

## APPENDIX 1 TO BY-LAW #68/08

### MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT (Information and Guidelines)

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#### About MFIPPA

#### ***What is the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)***

The *Municipal Freedom of Information and Protection of Privacy Act* applies to all local government organizations, including municipalities, school boards, public utilities, transit and police commissions, fire departments, conservation authorities, boards of health and other local boards. There are separate Acts that apply specifically to Provincial Ministries, agencies and Federal Government institutions.

**MFIPPA** came into effect January 1, 1991 and required municipal institutions to protect the privacy of an individual's personal information existing in government records. The Act creates a privacy protection scheme, which the government must follow to protect an individual's right to privacy. The scheme includes rules regarding the collection, use, disclosure and disposal of personal information in the custody and control of a municipal institution.

The Act also gave individuals the right to access municipal government information, including most general records and records containing their own personal information, subject to very specific and limited exemptions. As well, the Act provides individuals with the right to request a correction of their personal information, which they believe to be false or inaccurate and/or to attach a statement of disagreement to their records. An individual is also provided with the opportunity to request an independent review from the Information and Privacy Commissioner/Ontario of the decisions made under MFIPPA by the head of an institution.

Each municipal organization is required to appoint a head who is responsible for overseeing the administration of the legislation within the institution and for decisions made under the legislation. At the Township of North Kawartha, the Township Council has delegated the powers and duties of the head to the Reeve, who in turn delegated these responsibilities to the CAO. The CAO may be contacted at:

Township of North Kawartha  
P.O. Box 550  
280 Burleigh Street  
Apsley, ON K0L 1A0  
705-656-4445 Ext.36

The legislation also stipulates that an institution must provide the requester with the information and/or a decision regarding their request within 30 calendar days from the date a complete request is received. On occasion, an institution may ask for an extension, if the request is for an extensive number of records and/or if an outside consultant needs to be contacted.

In keeping with the spirit of the legislation, the Township of North Kawartha is committed to providing individuals with the right of [access to information](#) in its custody and control including most operational records as well as records containing their own [personal information](#), where applicable. This process is called "business as usual" and allows certain records to be disclosed, without

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having to make a formal request under the Act. Only under limited circumstances does the Township require an individual to make a formal MFIPPA request.

You may wish to view or download a complete copy of the [Municipal Freedom of Information and Protection of Privacy Act](#), accessible through The Information and Privacy Commissioner/Ontario's web site.

#### What is "Personal Information"?

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Personal information is defined as recorded information about an identifiable individual, including:

- information relating to race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status;
- information relating to the education or the medical, psychiatric, psychological, criminal or employment history of an individual or information relating to financial transactions in which the individual has been involved;
- any identifying number, symbol or other particular assigned to the individual;
- the address, telephone number, fingerprints, or blood type of the individual;
- the personal opinions or views of the individual except if they relate to another individual;
- correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature and replies to that correspondence that would reveal the contents of the original correspondence;
- the views or opinions of another individual about the individual; and
- the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

#### Access to Information and Privacy

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##### [Information Request Form \(pdf\)](#)

The Municipal Freedom of Information and Protection of Privacy Act provides an individual with the right to access information under the custody and control of an institution, including one's own personal information ([Section I- MFIPPA](#)). There are certain limitations that may exclude records from being accessible: the records may be exempt, confidentiality provisions may apply or the request may be considered frivolous or vexatious.

Individuals wishing to access municipal government records, should begin by contacting the Township of North Kawartha, in order to be linked to the applicable Township department that has the information. The appropriate departmental staff will then determine if the request should be submitted formally under the Act or if the information will be provided under business as usual. It is important to note that the rules governing access and privacy under MFIPPA apply to both formal and informal requests for information.

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#### ROUTINE DISCLOSURE GUIDELINES FOR TOWNSHIP OF NORTH KAWARTHA STAFF

##### Introduction

One of the key principles of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) is that “information should be available to the public.” MFIPPA provides for a right of formal access to records through filing an access request. However, MFIPPA also provides that the Township may establish a routine disclosure program, when there is nothing in the Act to prevent the Township from giving access to information.

Routine disclosure is a cost-effective and customer-friendly way of providing information to the public, directly by program areas, without a formal access request.

The following guideline outlines the main rules in MFIPPA that allow for the routine disclosure of information, either to the public at large, or to individuals to whom it directly relates. Routine disclosure is also a key priority of Township Council.

More details on the routine disclosure process are also available in the Access & Privacy Manual including a list of legislated provisions providing for routine disclosure. (Note: A copy of the manual is available on the following website: <http://www.accessandprivacy.gov.on.ca/english/manual/index.html>)

##### Council Documents

Many Council-related documents are routinely available to the public. Under the Municipal Act, 2006, the Township Clerk must make publicly available:

- Township by-laws and resolutions
- minutes and proceedings of regular, special or committee meetings of Council, whether the minutes and proceedings have been adopted or not
- records considered at a meeting, except those records considered during that part of a meeting that was closed to the public (“in camera” meeting)
- the records of Council
- an itemized statement on remuneration and expenses paid in the previous year to each member of Council and each person appointed by the Township to serve as a member of any body

This public access is limited by the exemptions in MFIPPA. The Township may refuse to disclose:

- a draft by-law
- a record that reveals the substance of deliberations of a meeting of Council or a committee, where the Municipal Act, 2006 authorizes holding that meeting in the absence of the public (“in camera” meeting).

However, the Township may not apply this exemption to:

- draft by-laws that have been considered in a meeting open to the public
- records of an “in camera” meeting, where the subject matter of the deliberations has been considered in a meeting open to the public
- records that are more than 20 years old

##### Reports and Proposals

The Township may refuse to disclose under MFIPPA, records that would reveal the advice or recommendations of a Township employee or consultant. This is discretionary, so the Township may also choose to disclose such information.

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There is a long list of exceptions to this rule. The Township may not use this exemption to refuse access to:

- factual material
- statistical surveys
- reports by a valuator
- environmental impact statements or similar records
- reports or studies on the performance or efficiency of the Township
- feasibility studies or other technical studies, including a cost estimate, relating to a Township policy or project
- reports containing the results of field research undertaken before the formulation of a policy proposal
- final plans or proposals to change a Township program, or for the establishment of a new program, including a budgetary estimate for the program
- reports of internal committees or similar bodies, established for the purpose of preparing a report on a particular topic
- reports of bodies attached to the Township, established for the purpose of undertaking inquiries and making reports or recommendations to the Township
- reasons for a final decision, order or ruling of Township staff made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the Township
- records more than 20 years old

#### **Law Enforcement Reports**

The Township may refuse to disclose certain records relating to the Township's law enforcement programs, as outlined in MFIPPA, except for:

- reports prepared in the course of routine inspections by the Township
- records on the degree of success achieved in a law enforcement program, including statistical analyses

#### **Confidential Information from Another Government**

The Township is obliged to keep confidential information received in confidence from a federal or provincial government ministry or agency. However, if the other ministry or agency consents to the disclosure, the Township must disclose the information.

#### **Confidential Information from a Third Party**

The Township is required to keep financial, technical or commercial information received in confidence from a third party, such as a private company, where disclosure of the information could reasonably cause harm to the third party's interests. However, the Township is allowed to release this information if the third party consents.

#### **Personal Information**

The Township is required to protect the privacy of personal information relating to individuals, except in limited circumstances. This is one of the key principles of MFIPPA.

It is not an invasion of privacy to disclose the following:

- classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of the Township
- financial or other details of a contract for personal services between an individual and the Township

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Another key principle is the right of an individual to obtain access to their own personal information. This can be done under routine disclosure as well as through a formal request.

Access may be restricted where another exemption applies to the information, or where disclosure would invade another individual's privacy.

Personal information may also be disclosed, without a formal access request, as follows:

- if the person to whom the information relates has identified that information in particular and consented to its disclosure
- for the purpose for which it was obtained or compiled, or for a consistent purpose which an individual might reasonably expect
- to an officer or employee of the Township who needs the record in the performance of his or her duties and disclosure is necessary and proper in the discharge of the Township's functions
- for the purpose of complying with any federal or provincial legislation, an agreement or arrangement under such legislation, or a treaty
- to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result
- in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates
- in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased
- to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs

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#### A Councillor's Guide to Access and Privacy Legislation

##### Introduction

The Township of North Kawartha must comply with a number of laws including the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). MFIPPA has two main purposes:

##### Access

The public has the right to **access** records held by municipalities, subject only to limited and specific exemptions to disclosure. Individuals have the right to access their own personal information and to correct it if the information is not accurate.

##### Privacy

The **privacy** of individuals must be protected by respecting rules governing the collection, use, disclosure and secure disposal of personal information. Personal information is information about an identifiable individual, such as (but not limited to) address, race, religion, gender, family status, employment history, medical history, any identifying number assigned to the individual, personal opinions or views of an individual about another individual, correspondence of a private or confidential nature from an individual.

This guide provides a brief description of how MFIPPA applies to both records requested by, and in the possession of, members of Council. This guide also describes Township of North Kawartha processes and resources for ensuring compliance with access and privacy laws for Township programs and services.

##### Duty of Confidentiality

The Code of Conduct for Members of Council prohibits members of Council from disclosing confidential information. In addition, the Code prohibits members from using their authority to coerce or influence staff with the intent of interfering with that person's duties.

#### Access by Councillors to General Information at the Township of North Kawartha

**Councillors do not have any special rights of access to information under MFIPPA. However, it is recognized and permitted that Council as a whole have access in limited and specific circumstances to confidential and/or personal information for making informed decisions.**

A Township Councillor may only have access to information in the Township's custody or control if it complies with MFIPPA. The same is true for former members of Council or employees who at one time may have had access to records in the performance of their duties.

Every person has a right to access a record in the custody and/or control of the Township, unless the record falls within one of the 12 exemptions specified in MFIPPA. An exemption is a reason why information may not be released. If only part of a record is exempt, it will be severed and portions of that record will be released.

Only in restricted circumstances may councillors have the right to access certain types of information not available to the general public:

- If the information is necessary in for the business of Council

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- If the information is reasonably necessary for decision making purposes.

Depending on the nature and type of information requested, records may be provided in confidence to committee or Council members under confidential cover solely for the purpose of review and decision making (for example, in the case of draft reports on pending projects or policies, employment matters, legal advice, or details of ongoing negotiations or transactions). In these circumstances, the information in question is considered *confidential* and Council members are prohibited from releasing the information in any form, without the express authorization of Council. The same is true for information provided to councillors in preparation for *closed* Council or committee meetings.

Depending on the document requested, it may be accessible under Routine Disclosure from the department that has custody of the information. If the information is not disclosed, the councillor may submit a formal Freedom of Information request under MFIPPA. In this case, the councillor has the same status as any member of the public and Township staff will process the request in accordance with MFIPPA. At the Township of North Kawartha, access request forms are available at the Municipal Office.

#### **Access to Personal Information at the Township of North Kawartha**

If a councillor seeks access to personal information of a third party (for example an employee or a constituent), the councillor may only obtain the personal information if disclosure is specifically authorized under section 32 of *MFIPPA*. Examples of authorized disclosures are:

- with the specific written consent of the individual
- under compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill, or deceased
- without consent of the individual in a *closed* meeting of Council/committee, for the purpose of conducting Council/Committee business.

#### **Councillors Privacy Obligations**

As noted above, the Township has obligations under *MFIPPA* to protect personal information in its custody or control. Councillors who have received access to Township records containing personal information or other confidential information have a responsibility to protect this information while it is in their possession. In these circumstances, councillors must ensure that the privacy of the individual to whom the information relates is protected at all times, and must keep that information physically secure so as to avoid unauthorized access or destruction.

Councillors are responsible for ensuring that their employees understand these obligations and comply with the *Act*. Access and privacy awareness training is available to Township staff.

Ways to protect personal privacy include:

- storing documents containing personal information in locked cabinets
- not leaving documents containing personal information on your desk and implementing a clean desk policy for staff working in elected officials' offices
- encrypting personal information stored on mobile devices
- using secure password protected USB drives (also known as jump/flash drives)
- when transporting personal information adding a password to mobile devices in case it is lost or stolen

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- not leaving records containing personal information in your vehicle, home or other areas where others may have access to it
- positioning your computer monitor where it is not visible to others
- ensuring that files in your office are secure (locked storage)
- not discussing personal information of others in open areas such as reception areas and hallways, and
- not disclosing an individual's personal information during a public meeting without the individual's written consent.

#### **Councillors Records – Are They Accessible?**

It is important to remember that the access provisions of the *MFIPPA* cover records that are in the **custody** or under the **control** of an institution. According to Ontario's Information and Privacy Commissioner (IPC), "a record need only be in the custody **or** under the control of an institution" in order to be subject to an access request under *MFIPPA*. This includes information created by a third party that has been provided to, or obtained by, the Township.

Since the IPC has confirmed that, except in unusual circumstances, a councillor is not an officer or employee of an institution and in general, Councillors constituency records are considered "personal" and are not subject to *MFIPPA*. Accordingly, under *MFIPPA*, a person generally does not have a right to access a councillor's constituency records. By contrast, records related to a councillor's official responsibilities as a member of Council or to some aspect of Township Council's mandate (e.g. member of a standing committee or special task force) are subject to *MFIPPA*. A careful analysis of all relevant factors is required before determining if a record is considered to be in the custody or control of the Township.

Constituency records generally relate to issues the councillor is dealing with involving one or more members of the public that either live or own a business within the councillor's ward. Constituency records may include:

- letters
- e-mails
- faxes
- telephone messages
- mailing lists.

In keeping with the accountability framework outlined in the Municipal Act, the records that committee chairs receive and create in the course of their committee work must be forwarded to the relevant municipal department(s). The Township's business units are responsible for maintaining these records to ensure the effective, ongoing operation of the Township.

There are a number of criteria used to determine whether a record is in the custody or under the control of a municipality. The issue of custody and/or control will be decided on the particular facts and circumstances of each case.

There are no hard and fast rules to decide whether a record is under the "custody or control" of the Township of North Kawartha and therefore subject to *MFIPPA*. Even records relating to constituency matters may be accessible if a consideration of the factors leads to the conclusion that they are in the custody or control of the institution.

#### **Penalties under the Acts**

Councillors and staff need to be aware that individuals may be personally liable if found guilty of an offence. Under section 48 of *MFIPPA*, a person who wilfully



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discloses personal information in contravention of the *Act* may be liable to a fine of up to \$5,000.

The IPC may launch an investigation if she believes that Township staff or a member of Council has been involved in a privacy breach or delayed the processing of a Freedom of Information request. A privacy breach relates to the unauthorized release of an individual's personal information without their consent. An investigation and subsequent Order by the IPC could:

- reduce the public's trust in the Township
- force changes in the way programs operate
- embarrass members of Council and/or Township staff, and tarnish the Township's reputation.

#### **Corporate Access and Privacy**

In the Township of North Kawartha, Township Council has delegated to the Township CAO responsibility for overseeing the administration of MFIPPA and for access decisions made under the legislation.

Freedom of Information (FOI) requests should be forwarded directly to the CAO. Individuals that want to make formal FOI requests can submit their written requests along with the \$5.00 application fee at the Township Office.

The Township is required under the *Act* to process the request within a legislated 30-day response time. Within this time frame, staff must retrieve from affected departments records that are responsive to the request, review the records to determine if exemptions apply and prepare the decision letter and/or documents for release. A record can be in any format including:

- correspondence
- drawings/plans
- hand written notes
- photographs
- e-mail messages
- voice mail messages.

The Township provides the requester with a formal written decision detailing whether the records can be disclosed in full, part or not at all in accordance with *MFIPPA*. When access is granted in full or part, staff will provide the requester with photocopies of the records, or, if requested, the requester may review the records in person at the Municipal office.

The Township's decision with respect to access to information may be appealed to the IPC. This independent body has advisory, investigation and order-making powers to ensure that municipalities are compliant with the provisions of *MFIPPA*.

The Township is legally required to comply with any provisions contained in the Order. If a requester or an institution is strongly opposed to an order issued by the IPC, they can request the order be reviewed by a divisional court. This process is referred to as *Judicial Review*.

Should you have any questions about *MFIPPA*, please contact the Access and Privacy Office at the Ministry of Government and Consumer Services. 416-212-7061 or [www.accessandprivacy.gov.on.ca](http://www.accessandprivacy.gov.on.ca)

Adopted by Resolution #08-18 on January 15<sup>th</sup>, 2008