



January 14, 2021

Information and Privacy Commissioner of Ontario
2 Bloor Street East,
Suite 1400
Toronto, ON M4W 1A8

Dear Commissioner Kosseim:

We thank you for the opportunity to provide input into the Information and Privacy Commissioner's Office priority setting consultation.

As you are aware, the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) applies to over 1,200 municipal institutions such as municipalities, police services, school boards, conservation authorities, boards of health, and transit commissions. As such, the Association of Municipal Managers, Clerks, and Treasurers of Ontario (AMCTO) has a significant interest in the work undertaken by your Office.

AMCTO represents excellence in local government management and leadership. With more than 2000 members working in municipalities across Ontario, AMCTO is Ontario's largest voluntary association of local government professionals, and the leading professional development organization for municipal professionals.

A number of our members are City, Town, Regional and County Clerks and other municipal administrators, who manage the day-to-day administration and operation of their municipality's freedom of information and protection of privacy programs.

We are pleased to see that you included a municipal representative on your Ad Hoc Strategic Advisory Committee. The municipal voice is key to understanding the pressures and challenges these public servants face in administering the legislation and complying with IPC rulings on matters under MFIPPA.

As your predecessor has noted, the time is ripe for modernization of MFIPPA. Best practice suggests that policy, including those set out in legislation, should be reviewed regularly. Precedent suggest 5 years for legislation and this legislation has not been comprehensively reviewed in three decades. Moreover, the legislation has not kept up with the pace of technological changes.

While the decision to review the legislation, and make amendments to it, rests with the Minister of Government and Consumer Services (MGCS), AMCTO believes that there are other collaborative opportunities that can be undertaken in the meantime to improve processes, address inequities and co-design tools and resources, to support better capacity building amongst municipal administrators with the goal of improving access to information and promoting accountability.

As you know AMCTO and the IPCO have a good working relationship and it is our hope that we can continue to build this relationship for the betterment of municipal public servants as they carry out the important work of access to information. As technology

continues to change, as public expectations about access to information continues to evolve, the importance of cooperation and collaboration amongst IPC, AMCTO and the ministry, will be all the more important. With this in mind, we believe there is alignment between the interests and priorities of IPC and AMCTO. Attached below are some of AMCTO's comments on the IPC's Priority Setting Consultation Paper.

We look forward to seeing the finalized priorities and working with you and your staff on areas of common interest and concern.

For any questions, please do not hesitate to contact Alana Del Greco, Manager of Policy & Government Relations (adelgreco@amcto.com) who will be happy to assist.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Tremblay". The signature is fluid and cursive, with a large loop at the end.

Robert Tremblay CMO, AOMC, Dipl.M.A.
President, AMCTO

AMCTO appreciates the opportunity to review the IPC Priority Setting Consultation Paper and provide feedback from members. After taking time to read through the paper and consult with our Legislative and Policy Advisory Committee and Board members, who work in a variety of roles across Ontario municipalities, we have focused our comments on three of the potential six strategic priorities:

- Government Digital Service Delivery
- Transparency and Open Government
- Responsible Use of Data for Good

Potential Strategic Priority: Government Digital Service Delivery

Would government digital service delivery be a priority for you? Why or why not?

Government digital service delivery will be a significant priority to municipalities and their staff, but it also faces certain challenges. This includes wide access to reliable, affordable broadband in rural and Northern Communities. Alignment between provincial programs and services with what is available to municipalities.

Each municipality is different. Some municipalities have their own IT departments with multiple Full Time Equivalents, while others may rely on joint service agreements between municipalities for the basics, but do not always have technical support readily available. The programs and services that might be easily delivered digitally in larger municipalities, may be a challenge to deliver in smaller communities who have only a few staff and limited resources. That said, the opportunity to modernize, streamline and improve efficiencies could present a number of opportunities for municipalities. This is why one-size fits all legislation and policies are problematic

If the IPC were to make government digital service delivery a priority, do you agree with our proposed goal statement? If not, how would you suggest changing it?

The IPC will be a trusted source of independent advice to government institutions seeking to digitize their services, while holding them accountable for respecting the privacy and access rights of individuals who use such services.

The goal is appropriate. AMCTO will be interested to see what activities and outputs the IPC commits to for reaching this goal.

We believe that it will be critical for the IPC to come at this goal from a human-centered, whole-of-service perspective. By this we mean, not just considering the requestors perspective but also those of municipal administrators. The underlying assumption of IPCs advice to municipal staff should recognize that municipal administrators have a

genuine desire to provide what information they can, to adhere to the law and fulfil their obligations, doing what they can within their existing (and limited) resources and capacity to deliver the service.

In so doing, they face challenges including from the requestors themselves. IPC rulings and still-to-be modernized legislation create unintentional loopholes for those making requests in bad faith to take advantage of the system and make frivolous and vexatious requests which often causes additional burden.

Any future changes to MFIPPA legislation should be enabling, flexible and acknowledge at the heart of its intent is accountability and transparency of democratic decision-making processes. The experiences, limitations and best efforts of municipal administrators should be taken into consideration.

If government digital service delivery is selected as one of IPC's strategic priorities, what else could the IPC do to advance this priority area over the next five years

In depth education, training and resources could be developed to support municipal staff who already deliver a huge range of services at the local level of which freedom of information is but one. This support would acknowledge that digital service delivery is still a relatively new concept for many municipalities and that digital identity is a complex endeavor which will result in changes to a number of municipal business processes.

As the leading professional development organization for municipal professionals, AMCTO is available to assist to fulfill this goal.

Moreover, IPC could be an advocate for municipalities in the evolution of digital government in Ontario. Often in transformational projects such as those outlined in [Ontario Onwards](#) and the Provincial commitment to digital identity, frameworks, resources, funding envelopes, policies and legislation are designed and implemented with only the Province in mind.

The Province and the IPC should ensure that municipalities and their administrators are involved in the design and implementation of these outputs to ensure these are flexible and adaptable for municipalities as municipalities also look to implement digital government and digital identity.

The Province often forgets in these exercises, that municipalities provide a number of programs and services on behalf of the Province as a result of downloading and are required to adhere to Provincial rules for the delivery of these services.

Inevitably because of this, there is a disconnect between Provincial processes and how services are delivered on the ground. Municipal clerks and other front-line staff provide services such as commissioning of documents, issuance of marriage licenses among

other licenses and permits all of which could be issued digitally and could be impacted by the use of digital identification. IPC, Treasury Board Secretariat, MGCS and AMCTO could work together to ensure that municipal technical and operational considerations are embedded in digital government and digital identity frameworks.

Social service provision such as social housing, Ontario disability support, and social assistance by single-tier and upper-tier municipalities, will also be impacted by a change brought by sweeping digital government and digital identity implementation. There may also be impacts to other local service provisions such as the administration of Provincial Offences Courts, libraries, recreational programming, property taxation and election administration.

A wide-angled, integrated planning lens should be applied to the development, design, prototyping and implementation and review of these important endeavors. Municipalities and their administrators should be at the table to ensure that policy and implementation work seamlessly, municipal impacts are reduced and the best outcomes for service delivery to our residents can be achieved

Potential Strategic Priority: Transparency and Open Government

Would government transparency and open government be a priority for you? Why or why not?

Transparency and open government will always be a priority for municipal administrators at all levels. Openness is at the heart of how municipalities make decisions and transparency is important for building and maintaining public trust. Municipalities are the most open and transparent governments with meetings open to the public, and agendas, minutes, reports and financial information typically available to the public

If the IPC were to make transparency and open government a priority, do you agree with our proposed goal statement? If not, how would you suggest changing it?

The IPC will reduce barriers to access government-held information by promoting efficient access-to-information processes, proactive disclosures, and an overall culture of open government, while also protecting the personal information of individuals.

There is no doubt that transparency and openness in government is a critical priority in a democratic society. However, it must be acknowledged that these principles are not always at the heart of requests and appeals made through the freedom of information process. The goal is appropriate but should be weighed against this fact. AMCTO will be interested to see what activities and outputs the IPC commits to for reaching this goal.

If transparency and open government is selected as one of IPC's strategic priorities, what else could the IPC do to advance this priority area over the next five years?

As is noted in the consultation paper, "a culture of proactive transparency has significant benefits for government, such as reducing the person-hours and other resource expenditures involved in processing freedom of information requests." We would support efforts taken by the IPC to co-developing guidance, webinars, workshops and sharing of promising practices with its stakeholders including AMCTO that enhance this culture.

For instance:

- IPC and AMCTO could co-design a template on routine disclosure and active dissemination policies that while sets a baseline of commonly held principles and policy statements, is flexible enough to be adapted to local circumstances. AMCTO could publish this document with the endorsement of the IPC Office.
- Resources such as those that outline how to execute proactive transparency step by step, with promising practices on reducing administrative burden and increasing continuous improvement, could prove helpful in reducing overworked and overwhelmed staff.

In many cases, municipal administrators already undertake training and information sharing about MFIPPA requirements and local programs and policies. Building a supportive culture takes a whole of organization effort and includes and other officials in municipalities from elected officials, to staff members and members of the public. It also takes enabling legislation and provincially imposed processes and orders that work with administrators

We would caution requiring municipalities to publish "more open procurement processes and proactive disclosure of government contracting records." We would encourage the IPC to seek further consultation with municipal stakeholders on this, and other issues to determine the scope of further proactive disclosures as there are unique challenges faced by municipalities. We must also think practically about this as well when requiring something be done. All municipal budgets are stretched to the limits, but for smaller municipalities with even tighter budgets, posting more information means having to make choices and re-prioritizing budgets and work done by other departments.

Potential Strategic Priority: Responsible Use of Data for Good

Would responsible use of data for good be a priority for you? Why or why not?

Responsible use of data for good is important to municipal administrators. AMCTO recognizes the importance of data for informed, evidence based decision-making and also recognizes the opportunities that data about our communities and its diverse

AMCTO (ASSOCIATION OF MUNICIPAL MANAGERS, CLERKS AND TREASURERS OF ONTARIO)

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residents (youth, adults, seniors and so on) are for developing strategic priorities, making funding decisions, delivering programs and services that meet the needs of residents and for improving access to programs and services. We also recognize the responsibility of maintaining the security and privacy of individuals and ensuring that data complies with legislation like MFIPPA.

If the IPC were to make the responsible use of data for good a priority, do you agree with our proposed goal statement? If not, how would you suggest changing it?

The IPC will convene, and work with, relevant partners to develop governance frameworks that support the responsible use of data for innovative and socially beneficial purposes.

The goal is appropriate. AMCTO will be interested to see what activities and outputs the IPC commits to for reaching this goal. We would in fact expand it to include: responsible use of information for good.

If the responsible use of data for good is selected as one of IPC's strategic priorities, what else could the IPC do to advance this priority area over the next five years?

As with the first potential strategic priority: Government Digital Service Delivery, IPC can be an advocate to encourage the Province to include municipalities in these discussions and at the very least encourage the Province to develop approaches, policies and initiatives that also consider municipal interests and impacts. AMCTO members would appreciate guidance supported by training on the sharing of "data for good" so that municipal administrators while still exercising caution and ensuring the protection of privacy may nevertheless engage appropriately in data-sharing initiatives that could support the development of local innovative solutions.

As we look to the next few years, with Artificial Intelligence increased automation among other innovations as well as any future so-called "disruptors" that are not yet conceived, it will be critical to include municipalities and their administrators in discussions about the impacts of these on local government responsibilities, processes, programs and services and in finding a way forward on these pieces together.

The IPC Office should lead public advocacy in this space, linked to building a culture of openness and transparency and work on a unified message with municipalities to provide the public with what it means about use of data for good. This speaks to the point we made earlier about bad actors using loopholes in legislation and existing guidance and public information materials that imposes few limits: there are actors who take advantage and make requests with intent to use the information in bad faith. There needs to be a unified front from the Province, from municipalities and from the IPC Office that these types of behaviours are not acceptable, are inconsistent with the intent and spirit of legislation, and can cause harm.

Cross-Cutting Approaches

What other cross-cutting approaches should the IPC consider taking in respect to its strategic priorities?

Transition the ad hoc strategic advisory group to a permanent committee of external advisors. A formalized network of experts and practitioners, leveraging their own networks for input and advice, would ensure regular connection points between municipalities, IPC and others for the exchange of barriers, promising practices, lessons learned and pain points.

Activities and outputs for each of the above noted goals we have commented on in this submission, could be helpfully informed by such a committee of external advisors to ensure that these goals are achieved in a way that accounts for unique challenges faced by municipalities and their administrators, and uncover and co-develop tools, resources and other products that will support them in carrying out their responsibilities.

Similar to a committee of advisors to the IPC of BC, such a committee could also:

- identify emerging technical, administrative and managerial issues affecting access to information and the protection of privacy
- bring forward information from municipalities concerning the administration of MFIPPA.
- identify knowledge gaps and recommend remedial strategies
- identify education and resource needs on privacy and information access issues
- identify subject areas requiring research and/or a policy response

AMCTO would welcome an opportunity to have representation on this committee.

Finally, the FOI, open data, records management space is complex and complicated and will become even more so within the existing structures of technology and current and future disruptors. Expertise, staff capacity and request load are different across the 444 municipalities in Ontario. It may be helpful to synthesize, integrate, and simplify the overall picture of information, data and access processes by creating educational resources that make the link between proactive disclosure, active dissemination, open data, and the process related to records management, access to information and protection of privacy. This could help build the culture the IPC is looking to instill.

We believe it will also be helpful to establish a baseline of policy and program frameworks or toolkits, for FOI and privacy protection (and perhaps even ones based on population) from which municipalities could build upon and adapted to manage their own unique circumstances.