



STAFF REPORT INFORMATION ONLY

Confidentiality of Legal Actions taken by Municipal Licensing and Standards Staff

To report on the disclosure of information related to inspection and enforcement activities.

Date:	May 25, 2007
To:	Licensing and Standards Committee
From:	Executive Director
Wards:	All
Reference Number:	5116

SUMMARY

The collection, maintenance, use and disclosure of records are governed by the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA/the Act).

However, the sharing of information is not only an MFIPPA issue. City staff engaged in law enforcement investigations are provincial offences officers. Requests for and disclosure of enforcement information should not infringe their independence and discretion as it relates to investigations and potential legal actions.

Generally, the public is entitled to any information that will not compromise the Municipal Licensing and Standards Division (ML&S) investigation and when disclosure is not prohibited under MFIPPA .

A large number of records maintained by the ML&S, that do not contain confidential information, are publicly available and should be available to the public whether it is routinely disclosed, actively disseminated or otherwise. This includes information and documentation such as inquiries to confirm the license status of a business, general inquiries on regulations, standards related to by-laws and materials presented to Committee and stakeholders. Additionally, Notices or Orders to Comply and information on the status of legal actions may be released to the public, provided that the information is duly reviewed to ensure compliance with MFIPPA.

Routine disclosure of information is the preferred method of granting access to information held by ML&S; however, there are potential risks to the City if the MFIPPA is not applied when disclosing information in the custody or under the control of the ML&S. Some of the risks include the potential compromise of an investigation and disclosing personal information in violation of the *MFIPPA*.

ML&S is in the process of finalizing a routine disclosure plan.

This report was prepared in consultation with Legal Services and Corporate Access and Privacy (CAP) Office.

FINANCIAL IMPACT

This report will have **no** financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of May 4, 2007, the Licensing and Standards Committee received a letter from Councillor Jenkins asking the Committee to request a report to the Licensing and Standards Committee on the policy of maintaining the confidentiality of legal actions initiated by Municipal Licensing and Standards Division (ML&S) staff.

The Licensing and Standards Committee requested that the Executive Director, ML&S, in consultation with Legal Services and Corporate Access and Privacy staff, report to the next meeting of the Licensing and Standards Committee on the policy of maintaining the confidentiality of legal actions initiated by ML&S staff and recommendations with respect to the policy of not disclosing enforcement actions before the courts regarding zoning and/or property standards matters.

COMMENTS

Overview of the Municipal Freedom of Information and Protection of Privacy Act

The MFIPPA has two main purposes: 1) to create a right of access for the public to information in the custody or control of the City subject to certain exemptions; and, 2) to protect the privacy of individuals by restricting the collection, use and disclosure of personal information by the City. Accordingly, while persons have the right of access to information in the City's custody or control (subject to certain exceptions set out in the legislation), MFIPPA also limits what personal information the City can disclose.

Part I of the MFIPPA sets out the access to information provisions. Under Part I, any person (whether an individual or an organization) may submit a request for information contained in a record – but all such formal requests that are submitted must be clear, in writing and accompanied by a \$5.00 application fee.

In accordance with Part II of the Act, personal information is treated very differently than general information under Part I. Part II establishes a comprehensive privacy scheme for personal information that regulates the routine, day-to-day collection, use, disclosure and retention of personal information by City staff – whether or not an access request for personal information is received.

Nothing in MFIPPA prevents the City divisions from developing routine disclosure policies for those general records that are not subject to mandatory exemption from the right of access to information or whose disclosure does not conflict with the City's legal obligations in general.

Routine Disclosure

As noted above, Part I of the MFIPPA establishes a right of access by the public to certain information in the custody or control of the City when requested under the Act, subject to certain exceptions. However, a significant portion, if not a majority, of the City's records are not confidential and individual members of the public need not make formal requests for access to such records.

Routine disclosure usually involves an identified class or series of records maintained by a division. However, it would not be uncommon for the public to contact a division directly to request specific information that has not been previously evaluated for routine disclosure.

In these circumstances the CAP Office encourages staff to provide informal access to the information – that is access in the absence of a formal MFIPPA request. Informal disclosure of information directly by division staff is encouraged in order to avoid delays and cost to requesters in providing access to the information under MFIPPA.

Enforcement Related Information

The Courts have held that police officers are entitled to independence and discretion in carrying out their investigations and other duties as they perform a public service instead of acting in the corporate interest of the City, their duties are derived from law and they act in the interest of the public at large. The same reasoning applies to provincial offences officers, the City staff engaged in law enforcement investigations. Requests for and disclosure of information should not infringe this independence and discretion.

ML&S receives requests for information from individuals through a variety of means, including e-mails, phone calls, or an invitation to a meeting. Responses to these requests are handled on a case by case basis.

Generally, the public is entitled to any information that will not compromise the ML&S investigation and when disclosure of personal information is not prohibited under MFIPPA. This means information and documentation produced at the end of a process

(e.g., a copy of a Notice or Order to Comply, duly reviewed to ensure compliance with MFIPPA, or whether a legal action has been commenced) may be released to the individual or parties who have requested the information.

ML&S is in the process of drafting and finalizing a routine disclosure plan.

CONTACT

Frank Weinstock,
Manager, Policy and Planning Services
Municipal Licensing and Standards
City Hall, East Tower, 12th Floor
100 Queen Street West
Toronto, Ontario M5H 2N2
Tel.: (416) 392-0404 Fax: (416) 392-8805
E-mail: fweinst@toronto.ca

SIGNATURE

Lenna Bardburn
Executive Director
Municipal Licensing and Standards