



January 4, 2024

sent via email

Minister Todd McCarthy
Ministry of Public and Business Service Delivery
777 Bay Street
College Park 5th Floor,
Toronto, ON M7A 2J3

Dear Minister McCarthy:

We are pleased to share with you our legislative submission: *Looking Ahead: A Proactive Submission to Modernize the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.

As your ministry knows well, this submission represents the culmination of over two years of dedication from AMCTO members who reviewed, analyzed, and evaluated possible reforms to *MFIPPA*. The submission highlights and provides examples of some of the biggest issues faced by municipal staff when it comes to administering the *Act*. We recommend solutions to help ensure that the next iteration of *MFIPPA* addresses new and emerging trends and provides much needed clarity, while promoting accountability and transparency.

Municipalities consider transparency an important tool for building and maintaining public trust and recognize the importance of continuously improving. Municipal administrators need legislation that supports effective local program delivery; is responsive to current technology; and reflects its original intent of open and accountable governance.

In the attached submission, you will find 20 recommendations that we believe will help the Province ensure that municipalities have the legislative framework they need to continue their strong record in demonstrating accountability and transparency, and to best serve members of the public.

We look forward to working with your ministry to move ahead with amending *MFIPPA* soon, and continuing to offer the expertise of our members in informing how to best implement changes made to this important legislation.



We look forward to meeting with you at the 2024 ROMA Conference later this month.

To discuss this submission and the ministry's next steps in more detail than we can cover during a delegation meeting, please do not hesitate to reach out to David Arbuckle, Executive Director (darbuckle@amcto.com), who would be happy to arrange a meeting.

Yours truly,

[Originally Signed]

Stephen O'Brien, AOMC
President, AMCTO

cc. Hon. Paul Calandra, Minister of Municipal Affairs and Housing
Renu Kulendran, Deputy Minister, Ministry of Public and Business Service Delivery
Martha Greenberg, Deputy Minister, Ministry of Municipal Affairs and Housing



AMCTO
THE MUNICIPAL EXPERTS

**Looking Ahead: A Proactive Submission
to Modernize the *Municipal Freedom of
Information and Protection of Privacy Act***



Introduction

The [*Municipal Freedom of Information and Protection of Privacy Act, 1990 \(MFIPPA\)*](#) sets the framework for municipal information and privacy management. It provides the public a formal right of access to records that are in a municipality's custody or under its control, and protects the privacy of individuals with respect to personal information about themselves held by institutions. *MFIPPA* is an important tool for municipal accountability and transparency.

As the largest voluntary municipal association in Ontario with members working in municipalities across the province, the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) takes the position that local governments serve as the most transparent level of government, with openness at the core of operations. Municipalities consider transparency an important tool for building and maintaining public trust and recognize the importance of continuously improving. Municipal administrators need legislation that:

- Supports effective local program delivery;
- Is responsive to current technology; and
- Reflects its original intent of open and accountable governance.

We know this is easier said than done. *MFIPPA*, as it currently stands, presents numerous challenges for municipal staff, which in turn can hinder the *Act's* effectiveness and efficiency when it comes to serving the public. As one important function of good governance and accountability and transparency, freedom of information (FOI) and protection of privacy programs rely on rules and guidance provided through legislation such as *MFIPPA*. Therefore, it is important that the *Act* is modern, continuously improved, and reviewed regularly to ensure it is responsive to ever-changing environments and technologies. Administrators are able to provide better service when the legislative environment in which they operate is responsive, permissive and outcomes-focused.

This submission has been pro-actively prepared by AMCTO to support the idea that a comprehensive review of the *Act* is required, with the intention of modernizing *MFIPPA* and the FOI and privacy protection processes. It highlights and provides examples of some of the biggest issues faced by administrators, while recommending solutions to help ensure the next iteration of *MFIPPA* is resilient and adaptable to future technological and societal trends, challenges, and opportunities. This submission is the result of continuous and ongoing conversations with our members and a specialized Association *MFIPPA* Working Group. Through this submission, we hope to inform a broader conversation about the importance of accountable and open local governments.

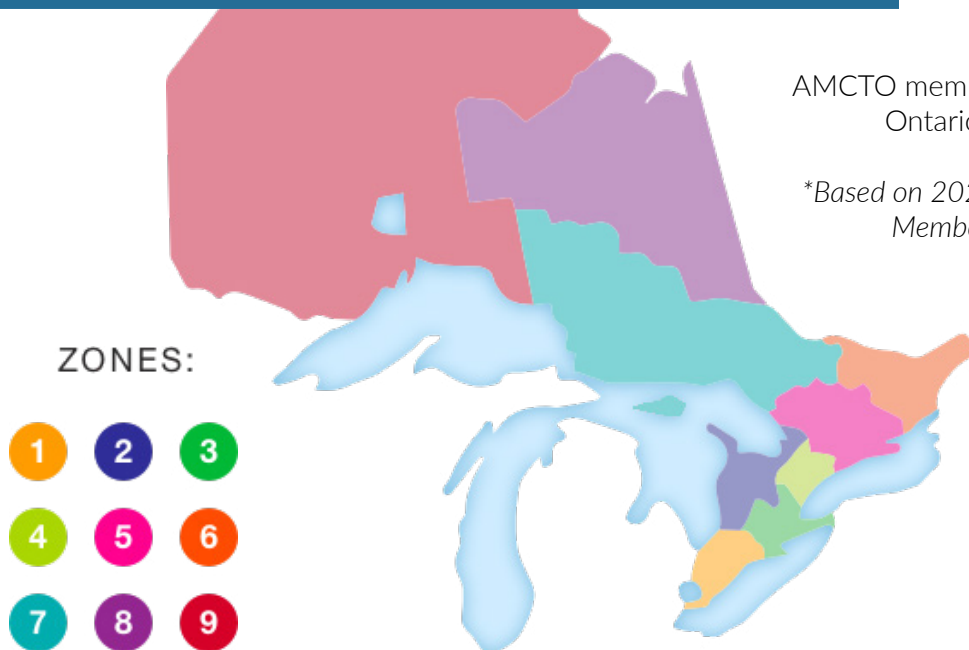


Background

Since 2020, dozens of municipalities have passed municipal resolutions in support of the review and reform of *MFIPPA*. Municipalities support relevant and up-to-date legislation to ensure that the public is offered timely access to information and municipalities continue to be open and transparent levels of government. Municipalities from all nine of AMCTO's geographic zones are in support of *MFIPPA* reform.

Did You Know?

In 2022, municipal institutions maintained an 81% response rate within 30 days to FOI requests, while for provincial institutions, only 51% of requests were completed within 30 days.¹



AMCTO Zones 1-9
AMCTO membership covers 98% of Ontario's 444 municipalities*

*Based on 2021 AMCTO State of the Membership Survey responses

¹ Information and Privacy Commissioner of Ontario 2022 Annual Report: "The Vision of a Modern and Effective Regulator". <https://www.ipc.on.ca/wp-content/uploads/2023/06/ipc-annual-report-2022.pdf>

AMCTO MFIPPA Working Group

AMCTO formed the *MFIPPA* Working Group in 2021 to support members in delivering freedom of information and privacy programs and to support the Association's advocacy for *MFIPPA* reform. The Working Group was comprised of AMCTO members who are information and privacy professionals, clerks and those responsible for administering *MFIPPA* in municipalities across the province. The Working Group reviewed, analyzed, and discussed a suite of reforms to *MFIPPA* to support the creation of a proactive legislative submission. To further support this submission, in January 2023, AMCTO surveyed membership to hear more about members' experience administering *MFIPPA*. As a result, 117 survey responses were collected between January 16 and February 20, 2023. Responses from municipalities of all sizes and tiers outlined both qualitative and quantitative data across all of the Association's nine geographical zones.

AMCTO would like to thank the following individuals for their time, contributions, and expertise as part of our *MFIPPA* Working Group and for their assistance in helping to formulate this submission:

Pam Fettes (Chair)
Town of New Tecumseth

Kiel Anderson (Vice-Chair)
City of Ottawa

Lauren Halsey
City of Thunder Bay

Kristin Smith
City of Vaughan

Jibira Rajadurai
City of Brampton (former)

Chris MacDougall
Town of Bracebridge

Evelina Skalski
City of London

Suzanne Klatt
Township of Madawaska Valley

Melissa Weatherbie
Town of Whitby

Jennifer Montreuil
Town of Kirkland Lake

Susan Campbell
City of Toronto

Brian Masschaele
County of Elgin

For more information about this Working Group and AMCTO advocacy initiatives, please contact advocacy@amcto.com.

Who is Responsible?

Currently, responsibility for *MFIPPA* legislation rests with the Ministry and Public of Business Service Delivery (MPBSD). We encourage the ministry to continue to collaborate with AMCTO, the Office of the Information and Privacy Commissioner of Ontario (IPC), and other municipal partners to review and update *MFIPPA*, and to provide relevant guidance to support the municipal sector.





Overview of the Issues

Improve clarity of the Act to strengthen administration and ensure limited municipal resources are best allocated.

Increase trust in public institutions through strengthening accountability, transparency, and responsiveness.

Ensure the Act is responsive to current technology trends and addresses the needs of the digital era.

Municipal administrators recognize *MFIPPA* as an important part of municipal accountability and transparency frameworks. However, the legislation in its current form is not responsive enough to the needs of digital government and lacks clarity in critical areas. This means that municipal resources are being spent navigating unnecessarily administratively burdensome processes rather than serving the public.

Some of the top concerns identified by AMCTO members include the Act's failure to keep up with technological advances. *MFIPPA* and its regulations not only contain references to outdated technology, but do not consider the many new challenges and opportunities that have occurred in the last 30 years. This means that the Act is not equipped to consider important trends such as cyber-security breaches, online communication platforms, digital governance, digital identities, and artificial intelligence. Ignoring these topics puts both municipalities and the public at risk.

Furthermore, *MFIPPA* lacks clarity in critical areas that can hinder efficient service delivery in municipal information and privacy programs. It is important to note that in most of Ontario's 444 municipalities, *MFIPPA* is primarily administered by municipal staff, such as clerks, who are responsible for many other operational and legislative functions in the municipality. Municipal administrators are particularly attuned to the Act's interaction with other pieces of legislation, and are aware of the need for consistency and guidance in the legislative framework.

Finally, municipal administrators require additional guidance on *MFIPPA* and promising practices when it comes to access to information and privacy. Institutions should have access to annual training and up-to-date resources targeted to both municipal staff and elected officials.





Recommendations

Strengthening Municipal Accountability and Transparency

Ontario's municipalities operate under a legislated accountability and transparency framework with a mix of mandatory and discretionary measures through *MFIPPA* and other legislation. Ensuring that a municipality is accountable, and its operations are transparent is one of council's roles under section 224 of the *Municipal Act, 2001*.² The below recommendations encourage the Province to consider further strengthening and adding to the important provisions in *MFIPPA* that support accountable and transparent municipal operations.

1. Provide principles-based guidance on data governance, including:

a. The use of information between organizations

MFIPPA should provide clarity on the sharing and use of information across institutions, especially pertaining to two-tier governments and in cases where municipalities may have shared service agreements.

Furthermore, consideration should be given to amending *MFIPPA* to ensure that exemptions are applied consistently for all institutions. Currently the *Act* specifies that records sent to federal and provincial governments are exempt from the *Act*. Consideration should be given to add a provision that records received from these institutions are exempt. Records sent to and from other municipal governments should also be included in this exemption.

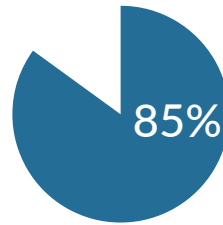
b. Open data

MFIPPA is lacking principles-based guidance for municipalities regarding data governance and open data. The IPC encourages municipalities to expand their open government activities³. Municipalities already practice open government through holding open meetings, and having transparent decision-making processes, yet many municipalities do not have an open government strategy or procedure, often due to a lack of resources or capacity.

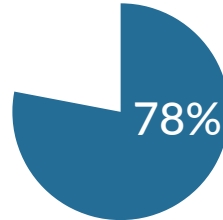
² Section 24(d.1) of the *Municipal Act, 2001* states: "It is the role of council [...] to ensure the accountability and transparency of the operations of the municipality, including the activities of senior management of the municipality".

³ Information and Privacy Commissioner of Ontario: "Open Government." <https://www.ipc.on.ca/access-organizations/open-government/>

As municipalities are enabled to make more information available to the public digitally, the ministry should consider providing a framework for municipal open data in the Act, and/or providing guidance to municipalities.



of survey respondents reported not having an open government strategy



of survey respondents reported not having an open government procedure in place

2. Require municipalities to adopt a Routine Disclosure and Active Dissemination (RD/AD) Policy

Did You Know?

AMCTO has a guide offering considerations for establishing RD/AD: [Considerations for Establishing Routine Disclosure and Active Dissemination⁴](#)

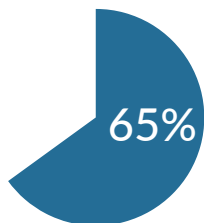
RD/AD supports information access through proactively releasing information and data. Many municipalities do not have a RD/AD policy, nor RD/AD plans. Requiring municipalities to adopt RD/AD policies in *MFIPPA* could help municipal staff gain organizational support for RD/AD programs.

A RD/AD policy can assist municipalities in ensuring that information is made available to the public, and

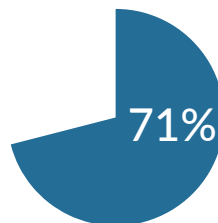
move towards a more mature open government program. Should the ministry add a provision to *MFIPPA* requiring municipalities to have RD/AD policies or plans, consideration should also be given to the creation of a regulation specifying the types of records to be considered for inclusion in RD and AD programs in consultation with municipal administrators.

This requirement should be flexible, allowing municipalities to create a RD/AD policy suitable to their community. Levels of program maturity and organizational readiness differ between municipalities. In many municipalities, administrators responsible for FOI programs also have numerous other legislative and operational duties and responsibilities.

Provincial and IPC guidance on a spectrum of RD/AD program maturity would be helpful to smaller municipalities who lack the financial and human resources to implement such policies and programs. This would ensure that Provincial and IPC expectations about such programs are well understood.



of survey respondents reported not having a Routine Disclosure and Active Dissemination policy



of survey respondents reported not having Routine Disclosure and Active Dissemination plans

⁴AMCTO: "Considerations for Establishing Routine Disclosure and Active Dissemination". <https://www.amcto.com/Considerations-for-Establishing-RD-AD>

3. Consider integrating the Personal Information Bank (PIB) with another existing accountability and transparency measure such as Routine Disclosure or Active Dissemination procedures

A PIB is defined in *MFIPPA* as a “collection of personal information that is organized and retrievable using an individual’s name, identifying number, or assigned particulars”. Municipalities are required to maintain an updated PIB and make it accessible to the public. PIBs show the public where in the organization personal information might be contained.

PIBs are rarely requested from the public for viewing as most individuals know at least the department that would hold their personal information when they submit a request. PIBs serve as an accountability and transparency tool, but would be better used if integrated with more dynamic tools such as robust open data and RD/AD programs.

4. Provide minimum standards for privacy management and breach protocols

Providing minimum standards for privacy management in *MFIPPA* can help assure the public that there are reasonable safeguards in place to prevent the loss, misuse or disclosure of their personal information, as well as help municipalities ensure that their privacy programs are sufficient.

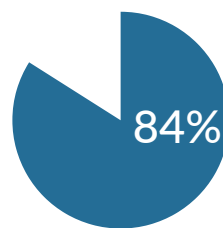
See the IPC's Guidance Document: [Privacy Breaches Guidelines for Public Sector Organizations](#)⁵

While the IPC provides some general guidelines for public sector organizations regarding privacy breaches, *MFIPPA* does not provide a framework for the management of privacy breaches⁴. Consideration should be given to add provisions to the *Act* that address issues such as notifying those affected by the breach, investigating the breach and preventing future breaches.

5. Designate clerks as heads of municipalities under the Act

While the majority of municipalities delegate authority to the clerk as the head of the municipality for the purposes of the *Act*, some municipalities designate the head of council or retain the default head as set out in the *Act* which is the municipal council as a whole.

To avoid potential conflicts of interest or politicization of the administration of *MFIPPA*, the *Act* should designate the clerk as the head of the municipality for the purposes of the *Act*. The clerk should be able to delegate this responsibility to another staff member, such as the deputy clerk or information manager.



of survey respondents reported delegating authority to the clerk as the head of the municipality for the purposes of the *Act*

⁵ Information and Privacy Commissioner of Ontario, “Privacy Breaches Guidelines for Public Sector Organizations”. <https://www.ipc.on.ca/wp-content/uploads/2019/09/privacy-breach-protocol-e.pdf>



Strengthening the Administration of MFIPPA

The ability for municipal staff to administer legislation as effectively and efficiently as possible leads to improved customer service and appropriate management of limited municipal financial and human resources. The following recommendations suggest ways that *MFIPPA* could be amended to ensure municipalities have the required clarity and legislative direction to provide improved service delivery in administering *MFIPPA*.

6. Include a provision in the Act for regular (five-year) review of the Act and General Regulation

a. Ensure that the Act is reflective of recent IPC Orders and guidance

Important guidance is available for municipalities in IPC Orders. However, municipal staff - and members of the public for that matter - do not have the time to review all orders when they are faced with responding to FOI requests. For this reason, the *Act* should be reviewed regularly to ensure consistency between information contained in IPC Orders and *MFIPPA*, and provide clarity to municipalities when decisions may appear contradictory.

b. Update the Act to reflect new and emerging technology

MFIPPA should be updated on a regular cycle to ensure that it is responsive to new and emerging technology and trends. While a comprehensive review should ensure that the *Act* does not become quickly outdated, with the pace of technological change, *MFIPPA* will continue to need regular review and updates. We are suggesting that the *Act* be substantially reviewed at least every five years with a specific legislative requirement to do so.

7. Enhance frivolous and vexatious provisions, expand definition, and provide a 'test' for administrators to utilize

Requestors may not intend for a request to be frivolous, vexatious or trivial, and municipalities should be encouraged to assist requestors in providing necessary specificity to reach the intended records. It is important that the threshold for frivolous and vexatious requests not be too low that the public's access to information is hindered. However, the current threshold for frivolous and vexatious requests does not provide enough clarity for municipalities to reliably apply the exemption.

The right balance must be struck so that the request for information may still be fulfilled. However, there are significant concerns with requestors who are uncooperative and demonstrate harassing behaviour.

The exemption for frivolous and vexatious requests has been identified as a top concern for municipal administrators.



MFIPPA does not provide adequate clarity on how these terms are defined or how a municipality should determine if they apply. Provisions should be included in MFIPPA to provide municipalities with a legislative “test” to determine if a request meets the criteria of this exemption.

Consideration should also be given to expanding this exemption to include overly broad requests. In some jurisdictions, this is referred to as “trivial” requests. An example of a trivial request might be when the requestor is looking for something very small contained within a very large amount of information. Ensuring requests are not overly broad can help municipalities best direct their staff time and resources, and ensure that all requestors get the information that they are looking for without bottlenecking the system.

See New Zealand’s *Privacy Act, 2022 S.53(h)*⁶, and *corresponding guidance regarding frivolous, vexatious and trivial requests*⁷.

8. Add a mechanism to confirm that requests with offensive and inappropriate language may be refused

In addition to ensuring that the public has a formal right to access municipal records, many municipal leaders also have obligations to ensure that their staff have a workplace that is safe and free of harassment under Provincial legislation.

A mechanism in the Act that would allow municipalities to deny requests with offensive and inappropriate language could assist municipalities in ensuring that their staff are able to perform their duties in a harassment-free environment. It should be noted that the intention of this provision would not be to deny access to records indefinitely; rather, in these cases requestors should be encouraged to revise requests to remove offensive and/or inappropriate language and act in a respectful manner.

9. Add a provision to the Act to permit municipalities to adopt a bulk-user policy

There is currently no limit on the number of FOI requests one individual can file at one time. This means that if an individual makes multiple requests all at once and a municipality handles each request in order of receipt, one requester may make it difficult for the municipality to keep up with all other requests.

In the spirit of fairness to all requestors, and to make the best use of limited municipal resources, municipalities should be permitted to temporarily “park” parts of multiple requests made at once by one individual and delay processing them until some have been completed. For example, municipalities could limit the number of



⁶ Parliamentary Counsel Office of New Zealand, “Privacy Act 2020”. <https://www.legislation.govt.nz/act/public/2020/0031/latest/LMS23398.html>

⁷ Privacy Commissioner of New Zealand, “Frivolous, vexatious or trivial”. <https://www.privacy.org.nz/privacy-act-2020/privacy-principles/6/frivolous-vexatious-or-trivial/>



requests processed by one individual at one time to ten, and wait to begin processing their eleventh request until the first ten have been resolved. This would allow municipalities to apply resources fairly and continue to process requests from all requesters in a timely manner.

10. Limit use of the Act to its intended purposes to prevent misuse and ensure that institutions are not the go-to source for information accessed through the legal system

Section 52(2.1) of the *Act* states that the *Act* does not apply to records related to a prosecution if all proceedings in respect of the prosecution have not been completed. Similar provisions should be added to the *Act* for litigation to ensure that the *Act* does not apply to a record relating to a legal proceeding if all of the proceedings or related proceedings have not been completed. When the *Act* is used as the go-to source for information meant to be accessed through the legal system, municipal ratepayers end up on the hook for the additional burden placed on municipal resources.

11. Ensure the Act is consistent with other applicable legislation. Where the Act is not consistent, provide guidance on which legislation prevails

While *MFIPPA* is the landmark legislation on municipal information and privacy management, many other pieces of provincial legislation discuss the disclosure and/or management of information, such as the *Planning Act*, *Heritage Act*, *Assessment Act*, *Municipal Elections Act* and *Municipal Act*. This can lead to confusion for the public and other practitioners as to when their information is protected and circumstances where it might be shared.

When reviewing *MFIPPA*, the Province should apply a whole-of-government approach to ensure that Ontario's information and privacy framework is consistent across all of Ontario's statutes. In circumstances where legislation conflicts, clarity should be provided on which legislation prevails.

12. Provide clarity throughout the Act that days are computed as business days

The *Act* should be amended to clarify and define days as business days to reflect regular business hours and operations of municipalities. A provision or definition should be added to the *Act* to clarify that days are calculated based on business days for the institution. This would provide municipalities adequate time to process requests and provide timeline clarity to the public.

13. Modify definition of a record to exclude automated records, such as logs and metadata, and to provide clarity on email records (e.g. only last email on email thread necessary), instant message chats and digital recycling bins

MFIPPA does not address the multitude of types of digital records that are created automatically, leading to ambiguity in the administration of the *Act*. Automated records are generally repetitive and providing them is not an efficient use of municipal staff time, nor is it helpful to requestors. For example, if a requester is looking for a record contained in an email thread, institutions should be able to provide just the last email in the thread as long as it contains all correspondence.

Furthermore, new forms of digital records should also be addressed in the *Act*. Examples of forms of records that require additional clarity include instant messaging chats on platforms that occur using and not using municipal resources, social media communications, and digital recycling bins.



14. Provide clarity in the Act regarding records of members of council

Requests for records of members of council are increasingly frequent. Clarity is required in the *Act* as to the circumstances when records are/are not considered in the custody of the municipality especially with regards to records of individual members of council. Additional clarity in *MFIPPA* regarding records that are created during the fulfillment of councillors' duties carrying out the business of their municipality would be beneficial to members of council, the public and municipal administrators.

Did You Know?

In our submissions regarding strong mayors regulations, we expressed concerns about the politicization of the municipal public service (in response to [22-MMAH014](#)⁸ and [22-MMAH015](#)⁹)

Consideration for any changes to the *Act* specifically related to records of members of council will need to consider recent changes in the *City of Toronto Act* and *Municipal Act* to allow for strong mayor authorities. Administratively, it is unclear how these new authorities for heads of council will impact overall municipal operations just as it is unclear how a strong mayor might choose to administer freedom of information and protection of privacy programs. AMCTO has expressed concern that these amendments could lead to politicization of the municipal public service and provides less oversight to council.

15. Provide clarification on circumstances when third-party notification is required

The third-party notification process was raised as a top challenge for many municipalities. With the increased frequency municipalities are dealing with third-party organizations, there are more FOI requests that require third-party notification. This can make it challenging for municipalities to meet deadlines to process requests.

It can also be difficult for municipalities to determine if a third-party notification is required due to the technical nature of requests and the fact that staff administering *MFIPPA* may not be subject matter experts in the topic. To avoid the risk of disclosing third-party information, municipalities may proceed with caution and choose to notify the third party if they are unable to make the determination as to whether the records should be released. This is not only time-consuming for the municipality, but it means that the requester faces additional delays.

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

Currently the fees outlined in *MFIPPA* and **R.R.O. 1990, Reg. 823** do not reflect the costs of providing services to the public. Costs to access information should not be prohibitive for the public to access records, but in their current form, they do not accurately account for resources used by the municipality. Since municipalities are already limited in the ways that they can collect revenue, the burden of making up for the difference falls to local ratepayers.

⁸ AMCTO, "Response to 22-MMAH014: Proposed regulations to prescribe provincial priorities related to the *Strong Mayors, Building Homes Act, 2022*". <https://www.amcto.com/response-to-MMAH014>

⁹ AMCTO, "Response to 22-MMAH015: Proposed Minister's Regulations to help bring the *Strong Mayors, Building Homes Act, 2022* into effect". <https://www.amcto.com/response-to-MMAH015>



Furthermore, *MFIPPA* and *R.R.O. 1990, Reg. 823* refer to outdated processes for the search and preparation of records. For example, *R.R.O. 1990, Reg. 823* refers only to conducting manual searches, where municipalities are increasingly conducting digital searches¹⁰. *MFIPPA* and *Reg. 823* should be overhauled to ensure that the circumstances for which municipalities can charge fees are reflective of municipal processes and do not place additional burden on local ratepayers.

Additional support and resources provided to municipalities to mature their programs towards more RD/AD and the digitization of records, as suggested in Recommendation 2, may help reduce costs and fees over time.

For more information on municipal financial sustainability see: “[Issue at a Glance: Municipal Financial Sustainability](#)”, 2022¹¹.

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

There are several references in *MFIPPA* and *R.R.O. 1990, Reg. 823* that should be updated or removed completely to keep the Act relevant. Some examples include references to CD-ROMs, and references to legislation that is no longer relevant such as the *Municipal Boundary Negotiations Act*¹². There are also places in the Act where language should be updated to reflect changes in industry-recognized terminology without adding new references that could become outdated.

Strengthening Responsiveness

To strengthen responsiveness in providing the public with information as efficiently as possible and to ensure municipal administrators are better equipped to manage the challenges and opportunities brought about by technology, municipal administrators need access to the right tools and resources. They also need to ensure that their time and resources are spent wisely. The following recommendations are intended to ensure municipalities have access to the information necessary to provide strong service delivery.

18. 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.

Municipalities should have access to regular training for both municipal staff and elected officials on *MFIPPA* offered by the ministry. Training should be targeted for municipalities and ensure that staff and council understand their roles and obligations under the Act. Guidance materials should be up to date with relevant instruction and examples that reflect an understanding of how municipalities operate.

¹⁰ Section 6.3 of *R.R.O. 199, Reg 823* states: “For manually searching a record, \$7.50 for each 15 minutes spent by any person”.

¹¹ AMCTO, “Issue at a Glance: Municipal Financial Sustainability”. <https://www.amcto.com/issue-at-a-glance-municipal-financial-sustainability>

¹² Section 11i of *MFIPPA* states: “(A head may refuse to disclose a record that contains:) submissions in respect of a matter under the *Municipal Boundary Negotiations Act* commenced before its repeal by the *Municipal Act, 2001*, by a party municipality or other body before the matter is resolved.”



New and updated resources will also be needed to support municipal administrators in dealing with the social and technological challenges of today, tomorrow, and beyond. This includes on the interface of *MFIPPA* with important topics such as cyber-security breaches, online communication platforms, digital governance, digital identities, integrated services, and artificial intelligence.

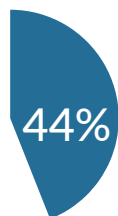
19. Revise annual reporting, as required in the Act, to ensure that data being collected is relevant. Consider replacing IPC reporting with requirements that municipalities report to their councils.

See AMCTO's summary report, "[Bearing the Burden: An Overview of Municipal Reporting to the Province](#)". 2017¹³.

Municipalities recognize that reporting can be an important accountability and transparency tool. However, reporting should be valuable for both the reporting agency and the one requesting the report. In its current form, many municipalities find annual reporting time consuming, and do

not find it relevant or useful for their purposes. The Province should require that the IPC regularly review its annual reporting requirements to ensure that the questions that they are asking are relevant and that the process to file reports is as efficient as possible.

As an alternative to annual reporting to the IPC, the Province could consider adding provisions to the *Act* to require municipalities to report to their councils on information and privacy program outcomes regularly. Several municipalities already report to their councils on high level statistics on a regular basis, and reporting to councils would enhance municipal accountability and transparency. Since municipal meetings are open, the IPC could then access these reports to inform their Annual Report.



44% of survey respondents reported that they do not read the IPC Annual Report



7% of survey respondents reported that they share the IPC Annual Report with their council

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

Predictability for municipalities participating in appeals would help municipal staff appropriately assign resources. Our survey responses show that in the past, municipal staff have waited months if not years for a file to be resolved. While rules of procedure are applied to IPC adjudication, reasonable timelines for resolving files at the IPC are needed to ensure that municipal administrators are not left waiting to process files and requests. We are pleased to see the IPC reviewing its procedures and processes which we are hopeful can lead to improved timelines.

¹³ AMCTO, "Bearing the Burden: A Review of Municipal Reporting to the Province". <https://www.amcto.com/bearing-the-burden>





Conclusion

Municipal accountability and transparency are best achieved when those responsible for administering legislation can do so with clarity and efficiency.

To demonstrate local leadership in enhancing municipal accountability and transparency, and to ensure that the Province's paramount piece of legislation guiding municipal information and privacy is robust and equipped to tackle the issues of today and the future, AMCTO recommends that the province:

Strengthen Municipal Accountability and Transparency

1. Provide principles-based guidance on data governance, including regarding the use of information between organizations and open data
2. Require municipalities to adopt a Routine Disclosure and Active Dissemination (RD/AD) Policy
3. Consider integrating the Personal Information Bank (PIB) 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*

Strengthen the Administration of MFIPPA

6. Include a provision in the *Act* for regular (five-year) review of the *Act* and General Regulation to:
 - a. Ensure that the *Act* is reflective of recent IPC Orders and guidance
 - b. Update the *Act* to reflect new and emerging technology
7. Enhance frivolous and vexatious provisions and expand definition and provide a 'test' for administrators to utilize
8. Add a mechanism 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. Limit use of the *Act* to its intended purposes to prevent misuse and ensure that institutions are not the go-to source for information accessed through the legal system
11. Ensure the *Act* is consistent with other applicable legislation. Where the *Act* is not consistent, provide guidance on which legislation prevails





Strengthen
Responsiveness

12. Provide clarity throughout the *Act* that days are computed as business days
13. Modify definition of a record to exclude automated records, and to provide clarity on email records, instant message chats and digital recycling bins
14. Provide clarity in the *Act* regarding records of members of council
15. Provide clarification on circumstances when third-party notification is required
16. Ensure fees are reflective of current processes, and keep pace with inflation
17. Review the *Act* to “clean-up” references to outdated processes and technology

18. Offer institutions updated training and guidance materials on *MFIPPA* on an annual basis targeted to both municipal staff and elected officials
19. 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
20. Provide more transparency on IPC processes and include in the *Act* timelines for IPC processing

We have noted that the *Act* needs to consider the social and technological challenges of today, tomorrow, and beyond while ensuring flexibility to respond to evolving service delivery and being cognisant of organizational capacity and maturity. We hope that the recommendations provided will support a comprehensive review of the legislation that includes other stakeholders who can speak more specifically to the current challenges of technology and privacy.

As an Association, we believe these principles and recommendations will help the Province ensure that the next iteration of *MFIPPA* is future-proof. The *Act* should guide strong municipal accountability, transparency, and protection of privacy to best serve members of the public.

It is important to note that any amendments to the legislation should provide adequate time for municipal administrators to develop and implement new policies, processes and procedures. It is also crucial that municipalities are supported with training, guidance materials, and resources target to both administrators and elected officials.

The purpose of this submission is to initiate a more robust dialogue on *MFIPPA* modernization. AMCTO members are always willing to collaborate, co-design and share promising practices and lessons learned to inform legislation, policies, programs and services.

We look forward to working with the Province to ensure that the next iteration of *MFIPPA* provides much needed clarity, addresses new and emerging trends, and promotes municipal accountability and transparency.



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Appendix

The following appendix outlines a detailed summary of the recommendations discussed in this report. These recommendations are categorized by issue with legislative reference to the *Act* (if applicable) followed by desired outcomes and the rationale behind them.



Appendix: Summary of Recommendations

Issue	Legislative Reference(s) if applicable	What we'd like to see	Rationale
Head of municipality	S. 3(1)	<ul style="list-style-type: none"> Designating clerks as heads of municipalities, with ability to designate to another municipal staff member 	<ul style="list-style-type: none"> While most municipalities designate the clerk as the head, some municipalities continue to designate council, or the head of council
Frivolous and vexatious	S. 4(1)b, S. 4(2), S. 17(1.1), S. 20.1 R.R.O 1990, Reg. 823 5.1	<ul style="list-style-type: none"> A legislative 'test' to help municipalities determine if a request can be considered frivolous or vexatious Consistency amongst IPC decisions A definition that clearly accounts for non-specific, overly broad requests A definition that allows staff to decline a request that is unnecessarily offensive 	<ul style="list-style-type: none"> Survey results indicate this is a top issue for municipalities Other jurisdictions have included 'trivial' requests as part of this exemption The threshold for frivolous and vexatious requests is so high it becomes almost impossible to reliably apply
Councillor records	S. 4(1), R.R.O 1990, Reg. 823 53(4)	<ul style="list-style-type: none"> Include under the <i>MFIPPA</i> framework records that are created by councillors during their duties in carrying out the business of their respective municipalities 	<ul style="list-style-type: none"> Requests for councillor requests are increasingly frequent Clarity is required in the <i>Act</i> as to the circumstances when records are / are not considered in the custody of the municipality.
Definition of a record	S. 2(1), S. 6(1)	<ul style="list-style-type: none"> Definition should be updated to reflect digital era Other types of drafts, besides draft by-laws, should not be considered records (e.g. early iterations of speeches, press releases etc.) 	<ul style="list-style-type: none"> Technological advances have complicated the definition of 'record' leaving a lack of clarity around new types of records such as emails and logs and metadata Programs such as Sharepoint automatically save multiple iterations of drafts at regular intervals; clarity is needed regarding multiple versions
Cybersecurity	S. 8(1)i	<ul style="list-style-type: none"> Guidance is needed as the <i>Act</i> does not speak to issues surrounding cybersecurity 	<ul style="list-style-type: none"> There is no exemption that applies directly to issues of cybersecurity; however, this is a reason why staff may have to refuse a request In these cases, municipal staff have to do the best they can with the legislation, including citing 8(1)i which applies to threats to a building

Issue	Legislative Reference(s) if applicable	What we'd like to see	Rationale
Disclosure of records from other institutions	S. 9(1), S. 9.1, <i>FIPPA</i> S. 15	<ul style="list-style-type: none"> • A provision added to specify that records sent 'to' federal and provincial governments are exempt • A provision should also be added to specify that records sent to and from other municipal governments are exempt 	<ul style="list-style-type: none"> • Requesters may use this as a work around when they do not receive what they are looking for from other governments (e.g. a request under <i>FIPPA</i>) • <i>FIPPA</i> S. 15 does not explicitly note municipalities when addressing relations with other governments
Use of "trade secret"	S. 10(1), 11(a)	<ul style="list-style-type: none"> • Consider changing to "proprietary" 	<ul style="list-style-type: none"> • Industry standard term
Records under Municipal Boundary Negotiations Act no longer relevant	S. 11 (i)	<ul style="list-style-type: none"> • The <i>Municipal Boundary Negotiations Act</i> was repealed by the <i>Municipal Act</i> in 2001. Matters initiated under this <i>Act</i> would likely be resolved or archived 	<ul style="list-style-type: none"> • N/A
Information available for inspection / examination	S. 25(1), S. 40(6)	<ul style="list-style-type: none"> • These sections should be updated as records are no longer provided in this way 	<ul style="list-style-type: none"> • Municipality provide copies rather than providing requestor with originals for inspection. • If copies cannot be provided due to contradiction with another <i>Act</i> (e.g. <i>Assessment Act</i>), then that <i>Act</i> already provides the authority to allow for inspection
Annual Reporting	S. 26	Annual reporting removed from the <i>Act</i> and replaced with requirement to report certain statistics to council on an annual basis	<ul style="list-style-type: none"> • Survey showed that municipalities find annual reporting time consuming and do not find it relevant or useful for their purposes (44% do not read; only 7% use it to report to council) • Several municipalities report to their councils on high level statistics on a regular basis • Requiring municipalities to report to their councils would enhance municipal accountability and transparency

Issue	Legislative Reference(s) if applicable	What we'd like to see	Rationale
Inclusion of email	S. 29(2) (c)	<ul style="list-style-type: none"> • “Title, business address, and business telephone number” should be changed to “business contact information” to reflect new forms of contact (e.g. email) 	<ul style="list-style-type: none"> • Municipalities should also provide email contact
Personal Information Banks	S. 34-35	<ul style="list-style-type: none"> • Consider integrating the PIB with another existing accountability and transparency measure such as Routine Disclosure or Active Dissemination procedures 	<ul style="list-style-type: none"> • PIBs are rarely requested from the public for viewing as most individuals know at least the department that would hold their personal information if they were submitting a request • PIBs serve as an accountability and transparency tool, but would be better used if integrated with a more dynamic tool
Clarity around dates	S. 39(2), S. 15, S. 18(2), S. 19, S. 21(2) c, S. 21(3), S. 21(4), S. 21(5), S. 21(7), S. 21(8),	<ul style="list-style-type: none"> • The Act specify “business” days 	<ul style="list-style-type: none"> • Would reflect the days that municipalities currently operate
Fees	S. 45, R.R.O 1990, Reg. 823 S. 6	<ul style="list-style-type: none"> • Fees should be reflective of current processes (e.g. digital search and preparation of records) • The Act should be agile so it can be responsive to technological advances 	<ul style="list-style-type: none"> • Fees refer to outdated practices such as manual search and providing records on CD-ROMS. The Act should not just be updated with short term in mind (e.g. changing CD-ROM to USB or digital file transfer fees), but should be malleable to reflect quick changes in technology
Fees	R.R.O 1990, Reg. 823 S. 6	<ul style="list-style-type: none"> • Fees should be increased to keep pace with inflation 	<ul style="list-style-type: none"> • Municipalities do not want to make fees unobtainable and limit access to the Act; however, fees are not currently reflective of costs to provide this service. This means local ratepayers end up subsidizing the costs of FOI requests. New fees should be established with built in increases reflective of Consumer Price Index changes.

Issue	Legislative Reference(s) if applicable	What we'd like to see	Rationale
Intentional Misuse of Act (legal discovery)	S. 51(1), S.52(2.1)	<ul style="list-style-type: none"> Provisions should be added to the Act to state that it does not apply to a record relating to a legal proceeding if all of the proceedings or related proceedings have not be completed 	<ul style="list-style-type: none"> Many municipalities have stated that FOI requests have been used as legal discovery (16% report lawyers are the most frequent requestors). This can place a strain on municipal resources, leaving residents to pay for processes best dealt with through the legal system.
Bulk User Policy	N/A	<ul style="list-style-type: none"> Add a provision in the Act to permit municipalities to adopt a bulk user policy 	<ul style="list-style-type: none"> Municipalities have found that one requestor making multiple requests can tie up resources, causing capacity issues for fulfilling other requests Several municipalities have already adopted bulk user policies, but explicit legislative authority would strengthen administration
Open Data, Routine Disclosure and Active Dissemination	N/A	<ul style="list-style-type: none"> Provide principles-based guidance on open government Require municipalities to adopt a Routine Disclosure and Active Dissemination Policy and provide a Minister's regulation with topics required to be included 	<ul style="list-style-type: none"> Many municipalities do not have an open data strategy (85%) or procedure (78%) Many municipalities do not have a routine disclosure and active dissemination policy (65%) or plans (71%) Creating a culture of openness can reduce the burden on FOI processes Policies and plans can help ensure organizational buy-in for program
Third Party Notification	10(1)	<ul style="list-style-type: none"> Provide clarification or simplification of the "test" to determine whether third party notification is required 	<ul style="list-style-type: none"> Third party notification identified as a top concern for municipalities
Harassment	N/A	<ul style="list-style-type: none"> Enhancing provisions throughout the Act (e.g. frivolous and vexatious provisions, bulk user policy) could help protect municipal staff from harassment when administering the Act 	<ul style="list-style-type: none"> Some municipalities, particularly but not limited to small/rural municipalities, cite harassment of municipal staff as a top issue

Issue	Legislative Reference(s) if applicable	What we'd like to see	Rationale
Privacy Breaches	N/A	<ul style="list-style-type: none"> Provide a minimum standard for a privacy breach and provide guidance on breach management protocols 	<ul style="list-style-type: none"> While the IPC recommends that institutions have a privacy breach plan, the <i>Act</i> does not address this With increased cyber security risks for municipalities, a transparent minimum standard (definition) for privacy breach and a protocol should be included in the <i>Act</i>
Consistency with other legislation	N/A	<ul style="list-style-type: none"> Ensure <i>Act</i> is consistent with other pieces of legislation (<i>Planning Act, Heritage Act, Assessment Act, Municipal Act, etc.</i>) Where the <i>Act</i> is not consistent, provide guidance on which legislation prevails 	<ul style="list-style-type: none"> It can be difficult for the public to understand where their personal information may be publicly available and where it is protected Guidance for public consumption on why information can be shared in specific circumstances but not others would be useful to assist residents with understanding Ontario's privacy regime
By-law complaints and dog bite inquiries	N/A	<ul style="list-style-type: none"> Provisions in the <i>Act</i> to ensure that institutions are not the go-to source for personal information when it is best accessed through the courts The <i>Act</i> should clarify that personal information will not be released as it related to by-law complaints 	<ul style="list-style-type: none"> Several municipalities cited requests for information on bylaw complaints, notably dog bites, as a top concern with the <i>Act</i>. Dog owner information is generally not provided to victims despite provisions in the <i>Act</i> that may provide for its release (14(2)(d)). The IPC has ordered the release of the name and address of a dog owner (MO-4049), but this matter is currently under judicial review.



The Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) represents excellence in local government, management and leadership. Over the past 85 years, AMCTO has provided education, accreditation, leadership, and management expertise for Ontario municipal professionals. With 2,200+ members working in municipalities across the province, AMCTO is Ontario's largest association of local government professionals, and the leading professional development organization for municipal professionals.

Our mission is to deliver professional growth, networks, advocacy, and leadership to support and strengthen the knowledge, skills, and capabilities of municipal professionals now and into the future.

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