

Introduction

Recent orders of the Information and Privacy Commissioner of Ontario (see Legislative References section), have clarified that Elected Officials are not employees or officers of the City as defined under *Municipal Freedom of Information and Protection of Privacy Act, 1990* (MFIPPA).

Constituency, political and personal records of Elected Officials are *not* City business records and are not subject to MFIPPA. However, when Elected Officials conduct City business, the records they create are considered City records and subject to MFIPPA legislation. As a result, the City has an obligation to create a separation between constituency, political and personal records of Elected Officials and City business records.

This separation ensures that the City does not exercise custody or control over Elected Officials' records. If the City is deemed to have custody or control over Elected Officials' records, then the City is required to provide public access to these records upon request, in accordance with the requirements of MFIPPA.

Directive Purpose

City Divisions must create a separation between the records of Elected Officials and City staff when implementing business processes, applications or systems that include the records of Elected Officials. Divisions that provide corporate services such as the City Clerk's Office, Information and Technology, Accounting Services, Human Resources and Pension, Payroll and Employee Benefits will be most impacted by this directive.

For the purposes of this directive, Elected Officials include Members of Council and their staff.

Directive Statement

Any business process or system (such as an email system or a payroll web portal) provided to Elected Officials by the City must be designed to:

- Ensure separation and segregation of Elected Officials records from each other, from City staff records and from the records of Accountability Officers.

- System design must:
 - Allow for each individual Elected Official's records to be *segregated* from the records of all other Elected Officials.
 - Allow for the *separation* of City business records from the constituency, personal or political records.

Service Level Agreements or Memorandums of Understanding may need to be developed by City staff to document the Elected Officials' requirements.

Directive Implementation

Ensuring the separation and segregation of Elected Officials' records is not a new requirement for City staff, for example;

- Separate servers were used to maintain the separation of Elected Officials' GroupWise email from each other and City staff.
- Separation of Elected Officials' records in the Unified messaging system was achieved through a third-party agreement with the vendor to keep their information separate from City staff.
- Independent legal counsel is available to Elected Officials if there is an appeal of a Freedom of Information request for their records. This maintains the independence of Elected Officials' information from City staff.

The following questions should be considered when planning to implement a business process or purchase or implement a technology that will include Elected Officials' records:

1. Are there adequate funds budgeted to implement separation requirements?
2. Is separation built into the technology through physical (separate databases for example), logical (design) or other means such as third party agreements?
3. Is this an enterprise financial, human resources or communications system? These systems are most likely to contain records of Elected Officials and City staff and will have a requirement for separation.
4. Some business systems are 'proprietary' and cannot be modified to accommodate business requirements of separation and segregation. When purchasing a new technology examine what options are available to implement separation and segregation of Elected Officials' records as required.

Legislative References

1. Municipal Freedom of Information and Protection of Privacy Act, 1990 (MFIPPA)
2. IPC Orders:
 - Order MO-2807
 - Order MO-2821
 - Order MO-2824
 - Order-MO-2842

Contact

For additional information and assistance, please contact:

Daphne Gaby Donaldson
Executive Director, Corporate Information Management Services
City Clerk's Office
ddonald@toronto.ca (416) 392-9673

Directive Approval

Joseph P. Pennachetti, City Manager

Signature: 
Date: 

Figure 1 Signature of City Manager, Dated December 2013