



Municipal Freedom of Information & Protection of Privacy Act (MFIPPA) Overview

Presentation to Council
February 10, 2015



Presentation Overview

1. MFIPPA Background
2. Purpose of MFIPPA
3. Who does what?
4. Access Exemptions
5. Access Process
6. Right of Access (Individual Councillors/Council)
7. Staff Recommendations



MFIPPA Background

- Local government institutions including the City of Markham have been subject to MFIPPA since **January 1, 1991**
- With minor exceptions, MFIPPA applies to all records in the custody or control of the City, even if they were created prior to the enactment of the legislation
- MFIPPA also applies to information provided to the City by other sources, such as businesses, municipalities, government agencies & individuals



Purpose of MFIPPA

1. To provide a **right of access** to City-held information in accordance with the following principles:
 - Information should be available to the public subject to limited & specific exemptions & exclusions
 - All persons have a right of access to their personal information & to request its correction
 - Decisions on information access may be subject to independent review by the Information & Privacy Commission of Ontario (IPC)



Purpose of MFIPPA

2. To **protect individual privacy** by:

- Requiring the City to handle personal information in accordance with the collection, use, retention, disclosure & disposal rules under MFIPPA
- Providing everyone with a right to complain to the IPC if they feel the City has mishandled their personal information



Who Does What?

- The “Head” of the institution is responsible for MFIPPA decisions
- Markham Council has appointed the City Clerk as the “Head”
- The “Head” is responsible for:
 - Meeting time limits & notification requirements
 - Considering representations from third parties
 - Making decisions about the disclosure of records & responding to requests
 - Determining the method of disclosing records
 - Responding to requests for correction of personal information
 - Defending decisions made under MFIPPA at an appeal
 - Administering the privacy protections of MFIPPA



Access Exemptions

- The right of access applies to an existing record – there is no obligation to create a record
- The right of access to information is subject to limitations & exclusions prescribed by MFIPPA
- 2 exemption types: Mandatory & Discretionary



Mandatory Access Exemptions

- The Head **MUST NOT** release records containing:
 - Personal Information about individuals other than the requester (Section 14)
 - Third Party Information supplied in confidence & its disclosure could prejudice the interests of the third party (Section 10)
 - Relations with other governments if information is supplied in confidence (Section 9)



Discretionary Access Exemptions

- The Head **MAY** choose not to release records relating to:
 - Draft by-laws, minutes of closed meetings
 - Advice & recommendations of staff
 - Law enforcement
 - Economic interest of the City
 - Solicitor-client privilege
 - Danger to a person's health or safety
 - Information about to be published or made publicly available



Discretionary Access Exemptions (Cont'd)

- MFIPPA prescribes a 2-stage process for determining whether a discretionary exemption is to be applied:
 1. The Head must determine whether the facts exist or may exist which bring the record requested within the exemption
 2. The Head must decide whether he/she is willing to release the record despite the existence of grounds for the exemption
- A decision by the Head to disclose information falling within an exemption is an exercise of discretion



Access Process

- Formal MFIPPA requests submitted to Head in writing & must be accompanied by prescribed fee
- Head has 30 days to respond
- Before issuing a response, the Head must undertake the following:
 - ☐ Determine if records exist
 - ☐ Determine if the City has custody & control of the records
 - ☐ Retrieve the records
 - ☐ Determine if third party notifications are required
 - ☐ Determine if exemptions apply
 - ☐ If appropriate, sever exempt material from the records
 - ☐ Determine the final fee for the records



Right of Access - Individual Councillors

- Under MFIPPA, individual Councillors have the same rights of access to City records as a member of the public
- A Councillor does not have greater rights of access to confidential information by virtue of office unless it is required to carry out their official duties
- Councillors may request City information under MFIPPA – the Head will process this in the same manner as public access requests



Right of Access – Individual Councillors (Cont'd)

- Section 2.1 of Markham's Council Code of Conduct states: "In addition to the Council Code of Conduct, Members are required to comply with existing provincial or federal legislation, including but not limited to:
 - *Municipal Act, 2001*
 - *Municipal Conflict of Interest Act*
 - *Municipal Elections Act, 1996*
 - ***Municipal Freedom of Information & Protection of Privacy Act***
 - *Ontario Human Rights Code*
 - *Ontario Occupational Health & Safety Act*
 - *Criminal Code of Canada.*"



Right of Access – Individual Councillors (Cont'd)

- Section 6 of Markham's Council Code of Conduct states: *"MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, financial, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor client privilege."*
- Section 6.1 of Markham's Council Code of Conduct further states: *"Members will not disclose or release any Confidential Information, in either oral or written form, acquired by virtue of their office, except when authorized by Council. Council may not authorize the disclosure of Confidential Information which the City is prohibited from disclosing under MFIPPA."*



Right of Access – City Council

- Municipal Councils cannot circumvent the process set out in MFIPPA by passing a resolution to release documents
- *“One of the purposes of MFIPPA is to ensure access decisions regarding the disclosure of information are reviewed independently of the institution controlling the information. To permit City Council to avoid the application of MFIPPA by directing access to a record rather than requesting it would thwart one of the purposes of the legislation.”**

* Excerpt from a 2010 Superior Court of Justice decision by Madame Justice Corrick involving a request by Toronto City Council for access to personal information held by the City



Recommendations

1. That Markham City Council give deference to the appeal process established in the Municipal Freedom of Information & Protection of Privacy Act & await the decision of the IPC;
2. That Markham City Council continue to comply with the Council Code of Conduct with respect to the disclosure of confidential information;
3. That the Head write to the IPC to urge them to render an expeditious decision with respect to the two outstanding appeals; &
4. That Staff report back when the IPC has rendered a decision.



Building Markham's Future Together
Journey to Excellence

