

# Issue at a Glance



## Modernizing the *Municipal Freedom of Information and Protection of Privacy Act, 1990*

December 2023

### Key Takeaways

- Municipalities consider transparency an important tool for building and maintaining public trust and recognize the importance of continuously improving.
- The *Municipal Freedom of Information and Protection of Privacy Act, 1990 (MFIPPA)* presents several challenges for municipal staff which can affect how effectively and efficiently they can provide services to the public.
- Municipal administrators require legislation that supports effective local service and program delivery, is responsive to current and future technology, and reflects its original intent of open and accountable government.
- *MFIPPA* should be comprehensively reviewed regularly to ensure it is responsive to ever-changing environments and technologies.

### Issue

Ontario's guiding legislative framework for information and privacy management, *MFIPPA*, has not been comprehensively reviewed in over 30 years, and presents numerous challenges for municipal staff, that hinders how efficiently and effectively they can provide important services to the public. Administrators can provide better service when the legislative environment in which they operate is responsive, permissive, and outcomes-focused.

### The Need for Reform

While municipalities are the most transparent level of government<sup>1</sup>, and municipalities recognize *MFIPPA* as an important part of municipal accountability and transparency frameworks<sup>2</sup>, the legislation in its current form is not responsive enough to the needs of digital government and lacks clarity in critical areas. This means that municipal resources are being spent navigating unnecessarily burdensome processes rather than serving the public.



## What is *MFIPPA*?

*MFIPPA* sets the framework for municipal information and privacy management. It provides the public a formal right of access to records that are in a municipality's custody or under its control and protects the privacy of individuals with respect to their personal information held by institutions.

In other words, *MFIPPA* sets the legislative framework for how the public can get access to municipal records, known as a Freedom of Information (FOI) request, and how the municipality protects individuals' personal information.

While the Ministry of Public and Business Service Delivery is responsible for the legislation, the day-to-day administration of *MFIPPA* is handled at the local level. The majority of municipalities delegate the responsibility of administering *MFIPPA* to the clerk<sup>3</sup>. Individuals have the right to appeal decisions made by the municipality under *MFIPPA*. Appeals are handled by the Information and Privacy Commissioner of Ontario (IPC).

*MFIPPA* has not been comprehensively reviewed and updated since it was first enacted in 1990. Much has changed in information and privacy management in the last 30 years. Dealing with an out-of-date piece of legislation poses challenges for municipal administrators in their efforts to provide important information to the public.

## The Digital Era

*MFIPPA* and its regulations not only contain references to outdated technology, but does not consider the many new challenges and opportunities that have occurred in the last 30 years. The Act is not equipped to consider important trends such as cyber-security breaches, online communication platforms, digital governance, digital identities, and artificial intelligence. Ignoring new and emerging technological changes has the potential to put municipalities and individuals at risk.

For example, *MFIPPA* does not address privacy breaches. Providing minimum standards for privacy management in *MFIPPA* would help assure the public that there are reasonable safeguards in place to prevent the loss, misuse or disclosure of their personal information, as well as help municipalities ensure that their privacy programs are sufficient. This is especially important now, as hacks and cyber security incidents, which could potentially lead to larger privacy breaches, are more common.

*MFIPPA* also does not address the multitude of types of digital records that have emerged over the last 30 years. Clarity is needed on how records such as instant message chats and social media communications, digital recycling bins, and automated records such as logs and meta data should be treated.

Municipal processes have changed a lot over the last 30 years, and *MFIPPA* does not always reflect the best ways to deliver services. For example, *MFIPPA*'s general regulation contains references to providing the public with records on CD-ROMs<sup>4</sup> and refers primarily to conducting only manual searches of records<sup>5</sup>, where many municipalities are now conducting digital searches. The legislative framework should be reflective of processes currently used in municipalities to provide the public with transparency regarding how municipal privacy and information programs are administered.



## Clarity and Guidance

In most of Ontario's 444 municipalities, *MFIPPA* is primarily administered by municipal staff, such as clerks, who are responsible for many other operational and legislative functions in the municipality. This means that they are particularly attuned to how *MFIPPA* interacts with other pieces of legislation and are aware of the need for consistency and guidance in the legislative framework.

While *MFIPPA* is the landmark legislation on municipal information and privacy management, many other pieces of provincial legislation discuss the disclosure and/or management of information such as the *Planning Act*, *Heritage Act*, *Assessment Act*, *Municipal Elections Act* and *Municipal Act*. This can lead to confusion for the public as to how their information is managed in different contexts.

*MFIPPA* lacks clarity in critical areas that can impede the efficient delivery of municipal information and privacy programs. For example, further clarity is needed as it pertains to the sharing and use of information across institutions, especially pertaining to third-party notifications, two-tier governments, and in cases where municipalities have shared service agreements. Without adequate guidance in these areas, municipal administrators often proceed by taking the most cautious approach, which might mean that a requestor will wait longer than necessary to get the information they are looking for.



## Efficient Service Delivery

It is important that municipalities operate as efficiently as possible. Ontario municipalities are extremely limited in the ways that they can collect revenue and are experiencing new challenges resulting in higher operational and capital costs<sup>6</sup>. Municipalities are increasingly being expected to do more with less. When legislation is not kept up-to-date, burdensome processes become increasingly onerous for municipal administrators, ultimately leading to delays in service delivery and increased costs for the public. Municipalities need tools that are permissive and adaptable so that they can tailor program design and service delivery to the needs of local residents.



## Conclusion

Municipal administrators are best able to serve the public when equipped with a legislative framework that supports local program delivery, is responsive to technology, and reflects its original intent of open and accountable government.

AMCTO recommends that the Province commit to a comprehensive review of *MFIPPA* to strengthen municipalities' ability to provide excellent information and privacy programs to the residents they serve. We also recommend that the Province continue to review *MFIPPA* every five years to ensure that the *Act* and its regulations continue to reflect new and emerging technology and are consistent with guidance provided to municipalities.

## Ideal Solution

Our members would like to see an updated legislative framework that:

1. Improves the clarity of the *Act* to strengthen administration and ensure limited resources are best allocated;
2. Increases trust in public institutions through strengthening accountability, transparency, and responsiveness; and
3. Ensures the *Act* is responsive to current technology trends and addresses the needs of the digital era.



<sup>1</sup> In 2022, municipal institutions maintained an 81% response rate within 30 data to FOI requests, while provincial institutions maintained a 51% response rate. See: Information and Privacy Commissioner of Ontario 2022 Annual Report: "The Vision of a Modern and Effective Regulator". <https://www.ipc.on.ca/wp-content/uploads/2023/06/ipc-annual-report-2022.pdf>

<sup>2</sup> Ensuring the accountability and transparency of the operations of the municipality is listed as a role of council under Section 24(d.1) of the *Municipal Act, 2001*.

<sup>3</sup> AMCTO conducted a survey in January 2023 to hear more about members' experience administering *MFIPPA*. 117 responses were collected. 84% of respondents indicated that their municipality designates the clerk as the head of the municipality for the purposes of the *Act*.

<sup>4</sup> Section 6(2) of *R.R.O. 1990 Reg 823* states: "For records provided on CD-ROMs, \$10 for each CD-ROM"

<sup>5</sup> Section 6(3) of *R.R.O. 1990, Reg 823* states: "For manually searching a record, \$7.50 for each 15 minutes spent by any person".

<sup>6</sup> For more information on municipal financial sustainability see: "Issue at a Glance: Municipal Financial Sustainability", 2022. [https://www.amcto.com/sites/default/files/2023-05/Issue-at-a-Glance\\_Financial-Sustainability\\_Jan-29.pdf](https://www.amcto.com/sites/default/files/2023-05/Issue-at-a-Glance_Financial-Sustainability_Jan-29.pdf)

