



Access and Privacy Manual

Table of Contents

1. Introduction

1.1 Overview

1.2 Purposes of the Act

1.3 Definitions and abbreviations

2. Right of Access and Exemptions

2.1 General right of access

2.2 Mandatory exemptions

2.3 Discretionary exemptions

2.4 Other access provisions and restrictions

2.5 Right of correction of personal information

3. Roles and Responsibilities

3.1 Introduction

3.2 City Manager and Deputy City Managers

3.3 Program Management Contacts (PMC)

3.4 Access Liaison Officers (ALO)

3.5 Corporate Access and Privacy Office (CAP)

3.6 City Clerk

3.7 Legal Services

4. Timely Response to Access Requests

4.1 Introduction

4.2 Follow-up process

4.3 Timelines for MFIPPA requests

4.4 Communication responsibilities

5. Access Request Co-ordination Procedures

5.1 Receiving requests

5.2 Clarifying requests

5.3 Fee charges and fee estimates

5.4 Time extensions

5.5 Searching for and retrieving records

5.6 Reviewing records and making recommendations on disclosure

5.7 Providing records to CAP

5.8 Severing records and applying exemptions

5.9 Preparing recommendations on access

5.10 Special interest group requests

Table of Contents

6. Appeals to the Information and Privacy Commissioner (IPC)

6.1 Appeal powers of the IPC

6.2 Appeal process

6.3 Mediation

6.4 Inquiry

7. Protection of Individual Privacy

7.1 Introduction

7.2 Collection of personal information

7.3 Retention of personal information

7.4 Use of personal information

7.5 Disclosure of personal information

7.6 Protection of personal health information

7.7 Privacy investigations

8. Routine Disclosure

8.1 Overview

8.2 Responsibility for routine disclosure

8.3 Guidelines for City divisions

8.4 Legal requirements for routine disclosure in other legislation

Introduction

1. Introduction

1.1: Overview

The City of Toronto is committed to a continually improving, effective access to information and privacy program as a corporate priority.

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) establishes an access to information regime, based on the following fundamental principles:

- Informed citizens are essential to the democratic process and the more that citizens know about their government the better they will be governed;
- Openness in government is essential to accountability and the Act is an integral part of that openness;
- Every individual has a basic right of access to his or her own personal information that the City of Toronto has collected and may use.

1.2: Purposes of the Act

Section 1 of the MFIPPA sets out that:

1. The purposes of this Act are,
 - a) To provide a right of access to information under the control of institutions in accordance with the principles that,
 - i. Information should be available to the public,
 - ii. Necessary exemptions from the right of access should be limited and specific, and
 - iii. Decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
 - b) To protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Since November 1, 2004, the *Personal Health Information Protection Act* (PHIPA) has also applied to City divisions or activities that are involved in delivering health care to individuals and are defined as health information custodians. PHIPA establishes specific access and privacy rules for personal health information records in the custody or control of health information custodians.

This manual can assist City of Toronto staff members that participate in responding to access to information requests under MFIPPA or PHIPA. The Corporate Access and Privacy Office (CAP) manages the response to requests for access to information, which members of the public may submit in writing under MFIPPA or PHIPA. Each City division that has custody or control of the requested records is responsible for retrieving those requested records within the timeframes this manual sets out. The City Clerk has the final decision-making authority to grant or withhold access to records in response to formal access requests submitted under MFIPPA or PHIPA.

1.3: Definitions and abbreviations

Personal Information

Any recorded information about an identifiable individual. The following are examples of “personal information”:

- race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital or family status
- education, medical, psychiatric, criminal or employment history
- financial transactions involving an individual
- any identifying number assigned to an individual
- home address, telephone number
- fingerprints, blood type
- personal opinions of or about an individual
- correspondence between an individual and the City of a confidential nature
- individual's name if it appears with other personal information or disclosure of the name would reveal other personal information

Personal Health Information

Any identifying information about an individual in oral or recorded form relating to:

- physical or mental health, health history of the individual's family
- provision of health care to the individual, including identification of a provider of health care
- plan of service for long-term care
- payments or eligibility for health care
- donation of any body part or substance
- health number
- identification of the individual's substitute decision-maker

Any identifying non-health information in a record that contains personal health information ("mixed record")

Does not include information relating to a City employee or agent, that is maintained primarily for a purpose other than providing health care

Record

Any information, however recorded, whether in printed form, on film, by electronic means or otherwise. The following are examples of "records":

- correspondence, memoranda, reports, e-mail
- handwritten notes, drafts
- books, plans, maps, drawings
- diagrams, pictorial or graphic works
- photographs, film, microfilm
- sound recordings, videotapes
- machine-readable records (for example, information in a database)

Abbreviations used in this Manual

ALO = Access Liaison Officer

CAP = Corporate Access and Privacy Office

HIC = Health Information Custodian

IPC = Information and Privacy Commissioner

MFIPPA = Municipal Freedom of Information and Protection of Privacy Act

PHIPA = Personal Health Information Protection Act

PMC = Program Management Contact

Right of Access and Exemptions

2. Right of Access and Exemptions

2.1: General right of access

Every person has a right of access to a record, or part of a record, in the City's custody or control, unless:

- it falls within one of the exemptions defined below, or
- the City Clerk determines that the request for access is frivolous or vexatious.

Exemptions should not simply be claimed because they are technically available; they should only be claimed if they genuinely apply to the information at issue.

2.2: Mandatory exemptions

MFIPPA contains three mandatory exemptions that prohibit the City from disclosing particular information. The City must withhold information falling under a mandatory exemption. The mandatory exemptions are:

Section 9 - "Relations with Governments"

Records that could reasonably be expected to reveal information the City has received in confidence from (a) federal, provincial or foreign government; (b) a government agency; or (c) an international organization.

However, the City must disclose such a record if the other government consents to its disclosure.

Section 10 - "Third Party Information"

Records that:

1. Reveal a trade secret, or scientific, technical, commercial, financial or labour relations information, and
2. Are supplied in confidence to the City, implicitly or explicitly, and
3. Disclosure could reasonably be expected to result in one of the following harms:
 - Significant prejudice to the competitive position of a person, group or organization
 - Significant interference with contractual negotiations of a person, group or organization
 - Similar information no longer being supplied to the City, where it is in the public interest for such information to be supplied
 - Undue loss or gain to any person, group or organization
 - Revealing information provided to resolve a labour relations dispute

All three parts of the above definition must be met for the exemption to apply to the records. The City has the discretion to disclose the record, with the consent of the person to whom the information relates.

Section 14 - "Personal Information"

Except in the circumstances outlined below, the City must refuse to disclose personal information to any person, other than the individual to whom it relates.

Right of Access and Exemptions

- Upon the prior written request or consent of the individual (if the individual is entitled to have access)
- Compelling circumstances affecting an individual's health or safety (with notice sent to the last known address of the individual to whom it relates)
- Personal information collected and maintained specifically for the purpose of creating a record available to the general public
- Under a federal or provincial law that expressly authorizes the disclosure
- Research purposes (under a research agreement)
- Justified invasion of privacy (factors for deciding this are defined in MFIPPA)

Examples of personal information that must not be disclosed to another person, in response to an access request, are:

- Medical information
- Information compiled for a law enforcement investigation
- Social service eligibility or determination of benefit levels
- Employment or educational history
- Information from a tax return or gathered for tax collection purposes
- An individual's financial history or activities
- Personal recommendations, character references or evaluations
- Racial or ethnic origin, sexual orientation, religious or political beliefs

Examples of personal information that are disclosed are:

- Classification, salary range, benefits, employment responsibilities of City employees
- Financial and other details of a contract for personal services between the City and any individual

2.3: Discretionary exemptions

MFIPPA contains nine discretionary exemptions that allow the City to withhold information at the discretion of the delegated decision-maker (City Clerk).

Section 6 - "Closed Meetings of Council"

Records that would reveal a draft by-law or the deliberations of a closed Council or committee meeting. However, this exemption does not apply if the matter has been considered in an open meeting, or the record is more than 20 years old.

Section 7 - "Advice or Recommendations"

Records that would reveal advice or recommendations of a City employee or consultant.

This exemption does not apply to the following records:

- Factual material
- Statistical surveys
- Valuators' reports
- Environmental impact statements or similar records
- Reports/studies on the City's performance or efficiency
- Technical studies/cost estimates relating to a City policy or project

Right of Access and Exemptions

- Research reports undertaken before the formulation of a policy proposal
- Final plans/proposals/budget estimates to change or establish City programs
- Reports by a committee or similar body within the City, established to prepare reports on specific topics
- Reports by a City body, established to undertake inquiries and make recommendations
- Reasons for a final decision made by City staff
- Records that are more than 20 years old

Section 8 - “Law Enforcement”

Records where disclosure could reasonably be expected to result in one of the following harms:

- Interference with a law enforcement matter
- Interference with a law enforcement investigation
- Revealing investigative techniques currently in use or likely to be used
- Disclosure of the identity of a confidential source, or information supplied by the source
- Danger to the life or safety of any person
- Depriving any person of the right to a fair trial
- Interference with intelligence gathering, or revealing intelligence information
- Revealing records that have been confiscated by a police officer
- Danger to the security of a building, vehicle or system established to protect property, for which protection is required
- Escape by a person from lawful detention, or danger to detention centre security
- Facilitating crime or hampering crime control

This exemption does not apply to:

- Reports prepared in the course of routine inspections by the City
- Records/statistics on the success achieved in a law enforcement program (unless release would interfere with a law enforcement matter)

Section 11 - “Economic and Other Interests”

- Trade secrets or financial, commercial, scientific or technical information belonging to the City or another government/agency that has real or potential monetary value
- Research obtained by City staff when release would deprive the employee of priority of publication
- Prejudice to economic interests, financial interests or competitive position of the City or another government/agency
- Plans or instructions to be applied to any City negotiations
- Plans relating to City human resources or administration that have not been put into operation or made public
- Premature disclosure of a policy decision or undue financial benefit/loss to any person
- Questions that will be used in an educational examination or test

Section 12 - “Solicitor-Client Privilege”

- Records subject to solicitor-client privilege
- Records prepared by or for City lawyers for use in giving legal advice or litigation

Right of Access and Exemptions

Section 13 - “Danger to Safety or Health”

Records whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Section 15 - “Information Soon to be Published”

- Information that has been published, or is currently available to the public
- Information that will be published by the City or another government/agency within 90 days (or a longer period required for printing/translation)

Section 38 - “Exemptions: Own Personal Information”

Under section 36, every individual has a right of access to:

- any personal information about the individual contained in a personal information bank
- any other personal information about the individual, where the requester is able to provide sufficiently specific information for the information to be retrieved

If access to personal information is given, the City must ensure that the personal information is provided in a comprehensible form, and in a manner that indicates the general conditions under which the personal information is stored and used. Any individual who makes a request for access to personal information under false pretences, is guilty of an offence and on conviction, is liable to a fine of up to \$5,000.

Section 38 outlines the circumstances where the personal information of a requester may be withheld from him/her:

- Another exemption applies to the information
- Invasion of another individual’s privacy
- Confidential evaluations compiled to award contracts or benefits (if a confidential source would be revealed)
- Confidential evaluations to determine suitability for an honour/award for achievement or service
- Medical information if release would harm the health of the individual
- Research or statistical records

2.4: Other access provisions and restrictions

Section 5 – “Hazards to the Public”

The City is obligated to disclose to the public or affected persons, as soon as possible, any record where it is in the public interest, and the record reveals a grave environmental, health or safety hazard to the public. This obligation must be met, despite any other provision in MFIPPA. Notice must be given, if practical, to any person to whom the information relates. A person given notice may make representations to the City why the record should not be disclosed.

Section 20.1 – “Frivolous and Vexatious Requests”

The City Clerk may determine that an access request is frivolous or vexatious, and will provide notice to the requester of that determination, including reasons. The requester’s right of access to the record does not apply, if the City Clerk has made such a determination on reasonable grounds. This determination may be appealed by the requester to the IPC.

Right of Access and Exemptions

Section 51 – “Litigation and Court Orders”

MFIPPA does not impose any limitation on the information otherwise available by law to a party to litigation, during the discovery process. It does not affect the power of a court or tribunal to compel City staff called as witnesses to testify or compel the production of a document.

Section 52 – “Outside the Scope of MFIPPA”

MFIPPA does not apply to certain types of City records, which are outside its scope. In these cases, there is no right of access to these records under MFIPPA, although they may be available through other legal means. These types of records are defined in section 52:

- Proceedings before a court or tribunal relating to labour relations or employment with the City
- Negotiations relating to labour relations or employment with the City
- Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the City has an interest
- Records placed in City Archives by an outside organization or private individual

This exclusion applies to most employment-related information. However, MFIPPA does apply to any agreement resulting from negotiations relating to labour relations or an employment-related matter, and to expense accounts submitted by City staff.

Section 53 – “Confidentiality in Other Legislation”

Other legislation takes precedence over MFIPPA in the event of an access request, which would prevent its disclosure:

- No person is entitled to inspect the contents of a ballot box unless authorized to do so by a court order. (*Municipal Elections Act, 1996*)
- City employees who have access to actual income and expense information on individual properties, in the course of their duties, must not disclose the information to any other person who is not similarly entitled to access. (*Assessment Act*)

Section 54 – “Exercise of Rights of Deceased Persons, Children, etc.”

Any right, including the right of access to information, conferred on an individual by MFIPPA may be exercised by another person in the following circumstances:

- Deceased individuals: by the individual’s personal representative if it relates to administration of the individual’s estate
- Individuals under Power of Attorney: by the individual’s attorney or guardian of person or property
- Individuals under age of 16: by a person who has lawful custody of the individual

Regulation 823 – “Security Restrictions”

MFIPPA requires the City to ensure the security of any original records when providing access to these records. A requester must examine the original record at City offices. Before providing access to a requester’s own personal information, the City must verify the requester’s identity.

The City is also required to ensure that only those individuals who need a record for the performance of their duties have access to that record.

Right of Access and Exemptions

The City must ensure that reasonable measures are defined, documented and put in place, taking into account the nature of the records to be protected, to:

- prevent unauthorized access to City records
- protect City records from inadvertent destruction or damage

2.5 Right of correction of personal information

Every individual who is given access to his/her personal information is entitled to:

- request correction of the personal information, if the individual believes there is an error or omission
- require that a statement of disagreement be attached to the information, reflecting any correction that was requested but not made
- require that anyone to whom the personal information was disclosed, within the year before the correction was requested, be notified of the correction or the statement of disagreement

The request for correction is made by using the same form used for an access request. Any individual who makes a request for correction of personal information under false pretences, is guilty of an offence and on conviction, is liable to a fine of up to \$5,000.

Roles and Responsibilities

3. Roles and Responsibilities

3.1: Introduction

The City, as a whole, and Council, in particular, are accountable for complying with MFIPPA and PHIPA. Complying with the access to information and privacy requirements of MFIPPA and PHIPA involves all employees of the City and is an integral part of the business of each division. Staff should not see complying with MFIPPA requirements as separate from the business of delivering a program or service. Under these statutes, the Information and Privacy Commissioner (IPC) has investigation and order-making powers to enforce compliance. In addition, persons affected by an IPC order under PHIPA may ask a court to award damages against the City for any harm they suffered as a result of the City contravening the Act.

Accordingly, City staff must make the processing of requests for access to information a top priority so that the City does not exceed the statutory time limits under MFIPPA or PHIPA for issuing decisions on access to information requests.

3.2: City Manager and Deputy City Managers

Role

The City Manager, as the City's senior executive, is responsible for making sure that the "head" (City Council) of the "institution" (the City of Toronto) properly discharges its statutory obligations under MFIPPA.

In discharging this responsibility, the City Manager generally and each Deputy City Manager with regards to his or her direct reports make sure that the divisions they oversee adhere to the procedures that this manual describes and to other City policies and practices that promote compliance with MFIPPA and PHIPA.

Responsibilities

The City Manager and Deputy City Managers are responsible for:

- allocating sufficient staff and other resources to make sure that divisions comply with the access and privacy requirements of the Acts;
- intervening effectively when staff members are not meeting internal benchmarks for divisional action.
- ensuring that staff members meet statutory timelines for responding to an access request.
- appointing an Access Liaison Officer (ALO) and a Program Management Contact (PMC) for their own offices and functions (as opposed to the divisions that directly report to them).

3.3: Program Management Contacts (PMC)

Role

The PMC is the general manager, director or executive director who manages particular programs or services, or a manager appointed as that person's delegate. He/she is the primary management liaison between CAP and the division for the purpose of responding to formal access requests that requesters submit under MFIPPA and, where applicable, under PHIPA.

Roles and Responsibilities

The PMC's role is:

- to oversee the activities of the ALO, who retrieve and review records at the request of CAP;
- to make sure that an appropriate member of their staff has responded to all MFIPPA requests pertaining to their division; and
- to intervene, if necessary, to make sure that the ALO retrieves and reviews records in a timely and complete manner.
- to be the contact for communications about the impending release of records under MFIPPA or PHIPA.

In discharging these responsibilities, the PMC may assign specific tasks to staff, particularly in those divisions that receive a large number of access requests. Even though he or she may assign such tasks to another staff member, CAP will continue to direct its communications about specific requests to the PMC.

Responsibilities

- Appoint the ALO for the division in consultation with CAP.
- Make sure that the ALO and other relevant division staff receive MFIPPA training offered by CAP and records management training offered by Records and Information Management.
- Make sure that a properly trained ALO is available at all times to fulfill the functions that this manual describes.
- Make sure that the ALO has the means necessary to search and retrieve requested division records.
- Make sure that the ALO provides CAP with time extension and fee estimates and/or copies of records within the time limits communicated by CAP.
- Make sure that staff members maintain division records to conform to recorded information management policies and procedures and City records retention bylaws and schedules.
- Make sure that all managers and staff in the division, including the ALO, give priority to retrieving and analyzing records that pertain to an access request.
- Act as a single point of contact between CAP and the division for the purpose of resolving problems or delays that occur at the division level.
- Manage communications and briefings within the division, with other City executives and with corporate areas such as Corporate Communications to make sure all relevant staff members are aware of issues arising from release of records under MFIPPA or PHIPA.
- Ensure completeness and clarity of briefing notes regarding impending release of records.
- Prepare correspondence to supplement the City Clerk's decision letter in situations where further explanation of the records is desirable.
- Make sure that each ALO is clearly aware of their responsibilities for searching, retrieving and reviewing records.
- Identify further related duties (if any) for the ALO other than those that this manual describes.

3.4: Access Liaison Officers (ALO)

Role

Each PMC appoints a division employee as an ALO to help CAP respond to access requests. ALO's locates records and documents the steps taken to search for and retrieve records, so that

Roles and Responsibilities

they can prepare time and fee estimates. They also help identify records that the City should not disclose.

ALO's must process access requests within time limits that MFIPPA sets out and, for those divisions that are also health information custodians, within the time limits that PHIPA sets out. Consequently, divisions must:

- Commit to retrieve and review records within the particular time limits;
- Put the necessary staff resources in place; and
- Communicate this commitment to their staff.

In discharging these responsibilities, the ALO may assign specific tasks to staff, particularly in those divisions that receive a large number of access requests. Even though the ALO may have assigned such tasks to another staff member, CAP will continue to direct its communications to the ALO.

Responsibilities

- Document searches conducted
- Provide input for access fee estimates and time extensions and make sure that fee and time extension estimates are reasonable
- Locate and retrieve requested records within their division and prepare copies of records for processing as requested by CAP
- Identify and flag specific records whose disclosure raises operational or other concerns.
- Provide the input on behalf of the division to CAP and the City Clerk regarding implications of disclosure of records – and make sure input has the support of relevant division managers
- Report back to the CAP in a timely manner about searching, retrieving and reviewing records
- Provide CAP with any required documentation

Skills required

An ALO must be a divisional employee who has sufficient seniority to manage retrieving records and who understands and can assess the operational impact of disclosing the records by consulting with division management and staff. Consequently, records management staff who may be physically located in particular division areas are not suitable candidates for appointment as an ALO – even though they may assist generally with retrieving and managing records. The PMC must make sure that the ALO has the skills and training required to perform their duties including:

- A working knowledge of the access provisions of MFIPPA and, if necessary, PHIPA;
- Familiarity with the division's record holdings;
- An understanding of the operational significance and context of division records and the ability to brief clearly CAP and the City Clerk on the operational implications of releasing records.
- Ability to work under tight timelines.
- Sound judgment, analytical and organizational skills.

Roles and Responsibilities

3.5: Corporate Access and Privacy Office (CAP)

Role

CAP receives requests for access to records, which requesters submit in writing under MFIPPA or PHIPA. It also co-ordinates the City's response to those requests. The office supports the City Clerk, who has authority under MFIPPA to decide whether a requester is entitled to receive records, subject to any right of appeal to the IPC.

Responsibilities

CAP supports and assists ALO's, division staff and management and the City Clerk. CAP will:

- Manage the overall process of responding to access requests under MFIPPA and PHIPA.
- Receive access requests, clarify requests, if necessary, and contact ALO's to begin searching for and retrieving appropriate records and/or request time extensions and estimate fees.
- Provide performance management reports to PMC's on how the division is complying with timeframes and access request procedures.
- Determine by discussing with requesters and division staff whether members of the public can access all or substantial portions of requested records outside of the statutory processes of MFIPPA or PHIPA.
- Make sure that the City claims any required time extensions and charges fees and deposits; prepare time extension and fee estimate/deposit letters, based on documented input received from division staff.
- Review records based on recommendations from divisions
- Sever exempt information and prepare records for release
- Prepare clear recommendations on application of exemptions and exercise of discretion for the City Clerk.
- Draft decision letters and related briefing materials for the City Clerk, based on recommendations from division and Legal Services staff.
- Provide training, advice and support for ALO's, PMC's and other division staff as required.
- Liaise with Legal Services and division staff on appeals or complaints to the IPC.
- Manage all stages of the appeal process, including mediation and inquiry.

3.6: City Clerk

Role

MFIPPA defines Council as the "head" of the institution (the City) for the purposes of the Act. As head, Council is accountable for City decisions under MFIPPA and for overseeing how the City administers the Act generally. This responsibility includes complying with the access provisions of that Act, and making sure that personal information that the institution holds is accurate, up-to-date and that it collects, uses and discloses that information in compliance with MFIPPA.

City Council has delegated to the City Clerk its authority to administer the "access to records" provisions of MFIPPA. As delegated "head", the City Clerk's authority includes determining, on behalf of Council, whether to grant or refuse access to records when responding to a request under MFIPPA. The City Clerk relies on the recommendations of CAP, division and Legal Services advisors to assist her in making her decision under the Act.

Roles and Responsibilities

Responsibilities

- Determine access to records when responding to written requests for access under MFIPPA as authorized by Council.
- Intervene with PMC's and City Managers, as required, to resolve any delays by division staff in searching, retrieving or reviewing records and to make sure the City complies with MFIPPA generally.
- Prepare an annual report on how the City administers MFIPPA and PHIPA to submit to Council.
- Prepare and submit to the IPC an annual statistical report on how the City administers MFIPPA and PHIPA as required by the IPC.
- Chair regular meetings of the Access and Privacy Co-ordinating Committee.

3.7: Legal Services

Role

Legal Services provides legal opinions on access requests, as requested by CAP, for a final decision on access by the City Clerk. Legal Services may represent the City on appeals to the IPC of the City Clerk's decisions as delegated head under MFIPPA and in proceedings before the IPC or the courts relating to complying with PHIPA.

Responsibilities

- Provide legal advice on jurisdictional issues with MFIPPA, PHIPA and other statutes to CAP, the City Clerk and divisions as required.
- Represent the City before the IPC in inquiries arising from decisions of the City Clerk regarding access to records requested under MFIPPA.
- Provide advice to the City Clerk on whether to seek judicial review of IPC decisions under MFIPPA and represent the City before the IPC on judicial review applications and on court proceedings generally involving PHIPA.
- Communicate to CAP any legal issues about access requests.
- Refer any formal requests from program areas for advice regarding the interpretation of MFIPPA and PHIPA to the Director, CAP.
- Notify CAP prior to disclosure to a City Division of advice or opinions on the interpretation of MFIPPA or PHIPA, to ensure consistent treatment of open access files and direction to program areas.
- Prepare representations or reconsideration requests, where necessary, regarding inquiries conducted by the IPC for the Clerk's signature, in accordance with the timelines set by the IPC for submission of representations.
- Provide legal opinions (formal or informal) as requested by CAP.

Timely Responses to Access Requests

4. Timely Responses to Access Requests

4.1: Introduction

The City is legally required to answer MFIPPA and PHIPA requests within 30 calendar days. Consequently, the City usually must process requests within 20 or 21 working days. This time period may be longer if the City has claimed that it needs a time extension to respond to the request. A City request for a time extension is subject to an appeal by the requester to the IPC about the reasonableness of the time extension. If the City has not notified the requester of a time extension and the City does not respond within 30 days to a particular request, then the City is deemed to have refused the request. The Act then entitles requesters to appeal immediately the “deemed refusal” to the IPC.

Because of the legislated short time frames, City staff must always process MFIPPA requests on a priority basis. CAP will send a request for records directly to the ALO with a specific deadline for the division staff to search, retrieve and copy the requested records.

The ALO must complete work on MFIPPA requests within the following time frames, or within any other timeframes that CAP specifies for particular requests. CAP generally allots the ALO 13 calendar days to:

- determine whether they need a reasonable extension of time to reply to the request;
- estimate applicable processing fees; and / or
- complete the search for records and provide copies of the records to CAP with input about severing confidential information in the records.

4.2: Follow-up process

If the ALO has not completed time extension requests or estimated fees nor retrieved and copied records and CAP has not received those copied records when they are due (generally on the 13th day), CAP will send the following notices:

***Day 10 - Memo to the PMC with a copy to the ALO reminding them that they must provide time extension and fee estimates and/or copies of requested records to CAP by Day 13 or the revised due date.**

***Day 16 - Memo to the Deputy City Manager, the PMC, the City Clerk and the ALO advising them that the division response is overdue and/or that CAP has not received copies of records.**

***Day 23 – Memo to the City Manager with a copy to the PMC, the Deputy City Manager and the City Clerk, advising that the division response is overdue and that, if the responsive records are not received in the next few days, the request will become overdue and cause the City’s compliance rate to drop.**

Sometimes CAP assigns a period longer than 13 days for the ALO to complete time and fee estimates, search and copy records and input access recommendations. In this case, CAP will

Timely Responses to Access Requests

send out the above reminder memos based on the revised due date.

If CAP does not receive copies of requested division records by the 28th day after it has received a request and it has not previously communicated a time extension to the requester, CAP will add the request to the overdue requests list and forward the list to the City Clerk for follow-up with the relevant PMC.

4.3: Timelines for MFIPPA requests

Days 1 - 2 (CAP receives request) – 2 days

- Request received with application fee
- Request determined to be clear (clock stops until request clarified and clarification confirmation letter sent)
- MFIPPA file opened with tracking form
- Request data entered into MFIPPA tracking system and access request status form
- Search request notification sent to division (ALO)

Days 3 - 15 (search, retrieval and review by ALO) – 13 days

- Record search and retrieval
- Notify CAP if time extension / fee estimate or deposit required
- Complete search time-tracking sheet
- Copy records
- Record review and highlighting of information for severing consideration
- Prepare memorandum of disclosure and record index - deliver with records to CAP

Days 16 – 23 (CAP) – 8 days

- Review records and division recommendations
- Discuss proposed severing with division and Legal Services if necessary
- Prepare decision letter and sever records, briefing note if required

Days 24 – 30 (City Clerk or designate) – 6 days

- Receive draft decision letter and review records
- Discuss with CAP and PMC if necessary
- Sign decision letter
- Send decision letter and/or records to requester

4.4: Communication responsibilities

Once CAP has informed a division of a newly received access request, it will communicate directly with the ALO about processing the request and will provide a copy of the request to the PMC. The ALO must update and advise their PMC and other division managers about how they are processing access requests and brief them of developments, as they require.

The ALO and PMC should consult with their division or corporate communications support staff to draft briefing and communications materials relating to the release of records. Similarly, the PMC is responsible for preparing any correspondence to supplement the City Clerk's decision letter in situations where the division staff believe they need to explain further the content of the records.

Access Request Co-ordination Procedures

5. Access Request Co-ordination Procedures

5.1: Receiving requests

Often, providing routine disclosure to records is in the best interests of both requesters and the City, and is the preferred method. The formal access process should be the route of last resort to obtain recorded information from the City. Routine disclosure reduces the time and cost of access for both requesters and the City. CAP will seek to determine whether a requester may obtain access to all or some of the requested records directly from the relevant division for example, by division staff providing information that is readily available to the public in the City's routine business -- or informally by establishing an agreement with the requester, CAP and the relevant division staff. This will usually involve a short discussion and negotiation with the requester and the division that maintains the requested records.

Divisions must advise CAP of any circumstances when they can routinely disclose certain records to requesters expeditiously outside of the Freedom of Information access scheme. CAP encourages divisions to pursue any opportunities for providing routine disclosure of records.

CAP processes all other requests for access to records that a requester submits in writing under MFIPPA.

After CAP has received the request, it date-stamps the request and assigns it a request number. CAP collects the \$5 application fee and issues a receipt. Staff members then enter request data into the MFIPPA tracking system.

CAP staff open an MFIPPA request file and include a tracking form, the original request and a copy of the application fee receipt. If the requester is seeking the personal information of a third party, CAP will also require the requester to provide a signed authorization from the third party, which they can then place in the file.

5.2: Clarifying requests

If the requester wishes to proceed with the request as set out in MFIPPA, CAP will seek to ensure that requests are as clear as possible, where the requests are ambiguous.

If divisions require a requester to further clarify a request, the ALO should immediately notify CAP, who will contact the requester and negotiate any necessary clarification(s). CAP will then immediately communicate the clarified request to the ALO and the PMC. CAP will contact the ALO for help clarifying requests as necessary.

When input from division staff is useful in clarifying a request, CAP may request the ALO or another appropriate division representative to participate in a telephone conference with the requester. CAP will confirm any clarification in writing with the requester.

5.3: Fee charges and fee estimates

Access Request Co-ordination Procedures

MFIPPA recognizes that institutions expend human and financial resources to process access requests that fulfill the public's right to information. As a result, MFIPPA establishes that it is reasonable to have people seeking access to records bear a proportion of the costs associated with providing access. CAP applies different fees prescribed by regulation, depending on whether the request is for general records or for the requester's own personal information. CAP must charge fees unless it decides to waive the fees under the fee-waiver provisions of MFIPPA.

For **all** requests under MFIPPA, the requester must pay a \$5 application fee. **The application fee is mandatory and CAP cannot waive it.** MFIPPA contains a fee schedule that sets out the amount that CAP may charge for various costs that the City may incur when processing a request:

Type of Fee	Amount
Application Fee	\$5
Photocopies and computer printouts	20 cents per page
Floppy disks	\$10 per disk
Manual search for records *	\$7.50 for each 15 minutes spent
Preparing a record for disclosure, including severing records *	\$7.50 for each 15 minutes spent
Developing a computer program to produce a record from a computer system	\$15 for each 15 minutes spent
Costs incurred in locating, retrieving, processing and copying the record	As specified in an invoice received by the City

* does not apply to a request from an individual for their own personal information.

MFIPPA requires the City Clerk to notify the requester of her decision regarding access to the requested records within 30 days of receiving the request. Therefore, CAP must issue both the fee estimate and a decision letter on access within that 30-day period (unless the division has claimed a need to extend the time to respond or CAP has requested authorization from a third party).

Where the estimated processing fee is less than \$100, CAP will include a fee statement in the decision letter to the requester before releasing the records.

When the processing fee for a request is more than \$100, CAP will provide the requester with a detailed fee estimate. CAP may require the requester to deposit up to 50 % of the estimated fee before the City proceeds with the request. MFIPPA entitles CAP and division staff to stop working on processing the request until the requester pays the deposit.

CAP may determine to provide the requester with a notice combining the fee estimate with an interim decision on access. An interim decision lets the requester know that certain exemptions may apply to the records, although the City has not made a final determination. Since this is not a final decision, it is not binding on the City and is not subject to appeal. However, the fee estimate may be appealed.

CAP determines both the interim decision and fee estimate, using one of the following methods:

- Consulting with division staff who are familiar with the type and contents of the records;

Access Request Co-ordination Procedures

and / or

- Basing the interim decision and fee estimate on a representative sampling of the records.

In all cases, staff should estimate the fee by examining the records and provide the requester with as much information as possible about the chargeable costs that the City will incur in processing the request. The estimate should also indicate that the requester may ask the City to waive the fee.

Once the City has sent the interim notice and fee estimate, the 30-day clock stops until the requester indicates that he or she is willing to proceed with the request (for example by paying the 50 per cent fee deposit). The City can then send a time extension notice, if necessary, after it has received a deposit.

5.4: Time extensions

MFIPPA allows the City to extend the processing time for a request when:

- The request is for a large number of records or necessitates searching through a large number of records and meeting the time limit would unreasonably interfere with the operations of the City; or
- City staff must consult with a person outside the City to comply with the request and they cannot reasonably complete the consultation within the time limit.

CAP determines whether the City will claim time extensions for a request, based on input from division staff. If either of the above factors apply, the ALO should advise CAP immediately and summarize the reasons for an extension when requests involve a large numbers of records by:

- Explaining the steps that staff require to search for responsive records and estimating the total number of pages of records;
- Identifying any exemptions that staff can anticipate in advance that the City may cite to withhold information;
- Providing a representative sample of records.

For requests that staff cannot complete without consulting with a person or organization outside the City, the ALO will provide the following information to CAP:

- The name of the person or organization that City staff will consult;
- The reason why consultations are necessary; and
- An estimate about when staff will complete the consultations.

5.5: Searching for and retrieving records

Once CAP has clarified a request, the next step is for the ALO to begin to search for all responsive records. At the same time, staff should prepare documentation to justify fee estimates and requests for time extensions, if any. CAP will ask the ALO to locate all division records responding to a request, estimate the search time required, of whether a time extension is needed.

The ALO must search for all recorded information -- no matter how it is recorded -- that responds to an access request. The ALO must retrieve, review and return the records to CAP no later than the return date that CAP provides. If the ALO requires a time extension to complete a search, he

Access Request Co-ordination Procedures

or she should contact CAP immediately to determine whether MFIPPA permits a time extension.

The City must adhere to timeframes to search for, and retrieve, records to make sure that it complies with MFIPPA. The City reports on the timeliness of its response to access requests under MFIPPA at year-end to City Council and to the IPC, who subsequently uses the statistical information to prepare her annual report.

When searching for records, the ALO should consult with staff responsible for the subject matter of the request, or who may have created the records. CAP staff will carefully assess requests that are ambiguous, broadly framed or which require the City to retrieve large numbers of records to make sure that staff can appropriately estimate fees, calculate time extensions and communicate fee estimates and time extensions to requesters as soon as possible.

The following is a checklist of steps to follow when searching for records:

1. ALO's usually will need to identify staff that can help them locate responsive records in their division. If the division is large and the ALO is unclear which section has responsive records, the ALO may send a general e-mail to all relevant staff to help find the individuals who can properly identify and gather all responsive records. In any event, the ALO will need to:
 - Provide staff with the details of the request;
 - Give staff a specific date to respond to the search request so that the City does not exceed the time that CAP allotted for the division to retrieve the records.
2. In consultation with staff, identify specific files or data banks that staff need to search. Document the search steps taken. In the event of an appeal, the IPC may call on the staff that searched for the records to describe the steps they took to conduct the search at an IPC oral inquiry.
3. CAP, ALO's and PMCs should document and keep all communications with division staff for future reference and / or appeals before the IPC.
4. If a request is for a specific record (e.g. a named report), ALO's must make sure that someone has searched for the record and, if no-one can find it, fully explain to CAP why no-one can find it.
5. If staff locate many responsive records or if they have to search through a large number of records, ALO's should consult with CAP before spending resources on the search. CAP may determine that it can extend the deadline for releasing records in certain circumstances.

A decision letter to the requester stating that the City has no responsive records can be appealed by the requester on the grounds of adequate search. The ALO must provide CAP with a detailed description of the search undertaken by the program area.

5.6: Reviewing records and making recommendations on disclosure

Divisions should seek to increase access to records, whenever possible, to support the stated purpose of MFIPPA which is:

Access Request Co-ordination Procedures

“to provide a right of access to information under the control of institutions in accordance with the principles that,

- (i) information should be available to the public,
- (ii) necessary exemptions from the right of access should be limited and specific.”

Once staff members have located all responsive records, the ALO must copy the records. CAP does not accept originals. Copy the records in the sequence in which you would find them in the files. This makes sure that the copies of records that CAP provides to the requester can be matched against the original records as they appear in the files.

The ALO, in consultation with division managers and/or other division staff who are knowledgeable about the records, should review each record to identify any operational or other concerns about disclosing the record. Most importantly, they should specifically identify any areas of concern in a record by flagging any information that the division does not believe that the City should disclose, and by explaining why the City needs to withhold it.

Division staff must communicate clearly the operational reasons why the City should not disclose the record. Remember that most exemptions in MFIPPA require City staff to identify how disclosing the records would harm the City. Division staff members are in the best position to identify how disclosing the record would harm the City. The ALO should highlight all information in a record that should be considered for possible severing under MFIPPA.

ALO's should maintain an MFIPPA request file for every MFIPPA request that affects his or her division. This file should contain:

- A copy of the access request
- Copies of any e-mails, notes to file or other information relevant to the record search
- ALO or other division staff recommendations on denying access to certain records
- A copy of the record or a list of records if a requester is seeking a large number of records

5.7: Providing records to CAP

The following guidelines are required in providing records to CAP in response to an access request.

1. **No original records** – The original record is the City's official record that the City must maintain for business continuity and evidentiary reasons. Because records can become lost, it is the information management policy of the City that CAP only deal with copies of the original records. There may also be times when a program area needs the particular record being requested because there is ongoing work associated with the file. Having to provide CAP with a copy of the records ensures that other City business can continue while CAP responds to access requests. Finally, where an original record is required in an investigation or legal proceeding, the City will be held responsible for the integrity of the evidence it produces.
2. **Paper Size** – MFIPPA has prescribed fees for copies of records. CAP provides a copy of the records to the requester according to the 8 ½ X 11 letter size prescribed size. In order to facilitate this, CAP requires records be provided on standard size paper.

Access Request Co-ordination Procedures

3. **Single-sided copies** – During the access review process, there may be portions of the record(s) which may need to be removed (severed) from the copy to be provided to the requester. Each page of the record(s) to be severed has to be individually scanned by CAP, in order to do so. In addition, any applicable fees to be charged for copies of records are calculated per page. For the sake of clarity, each page provided to CAP should only contain information on one side.
4. **Fastening of Records** – During the access review process, each page of the records must be numbered and reviewed individually. All staples must be removed prior to this step taking place. The use of staples, therefore adds an extra step to the review process by having to remove them. Records can be fastened with paper clips to ensure that no records are misplaced.
5. **Removal of Information** – When CAP reviews records in response to an access request, it is at this stage that any information which the requester is not entitled to will be removed from the record. CAP needs to have a clean, unaltered copy of the record in order to effectively make access decisions regarding the record(s). In addition, in the event of an appeal of the access decision, the IPC procedures mandate that both a copy of the severed records and a copy of the unsevered (clean copy) records be provided.
6. **Legibility** – In order for CAP to properly review record(s), they must be able to read it. Therefore, the clearer, more legible a record is, the better the likelihood of an accurate access decision being made. The requester must be able to read the record when access is provided. When a record is not legible, CAP may require the program area to provide a clearer copy or, in the case of a handwritten document, transcribe the record.
7. **Attach original e-mail request from CAP** – CAP processes more than 3, 000 requests per year on average. Each request is assigned an access request number (e.g. # 06-0010) to facilitate easy reference to individual requests. Attaching a copy of CAP's original e-mail request ensures that CAP is able to identify which request specific records pertain to.

5.8: Severing records and applying exemptions

MFIPPA requires that the City must disclose as much of the requested record as can reasonably be severed, without disclosing the information that falls under one of the exemptions. Severing is the process of “blacking out” information that is considered confidential and exempt from disclosure.

To assist the City Clerk in determining whether a record is exempt from access or outside the scope of MFIPPA, CAP will apply exemptions and sever records after considering the recommendations of the division staff.

Only CAP will sever records responsive to a formal MFIPPA request. Severances are decisions on disclosure, and the City Clerk is the only decision-maker at the City who has the authority to make decisions on disclosure under MFIPPA and PHIPA.

Access Request Co-ordination Procedures

5.9: Preparing recommendations on access

To determine if exemptions to the right of access apply, CAP and the City Clerk need to understand the division's reasons for seeking to withhold access to records. Consequently, division staff must provide to CAP background information about the particular records, reasons why the City should withhold any information and copies of the responsive records. Background information will assist CAP in determining which exemptions it can apply to severed records. This information will also assist CAP in explaining to the requester why the City has severed the record in the City Clerk's decision letter.

Division staff should provide reasons for exempting all or part of a record from access in writing to CAP to document the input from divisions and help the City respond to any appeals of an access decision that a requester may submit to the IPC.

The ALO should prepare and provide CAP with recommendations on access to records. When the City refuses access to a record or only partially grants access in the case of a severed record, MFIPPA requires the City Clerk to provide the requester with a decision letter that:

- explains the basis for the decision
- describes clearly to the requester the records responding to the request and specifically refer to the exemption(s) that the City has applied to justify a refusal to provide access
- where necessary, includes a detailed index of records that describes the contents and subject matter of the records
- notifies the requester when City staff members have determined that the record that the requester seeks does not exist
- states that the requester may appeal the decision to the IPC

CAP reviews responsive records and the division's recommendation about access and prepares a recommended decision for the City Clerk. If the PMC believes that an explanation of the records is required, the PMC may prepare a brief explanation under his or her signature. The explanation may be included with the decision letter or sent separately by the PMC.

5.10: Special interest group requests

These procedures relate to requests from special interest groups and individuals who make requests in the form of questions.

If a request is received in the form of questions, CAP will notify the requester that the right of access to information does not include the right to require a government institution to provide an answer to a specific question, but only to a right of access to an existing document on which information has been recorded, that the list of questions will not be processed as a MFIPPA request, refunding the \$5 fee. CAP will forward the letter to the appropriate PMC for response.

If a request is received for records that do not appear, on examination during intake of the request, to be subject to an exemption, CAP will advise the PMC that this should be handled outside of MFIPPA with an informal response from their area; forward the letter to the PMC for response; notify the requester that this will be responded to by the PMC outside of MFIPPA, and refund the \$5 fee.

Access Request Co-ordination Procedures

If a request is received for records that do appear to be subject to an exemption, CAP will process the request formally. If a request is for multiple records or applies to various program areas, CAP will split the request and require separate application fees.

If the request is for records that the ALO advises do not exist, CAP will notify the requester that the records do not exist, institutions are not obliged to create a record in response to a request, and a requester's right under the Act is to information contained in a record existing at the time of the request. CAP will provide a fee estimate for the creation of a record.

Responses to questions or requests for records that are outside of a formal request, in terms of both timeline and level of detail, are the responsibility of the division's PMC, who is accountable to the DCM and the City Manager. CAP is not responsible for following up on such responses as they are outside of MFIPPA. There is no legal obligation for the City to provide detailed responses to questions from members of the public.

Appeals to the Information and Privacy Commissioner (IPC)

6. Appeals to the Information and Privacy Commissioner (IPC)

6.1: Appeal powers of the IPC

MFIPPA establishes the right of a requester to appeal decisions that the City makes about access to records. The requester files appeals with the IPC.

A requester may appeal to the IPC the City Clerk's response to access requests. The IPC decides matters under appeal by issuing an order. Subject to MFIPPA, the order may contain any conditions the IPC considers appropriate. IPC orders are binding on all parties to the appeal. The IPC must notify the appellant, the City and any person given notice of the appeal as an affected person that the IPC has issued an order by sending a copy of the order to all parties.

The IPC's broad order-making power includes the right to order the City to search its files in the presence of IPC staff, if the IPC deems the original search was inadequate. However, the IPC does not have the power to order the City to create a record, unless a requester is seeking certain machine-readable records. The IPC may also issue an interim decision and may defer a decision until further submissions are provided. Failing to comply with an order of the IPC is an offence.

Under MFIPPA, most of the exemptions that allow the City to withhold a record are discretionary, which means that the City can choose whether to apply the exemption and withhold the record. While the IPC cannot substitute its discretion for that of the City, the IPC may review the way the head exercised discretion, to make sure that the City exercised discretion properly.

The IPC may examine the record to determine whether a discretionary exemption in fact applies. The IPC will expect the City to fully explain its reasons for not disclosing a record in its appeal submissions. If the rationale for the City's decision is not clear, the IPC may order the City to reconsider its decision to withhold a record and supply further written submissions.

Any person who wilfully obstructs the IPC in the performance of its functions, makes a false statement to mislead the IPC, or fails to comply with an order of the IPC, is guilty of an offence, and on conviction, is liable to a fine of up to \$5,000.

6.2: Appeal process

What can be appealed?

Generally, a requester may appeal to the IPC any decision that the City makes under MFIPPA, including:

- Deciding to extend the time limit for responding to a request;
- Refusing to grant access to a record on the ground that the record does not exist;
- Refusing to grant access to a record on the ground that the record is excluded from MFIPPA;
- Refusing to grant access to a record on the ground that the record is exempt;
- Granting access to only part of the record;
- Granting a request for access to a record or part that may contain third-party commercial information or that contains personal information where the disclosure may be an unjustified invasion of personal privacy;
- Refusing to confirm or deny the existence of a record that deals with law enforcement or

Appeals to the Information and Privacy Commissioner (IPC)

would, if disclosed, be an unjustified invasion of personal privacy;

- A deemed refusal to grant access to records;
- Refusing to make a correction to personal information requested;
- The amount of a fee charged;
- Refusing to waive a fee charged;
- Refusing to allow a requester to examine the original record.

Who can appeal?

The following persons can appeal to the IPC:

- A person who has requested access to a record
- A person who has requested access to his or her own personal information
- A person who has requested correction of his or her own personal information
- An affected third party who has received a notice that the City intends to disclose a record that may affect the interests of the third party.

Notice of appeal

A requester whom the City has notified of a decision has 30 calendar days to appeal the decision to the IPC. The IPC may, nonetheless, hear an appeal that a requester filed after the 30-day time limit, unless the City can show that the delay would prejudiced it. For example, prejudice may be established where records that are relevant to the appeal have been destroyed.

The appellant (the person who is appealing) begins an appeal by submitting a request for an appeal (notice of appeal) in writing to the IPC. Appellants do not have to use a prescribed form and generally do not understand the appeal process. As a result, appeal requests often do not contain enough information for the IPC to understand what is being appealed. The City should therefore include a paragraph in its decision letters informing a requester or third party that he / she can appeal the decision to the IPC within 30 days, and that they should accompany their notice of appeal with:

- The file number that the City assigned to the request;
- A copy of the decision letter; and
- A copy of the original request for information.

If an appellant is appealing a decision by the City that the requested records do not exist, the IPC may dismiss the appeal if the notice of appeal that the appellant submits does not present a reasonable basis for concluding that the record ought to exist.

Confirmation of appeal by the IPC

The IPC notifies CAP that a requester has filed an appeal by sending out a “confirmation of appeal” letter. It advises of the name of the requester, the IPC’s appeal number and the name of the mediator assigned to the case. It also advises CAP to notify the IPC if the responsive records are voluminous (500 pages or more and three exemptions or more).

The confirmation of appeal also asks the City to provide the following information within eight working days where applicable:

- A copy of the original request and its file number;
- A copy of the head’s decision letter;

Appeals to the Information and Privacy Commissioner (IPC)

- Any correspondence related to the request or the decision-making process;
- An index of the records under appeal and the exemptions applied to the records (the index may be shared with the appellant, so make sure that no exempt information appears in the index);
- A severed copy of the records under appeal if the City has made severances;
- An unsevered copy of the records.

The IPC further notifies the City that, if it wants to claim any discretionary exemptions in addition to those appearing in its decision letter, it must do so within 35 days.

Duty to provide records to the IPC

The City must provide the IPC with the records relevant to an appeal. The IPC may grant a time extension if the City can demonstrate that it is not feasible to provide the records within the assigned time.

If the City fails to provide the records within the required period, the IPC may issue an order requiring the City to produce the records. Failing to provide the records to the IPC may result in a prosecution for willfully obstructing the IPC.

The IPC may also require the City to prepare an affidavit describing the measures it took to search for a record, if the City claims that requested records do not exist. The IPC may require division staff to attend an oral inquiry on the adequacy of the City's search for records.

The IPC is entitled to examine any record under appeal even if it is highly sensitive or confidential. When arranging to transfer sensitive records to the IPC, the City should consider the nature of the record and options for securely delivering the records to the IPC. For example, the City may use courier companies that have bonded employees and secure transport and storage. Alternatively, an employee of the City may deliver the records to the IPC.

6.3: Mediation

The IPC may assign a mediator to investigate the circumstances of any appeal and to try to settle the matter under appeal. The mediator will review the relevant records or circumstances under appeal and verify the City's position. Acting as a go-between, he or she will also try to settle the appeal or simplify the issues, based on discussions with the appellant and the City. In a mediated settlement all parties reach an agreement about the matter under appeal.

The IPC will attempt to settle the issues at appeal before resorting to an order. The general time period allotted for mediation is two months. This time period may be shorter if the parties apparently will not reach an agreement. The appeal will then proceed to an inquiry.

6.4: Inquiry

Notice of inquiry and the Mediator's report

Where mediation is unsuccessful, an adjudicator may conduct an inquiry to review the City Clerk's decision. At this stage, the appellant and the City receive a "notice of inquiry" (NOI) letter from the IPC. The notice informs the parties to an appeal that they are entitled to make

Appeals to the Information and Privacy Commissioner (IPC)

representations. The NOI states the facts of the appeal and poses questions to the parties relating to the provisions of MFIPPA that are relevant to the issues under appeal. The City is expected to respond to the NOI by submitting representations within three weeks of the date of the notice of inquiry letter unless an extension is granted.

Considering additional exemptions and facts during the inquiry process

The IPC may allow the City to claim additional exemptions or to raise additional reasons for an exemption at the inquiry stage than it claimed originally at the request stage.

The City may only claim additional **discretionary** exemptions within 35 days after the appeal has been opened. If the City raises discretionary exemptions after the 35 days, the IPC is not obliged to consider the exemptions, although it may do so in unique circumstances. The City must send a new decision letter setting out the additional exemption within the 35-day period so that the appellant is given an opportunity to comment on the applicability of the new exemption claim. The initial notice sent out by the IPC will specify the deadline for claiming any new discretionary exemptions.

On occasion, the parties ought to submit further representations. This may occur where the IPC has, in the interim, issued an order relevant to the appeal. In these situations, the IPC may advise the parties that such an order has been issued, and allow for supplementary representations.

Burden of proof

The party claiming that a record is exempt from access has the burden of proving that the exemption applies. If the City Clerk denies access to a record or part of a record, she must establish on appeal that all or part of a record falls within an exemption under MFIPPA. If a third party who may be affected by the disclosure of a record does not want the record to be released, the third party must show why the record should not be disclosed.

If an appellant argues that there is a “compelling public interest” to disclose an otherwise exempt record, the burden of proof lies on the appellant. The burden is not absolute, however. Where the appellant is not familiar with the content of the records, the IPC will review them to determine whether the provision applies.

Written or oral submissions

The IPC must conduct an inquiry in a manner that protects the confidentiality of the records pending the IPC’s decision. Therefore, the normal rules governing the rights of parties who appear before tribunals do not apply. These include, for example, the right to a public hearing and the right to cross-examine witnesses.

The IPC’s general practice is to conduct inquiries through written submissions. It may require the City to make certain submissions by affidavit. Any party to the appeal may request an opportunity to make oral submissions, and the IPC may hold an oral hearing if the IPC believes that it would help explore the issues.

If the IPC holds an oral hearing, the IPC has the power to summon and examine witnesses under oath. Anything said or any document or thing produced during an inquiry, whether oral or written, is privileged to the same extent as it would be before a court. For example, testimony

Appeals to the Information and Privacy Commissioner (IPC)

provided during a hearing may not be used in other proceedings, except in cases of a prosecution for perjury.

IPC order

After receiving submissions from the interested parties, the IPC will issue a binding order that is not subject to appeal. An order may conclude with a statement requiring the City to disclose the records to which the order refers within 35 days following the date of the order and not earlier than the 30th day following the date of the order. If the order does not affect third parties, it will usually conclude with a statement requiring the City to disclose the records within 15 days of the date of the order.

Reconsideration of IPC orders

MFIPPA contains no express statutory provision that permits the IPC to reconsider an order. A reconsideration of an order is not an appeal of the order on its merits. A decision-maker may reconsider a decision in exceptional circumstances where it is established that:

- (a) There is a fundamental defect in the adjudication process;
- (b) There is some other jurisdictional defect in the decision; or
- (c) There is a clerical error, accidental error or omission or other similar error in the decision.

The IPC will not reconsider an order simply on the basis that new evidence is provided, whether or not that evidence was obtainable at the time of the inquiry. The City Clerk decides whether to ask the IPC to reconsider an order.

A request for reconsideration does not stay (suspend) the date of compliance for an order. The City must still comply with the terms of an order unless the IPC directs otherwise. A request for reconsideration with the IPC registrar of appeals should be filed within 21 days of the order date. This will allow the IPC's decision-maker to be in a position to make a determination on the request before the date for compliance of the order.

Judicial review

A party to an appeal may bring applications for judicial review before divisional court where he or she alleges that the IPC's decision was patently unreasonable or otherwise outside the IPC's jurisdiction. The order issued by the IPC advises the party against whom the order is made of the right to apply for judicial review and gives him or her 30 days to make the application. When the party makes no application for judicial review within that period, the party must comply with the order. The City Clerk decides whether to seek judicial review of an IPC order.

Protection of Individual Privacy

7. Protection of Individual Privacy

7.1: Introduction

MFIPPA requires that the City implement basic standards for protecting personal information in its possession. The privacy provisions of the legislation require institutions to use appropriate practices and procedures for collecting, storing, using, disclosing and disposing of personal information.

MFIPPA gives the IPC the authority to offer comments on the privacy protection implications of proposed City programs. The IPC is also authorized to order the City to:

- cease a personal information collection practice that contravenes MFIPPA, and
- destroy a collection of personal information that contravenes MFIPPA.

7.2: Collection of personal information

The City, or employees or consultants acting on the City's behalf, may only collect personal information that they are authorized to collect. This authority can be one of the following:

- collection of the information is expressly authorized by provincial or federal legislation
- the information is used for the purposes of law enforcement, or
- the information is necessary to the proper administration of a lawfully authorized activity

The City can only collect personal information directly from the individual to whom it relates, except in limited circumstances. Examples of these include:

- where the individual authorizes another method of collection
- the personal information may be disclosed to the City by another government
- where the IPC has authorized the City to collect the information indirectly from another person
- the information is collected for the purpose of law enforcement
- where other legislation provides for a different method of collection

When collecting personal information, the City must provide the individual with a notice of collection statement that contains:

- the City's legal authority to collect the information
- the principal purposes for which the information is intended to be used, and
- the title, business address and telephone number of an employee who can answer questions about the collection (i.e., why it is being collected, how it will be used)

Notice of collection statements are prepared by CAP and placed on City forms and web pages that collect personal information, based on a review of the form or web pages and a questionnaire submitted by the division that is collecting the information.

7.3: Retention of personal information

Personal information that has been used by the City must be retained for one year after it is used, unless another retention period has been provided in the City's retention by-law, or the individual

Protection of Individual Privacy

has consented to its earlier disposal. The purpose of this retention period is to ensure that individuals have a reasonable opportunity to obtain access to their personal information. The information must be disposed of through confidential shredding.

7.4: Use of personal information

The City is required to take reasonable steps to ensure that personal information in its records is not used unless it is accurate and up to date. The City must create a record of any use of personal information that is different from how the information is used on a regular basis. This record must be attached or linked to the personal information that has been used.

The City is only allowed to use personal information:

- if the individual has consented to the particular information being used
- for the purpose for which it was obtained or compiled
- for a consistent purpose, i.e. the individual might reasonably expect the use, or
- for the purpose for which the information was disclosed to the City by another government

7.5: Disclosure of personal information

The City is only allowed to disclose personal information in the following circumstances:

- to comply with a MFIPPA request
- if the individual has consented to its disclosure to another person
- for the purpose for which it was obtained or compiled
- for a consistent purpose, i.e. the individual might reasonably expect the disclosure
- disclosure is made to a City employee who needs the record in the performance of duties, where necessary and proper in carrying out City functions
- to comply with federal or provincial legislation
- to a law enforcement agency in Canada (e.g. the police), to aid an investigation
- in compelling circumstances affecting personal health or safety
- in compassionate circumstances, to contact next of kin or friend of an injured, ill or deceased person
- to a provincial or federal government department for auditing of cost-shared programs

The City must create a record of any disclosure of personal information to persons other than those to whom the information is disclosed on a regular basis. This record must be attached or linked to the personal information that has been disclosed.

Any person who wilfully discloses personal information, or maintains a personal information bank, in contravention of MFIPPA, is guilty of an offence, and on conviction, is liable to a fine of up to \$5,000.

7.6: Protection of Personal Health Information

Under PHIPA, there are a number of requirements to protect personal health information. These requirements are applicable to divisions designated as health information custodians (HIC) under PHIPA. These divisions are:

Protection of Individual Privacy

- Emergency Medical Services
- Homes for the Aged
- Human Resources: employee medical clinic
- Shelter Housing and Support: hostels
- Toronto Public Health

Security, Storage, Retention and Disposal

Each HIC must take steps to ensure that personal health information is protected against theft, loss, and unauthorized use, disclosure, copying, modification or disposal. The HIC must notify the individual at the first reasonable opportunity if the information is stolen, lost, or accessed by unauthorized persons.

Each HIC must ensure that personal health information is retained, transferred and disposed of in a secure manner. Where the personal health information is the subject of an access request, the HIC must retain the information for as long as necessary to allow the individual to exhaust any recourse with respect to the request.

Restrictions on Collection, Use and Disclosure

Each HIC must publish a written statement of its information practices. If the HIC uses or discloses personal health information, without the individual's consent, in a manner that is outside the scope of its information practices statement:

- the individual must be notified at the first reasonable opportunity
- a notation of the use or disclosure must be kept with the individual's personal health information records

Personal health information must not be collected, used or disclosed except:

- with the individual's consent, and the collection, use or disclosure is necessary for a lawful purpose; or
- as permitted by PHIPA

Unless required by law, a HIC must not collect, use or disclose personal health information if other information will serve the purpose. A HIC must not collect, use or disclose more personal health information than is reasonably necessary. Personal health information must be collected directly from the individual, except in specific circumstances allowed by PHIPA. There are also detailed restrictions on the use of personal health information.

Disclosure of personal health information, without the individual's consent, is permitted in the following situations:

- to process payments through government programs such as OHIP
- to report certain information, such as a health condition that makes the individual unfit to drive or to report certain diseases to public health authorities
- to report suspected abuse
- to identify a person who has died
- to assist the spouse or child of the deceased in making decisions about their own care
- to reduce a significant risk of serious bodily harm to a person or the public
- to give information to certain registries or planning bodies that use personal health

Protection of Individual Privacy

information to improve health care services or health system management

- to assist health researchers for research
- to improve or maintain the quality of care or any related program or service
- for risk management and legal purposes
- to allocate resources to programs or services
- to assess a person's ability to make health care or other important decisions
- to administer or enforce laws about the practices of health care providers
- for the purpose of a legal proceeding, complying with a court order, or other legal requirement

Any individual who wilfully collects, uses, discloses or disposes of personal health information, in contravention of PHIPA, obstructs the IPC in the performance of its functions, makes a false statement to the IPC, fails to comply with an order of the IPC, or disciplines any person for disclosing a contravention to the IPC or refusing to do anything that contravenes PHIPA, is guilty of an offence, and on conviction, is liable to a fine of up to \$50,000. A corporation who contravenes these provisions of PHIPA is liable to a fine of up to \$250,000.

7.7: Privacy investigations

Individuals may complain to the IPC when they believe that the City has improperly collected, used, disclosed, retained or disposed of their personal information. The IPC is responsible for reviewing possible breaches of the privacy provisions of the legislation. Sometimes the complaint is resolved informally through a resolution that is mutually satisfactory to the complainant and the City. An example of the mediation available at every step of the process may be simply to explain the procedure or why the City used the information in the way that it did. In these cases, the IPC may confirm the resolution by writing a letter to the City rather than publishing a formal investigation report. If the complaint is not resolved in this way, a formal investigation proceeds.

There are five steps in the privacy investigation process:

1. Notice and request for information

A letter from the IPC notifies CAP that they have received a complaint. The letter requests information relating to the City's position on the matter. It also can include specific questions about issues, such as the authority to collect, use or disclose the complainant's personal information.

2. The investigation

The IPC informs the City that it will make every effort to mediate and settle the complaint. It may require copies of relevant documents. Sometimes the investigation requires the investigator to personally visit the City and/or meet with key division staff.

3. Draft report

If mediation is unsuccessful and the issues are straightforward or routine, the IPC may conclude the matter with a letter. In other cases the matter will go to a draft and final report. Where the City has breached MFIPPA, the report will include recommendations to prevent future breaches. The IPC will ask the City and complainant to comment on errors or omissions in the draft report.

4. Final report

The IPC provides the City and complainant with a final investigation report. Where the IPC has made recommendations, it requests evidence that the City has implemented its

Protection of Individual Privacy

recommendations within six months. Evidence can be in the form of a letter and supporting documentation, such as a copy of a new policy or notice form.

5. Follow-up

If the IPC does not receive evidence that the City has implemented the recommendations within the six month period, the IPC contacts the City to find out if it has implemented the recommendations, and if not, why not.

Routine Disclosure

8. Routine Disclosure

8.1: Overview

A major challenge for all governments is meeting the public's growing need for information in a cost effective fashion. To satisfy this demand and foster open government, the IPC encourages the routine disclosure of information.

The IPC has specifically advised the City by order that citizens cannot participate meaningfully in the democratic process, and hold politicians and bureaucrats accountable, unless they have access to information held by the government, subject only to necessary exemptions that are limited and specific.

Routine disclosure occurs when:

- a request for a general record can be granted routinely either inside or outside of the formal access process prescribed by MFIPPA, or
- information or records are periodically released (without any request) pursuant to a specific strategy for release of information

There are numerous advantages to routine disclosure. Not only will the public be better-served and better-informed, but routine disclosure will be cost effective for the City as well. Processing requests and appeals within the confines of MFIPPA is more expensive and time consuming than having predictable access to pre-identified categories of records.

In the long run, routine disclosure can be labour saving. Classifying records as subject to routine disclosure and ensuring that front line staff are aware of these classifications will make it easier for staff to provide information to the public in an efficient manner.

The establishment of routine disclosure practices can be an important part of the City's commitment to an open exchange of information with the public that it serves. City divisions are encouraged to be proactive in establishing practices that foster routine disclosure. In the process of determining these practices, the following principles should be incorporated:

1. In the spirit of MFIPPA, unless there is a statutory requirement or reason not to release the documentation, routine disclosure of general records should become the norm.
2. Good customer service should always be of primary importance whether requests for information are made formally or informally. The actual needs of the customer should be addressed to the extent possible. Anticipating the needs of the customer and making the information available in advance of a request is the ultimate objective for which City divisions should aim.

Although routine disclosure is not specifically mandated by statute in Ontario, MFIPPA makes provision for the disclosure of information outside the formal access process — for example, through oral requests or in the absence of requests.

Routine Disclosure

8.2: Responsibility for routine disclosure

PMC's are responsible for ensuring appropriate routine disclosure practices are developed and implemented in their divisions. CAP is responsible for providing guidance and research to assist PMC's in developing division practices, and for promoting routine disclosure concepts to City divisions.

8.3: Guidelines for City divisions

The following practices are intended as tools which can help divisions determine which records could be classified as subject to routine disclosure.

As required by MFIPPA, the City has developed a directory of records identifying the various types of records maintained by each division. The directory of records represents a good starting position to implement routine disclosure.

Initially, classifying general records as subject to routine disclosure will require time on the part of division staff. A well-organized classification system will, however, help divisions when responding to customer needs.

When reviewing your records, look for trends in your requests. For example, a matter continually subject to public debate that would result in a number of requests may constitute a trend. Use these trends to help you identify other record categories that could be subject to routine disclosure. As trends develop, you will find that the process of classifying records will become easier. Each of these practices should also assist divisions to process access requests in a more cost effective fashion.

To determine which types of general records are good candidates for routine disclosure, the following practices should be considered:

1. If disclosure is mandated by another piece of legislation, the record is to be released. City divisions should refer to their own enabling legislation as well. For example, the *Assessment Act* requires that the assessment roll be made available for examination by the public.
2. Once a division has identified records which are subject to routine disclosure, the authority to disclose these documents should be delegated, to the extent possible, to front line staff within the division.
3. A list of division records subject to routine disclosure can be created and distributed to divisional front line staff. This list can then be used as a reference source. When dealing with the public, staff can refer to the list to immediately determine whether the records sought are ones which could be subject to routine disclosure.

Routine Disclosure

4. When a list of records is prepared, front line staff can also provide feedback on the list by evaluating how useful it is and provide suggestions on how to improve it. Divisions can then add records to the list and update the directory of records.
5. Any class of record which is released regularly, without exemption, should be reviewed to determine whether it should be subject to routine disclosure.
6. All newly created records should be evaluated to determine if there might be public benefit/interest in routine disclosure.
7. Where possible, standard records should be modified by removing segments that would be subject to mandatory exemptions thereby making the records subject to routine disclosure.
8. If a record contains both general information and personal information, but the main purpose of the record is to provide general information, review the record to determine if the personal information in the record can either be removed or moved to a separate page. If the information is removed and the record is then modified, parts of the record could then become subject to routine disclosure.
9. Where a division decides that a record is not subject to routine disclosure, the division should consider whether parts of the record could be subject to routine disclosure.
10. Records that are to be subject to routine disclosure should be determined by the nature of the record and not by the identity of the requester or the use to which the record will be put.
11. The list of records which are subject to routine disclosure should be reviewed on an annual basis to ensure the list is accurate and up-to-date.
12. Apply routine disclosure principles to make the process of providing access to an individual's personal information a more routine and less time-consuming process, always bearing in mind the need to protect the privacy of other individuals. For example, ensuring to the extent possible that records compiled in an individual's client file contain only that individual's personal information would make giving access to the individual a routine matter.

Routine Disclosure

8.4: Legal requirements for routine disclosure in other legislation

The following table provides example of legislation that require routine disclosure of City records.

Legal Authority	Records subject to Routine Disclosure
Municipal Act, s. 158	<p>Business Licensing List</p> <ul style="list-style-type: none"> • the classes of business subject to business licensing • the amount of each business licensing fee to be charged • the cost of administering and enforcing the business licensing by-law with respect to each class of business • how the amount of the business licensing fee is calculated • the classes of business subject to business registration
Municipal Act, s. 253	<p>Records of the Clerk</p> <ul style="list-style-type: none"> • by-laws and resolutions of the City and its local boards • minutes and proceedings of regular, special or committee meetings of Council or a local board, whether the minutes and proceedings have been adopted or not • records considered at a meeting, except records considered during that part of a meeting closed to the public • the records of Council • statements of remuneration and expenses of elected officials
Municipal Act, s. 268	<p>Property Register Public register listing and describing the land owned or leased by the City or local boards</p>
Municipal Act, s. 295	<p>Financial Statements Audited financial statements, the notes to the financial statements, the auditor's report and the tax rate information for the current and previous year as contained in the financial review</p>
Municipal Act, s. 299	<p>Efficiency & Effectiveness Information Information designated by the Province which relates to the efficiency and effectiveness of the City's operations</p>
Municipal Act, s. 300	<p>Service Improvements Annual notice to the public of,</p> <ul style="list-style-type: none"> • improvements in the efficiency and effectiveness of the delivery of services by the City and its local boards • barriers identified by the City and its local boards to achieving improvements in efficiency and effectiveness
Municipal Act, s. 331	<p>Property Tax Information List of the comparable properties and the determination made with respect to that eligible property (provided to property owner)</p>
Municipal Act, s. 352	<p>Tax Statements Itemized statement of amounts owing for taxes on any separately assessed rateable property</p>

Routine Disclosure

Legal Authority	Records subject to Routine Disclosure
Municipal Act, s. 374	<p>Tax Arrears Certificates</p> <ul style="list-style-type: none"> • Notice of the registration of the tax arrears certificate (provided to owner and interested parties) • Statutory declaration stating the names and addresses of the persons to whom notice was sent
Municipal Act, s. 378	<p>Property Tax Extension Agreements</p> <p>Extension agreements with the owner of the land, the spouse of the owner, a mortgagee or a tenant in occupation of the land extending the period of time in which the cancellation price is to be paid</p>
Municipal Act, s. 379	<p>Notice of Tax Sale</p> <p>Statutory declaration stating names, addresses of persons to whom final notice that land will be advertised for public sale was sent</p>
Municipal Act, s. 392	<p>Service Fees List</p> <p>A list indicating which City services, activities and use of properties are subject to fees or charges and the amount of each fee or charge</p>
Municipal Act, Reg. 119/03, s. 22	<p>Local Improvement Roll</p> <p>Local improvement roll and statement of cost of the work</p>
Assessment Act, s. 39	<p>Assessment Roll</p> <p>Description of land, names of persons liable to assessment, amount assessable against each person, names of tenant supporters of a school board, number of acres, current value, amount of taxable land, value of land exempt from taxation, classification, religion (if Roman Catholic), type of school board the person supports, corporations designated as ratepayers</p>
Emergency Management Act, s. 10	<p>Emergency Plans</p> <p>Provision of necessary services during an emergency, procedures and manner of responding to the emergency</p>
Municipal Elections Act, s. 88	<p>Election Records</p> <p>Documents filed with or prepared by the Clerk for an election</p>
Planning Act, s. 20	<p>Official Plan</p> <p>Goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the City or part of it</p>
Planning Act, s. 44	<p>Committee of Adjustment Records</p> <p>Minutes and records of all applications and decisions and of all other official business of the committee</p>
Line Fences Act, s. 31	<p>Fence Viewer's Awards</p> <p>Awards, certificates, decisions, notices or other documents resulting from proceedings initiated under the Line Fences Act</p>
Ontario Heritage Act, s. 27	<p>Heritage Properties Register</p> <p>Legal description, name and address of the owner, statement explaining the cultural heritage value or interest, description of the heritage attributes</p>