Proactive Disclosure of Information

- Providing guidance and support to assist employees at all levels, as required, in responding to information requests from Law Enforcement Agencies and other Authorized Agencies
- Developing and supporting openness and transparency training for employees, contractors, citizen members of committees and volunteers, as appropriate, and
- Processing FOI Requests

Employees

Employees are responsible for:

- Participating in training, as assigned
- Being familiar with legislative requirements pertaining to openness and transparency in relation to their particular job function, including how to appropriately protect Privileged Information, Personal Information and Confidential Information
- Complying with this policy and any associated guidelines, training or protocols with respect to the Information they receive, create, use, maintain or disclose
- Conducting a diligent search for Information responsive to all access to Information requests, including formal FOI Requests, information requests processed as Routine Disclosure and information requests from Law Enforcement Agencies and other Authorized Agencies and responding within established timelines, and
- Determining the most appropriate method of responding to an access to Information request

Contractors, Citizen Members of Committees and Volunteers

Contractors, citizen members of committees, volunteers, and any other persons who are acting on behalf of the City, are responsible for:

- Being familiar with legislative requirements pertaining to access to Information in relation to their particular duties
- Complying with this policy and any associated guidelines, training or protocols, and
- Conducting a diligent search for Information responsive to all access to Information requests, including formal FOI Requests, information requests processed as Routine Disclosure and information requests from Law Enforcement Agencies and other Authorized Agencies and responding within established timelines

Methods of Accessing City Information

Employees at all levels are empowered to disclose City Information using a method that is appropriate to the particular information. When disclosing Information, employees should use reasonable safeguards commensurate to the sensitivity of the Information being disclosed. Appropriate tactics may include, but are not limited to, the use of strong passwords, encryption, multifactor authentication, hand delivery, courier delivery and use of hard copies (rather than electronic copies). The Access and Privacy Office provides guidance and coaching, upon request.

Prior to any disclosure of City Information, employees must ensure that Privileged Information, Personal Information and Confidential Information is appropriately protected. In some instances,

this may involve withholding certain content. However, the mere presence of Privileged Information, Personal Information and/or Confidential Information is not, by itself, an indication that Information cannot be disclosed. City Information must be made available to extent permitted by legislation and/or contractual obligation.

Access to City Information is provided in the following ways:

1. Proactive Disclosure
2. Routine Disclosure
3. In response to requests from Authorized Agencies (e.g. Canada Revenue Agency (CRA), Children's Aid Society, Ontario Ombudsman)
4. In response to requests from Law Enforcement Agencies (e.g. RCMP, Peel Regional Police)
5. Disclosure Requests related to City prosecutions (e.g. charges under the Highway Traffic Act; municipal by-law infractions), and
6. In response to FOI Requests

Proactive Disclosure

Proactive Disclosure occurs when Information is periodically released (e.g. published to the City's website) without any request, pursuant to a specific disclosure strategy. The benefits of Proactive Disclosure include increased accountability, greater citizen engagement with and understanding of the City, a decrease in the number of individual requests for Information (reduced administrative costs), and the potential to attract residents and businesses by providing detailed City Information (economic growth). Proactive Disclosure is appropriate when:

- The Information is known to be of interest to the public, and
- The Information does not contain:
 - Confidential Information
 - Privileged Information
 - Personal Information, and/or
 - Information subject to Exemptions under MFIPPA

Employees requiring assistance determining if Information can be proactively disclosed should contact an Access and Privacy Officer for guidance. Examples of Proactive Disclosure include Council salaries and expense information, as well as City budget and financial information.

Routine Disclosure

Routine Disclosure occurs when, upon request, Information is disclosed outside of the FOI process. Routine Disclosure is appropriate when:

- Legislation specifically authorizes the disclosure of the Information, or
- The requested Information does not contain:
 - Confidential Information
 - Privileged Information
 - Personal Information, and/or

- Information subject to Exemptions under MFIPPA

Employees requiring assistance determining if Information can be routinely disclosed should contact an Access and Privacy Officer for guidance. Examples of Information that can be routinely disclosed include the assessment rolls, business licence information, environmental Records, fire reports, and City by-laws. The City may charge a fee for the disclosure of Records, in compliance with the User Fees and Charges By-law 0244-2022.

Requests for Information from Authorized Agencies

An Authorized Agency seeking access to Information is not required to follow the FOI process. Access requests from Authorized Agencies must:

- Be received in writing
- Detail the requested Information, and
- Identify the specific legal authority that allows the agency to access the Information

These agencies include, but are not limited to, Canada Revenue Agency, Children's Aid Society (CAS), Ministry of Labour and the Ontario Ombudsman.

Prior to actioning a request received from an Authorized Agency, responsible staff must verify the agency's legal authority to obtain the requested Information.

When responding to a request from an Authorized Agency, responsible staff must identify the information requested and only provide access to that specific Information, if available. Where responsible staff are uncertain, they should contact Legal Services for advice. Approval of the applicable manager/supervisor is required prior to release of the requested Information.

A copy of all Information disclosed to an Authorized Agency (or notes describing the Information disclosed, as appropriate) should be maintained in accordance with the Records Retention By-law 0097-2017, as amended.

Note: MFIPPA permits the City to disclose (otherwise protected) Personal Information to an Authorized Agency. Any questions regarding the disclosure of Personal Information should be directed to an Access and Privacy Officer prior to any release.

Requests for Information from Law Enforcement Agencies

A Law Enforcement Agency seeking access to Information is not required to follow the FOI process. Access requests from Law Enforcement Agencies must be made in writing and should be submitted using the [Law Enforcement Request Form](#), unless a warrant authorizing release of the information is presented.

These agencies include, but are not limited to, Peel Police, Toronto Police Services, Ontario Provincial Police, Canada Revenue Agency and Tarion Warrant Corporation.

Prior to actioning a request received from a Law Enforcement Agency, responsible staff must:

- Verify the agency's legal authority to obtain the requested information, and

- Ensure the request form is completed (or validate the warrant, as applicable)

When responding to a request from a Law Enforcement Agency, responsible staff must identify the information requested and only provide access to that specific Information, if available. Where responsible staff are uncertain they should contact Legal Services for advice. Approval of the applicable manager/supervisor is required prior to release of the requested Information.

A copy of all Information disclosed to a Law Enforcement Agency (or notes describing the Information disclosed, as appropriate) should be maintained in accordance with the Records Retention By-law 0097-2017, as amended.

Note: MFIPPA only permits the City to disclose Personal Information to a Law Enforcement Agency in Canada for the purpose of aiding in a law enforcement proceeding or investigation. When a Law Enforcement Agency requests Information that involves Personal Information, responsible staff must determine if the disclosure of such will aid an investigation being undertaken by the agency, or if there is a reasonable basis to believe an offence has been committed, that the disclosure will enable the agency to undertake an investigation. Any questions regarding the disclosure of Personal Information should be directed to an Access and Privacy Officer prior to any release.

Disclosure Requests Related to City Prosecutions

Defendants are entitled to receive, free of charge, [disclosure of evidence](#) that may be used in a City prosecution related to a charge against them. The Office of the City Clerk may be contacted for additional information.

Freedom of Information (FOI) Requests

When no other methods of accessing Records are available/applicable, an FOI request is appropriate. Any person can submit an FOI request for access to Record(s) under MFIPPA by:

- Making a request in writing or submitting [Form 2373 - Access or Correction Request](#) to the Deputy Clerk, Legislative Services
- Detailing the requested Records, and
- Paying the fee prescribed by the Regulations under MFIPPA (additional fees may apply)

The Access and Privacy Officers are responsible for handling and processing all FOI requests received by the City.

Access Decision

Under By-Law 0053-91, as amended, the City Clerk, or their delegate, is responsible for making an access decision. In making the access decision, careful consideration will be given to all relevant circumstances associated with the requested Records including any applicable Exemptions to disclosure set out in MFIPPA.

Note: If a legislative exemption applies to a requested Record, where possible, the City will sever (i.e. redact) the Information exempt from disclosure and disclose as much of the Record as possible.

Records Excluded from the Act

The access provisions in MFIPPA do not apply to certain City Records, including those relating to ongoing prosecutions, labour relations or employment-related matters. Requests to access these types of Records therefore cannot be processed under the FOI request process.

Employees who receive requests to access Records excluded from MFIPPA must determine if other access method(s) described in this policy can be used. Where employees are uncertain they should contact an Access and Privacy Officer for guidance.

Revision History

Reference	Description
LT – 2023 11 30	Replaces Corporate Policy and Procedure - 03-02-08 - Freedom of Information and Protection of Privacy (now rescinded). See also Privacy policy #03-02-12.