

Staff Report

Report To: Corporate Services Committee
Report From: Kristen Van Alphen, Manager of Legislative Services
Meeting Date: February 25, 2021
Report Code: CR-21-019
Subject: FOI-2020 Year in Review and Support for Legislative Reform

Recommendations:

THAT in consideration of Staff Report CR-21-019 respecting FOI-2020 Year in Review and Support for Legislative Reform, the Corporate Services Committee recommends that City Council endorse the resolution attached to this report.

Highlights:

- An overview of statistics for Freedom of Information requests completed in 2020.
- Intention to add time spent by the FOI coordinator in 2021.
- Legislation is in dire need of an update and a resolution supporting a fulsome review by the Ministry of Government and Consumer Services is recommended for endorsement.

Strategic Plan Alignment:

The recommendation in this report supports the objective of optimizing the City's operations while maintaining or improving quality of life.

Background:

The City is subject to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") which provides a right of access to certain records and personal information under the custody or control of municipal institutions.

Requests are coordinated by the Clerks division with staff from across the organization searching for and preparing records, depending on the nature of the request.

FOI requests are challenging to respond to as they are not contemplated in staff workplans and there is no advance notice of when a request will be received or how extensive it will be. In many cases, staff must 'drop' what they are doing to respond to requests in a timely fashion.

This report provides some statistics and analysis from the past year's FOI requests and outlines efforts being undertaken by Clerks in Ontario to affect change in the MFIPPA legislation.

Analysis:

Number of requests:

In 2020, 13 requests were dealt with throughout the year.

Number of requests received in 2020	10
Number of requests carried over from 2019	+4
Number of request carried forward to 2021 for completion	-1
TOTAL	13

Of the thirteen requests completed in 2020, one was a request for personal information and the remainder were general information requests.

Time to completion:

The standard time to complete a request is 30 days. This timeframe is extended where the City provides a notice of extension and/or a notice to an affected person (a third party who may have an interest in records being considered for release).

A notice of extension is made where the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution or where consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

Time to completion	Number of requests
30 days or less	4
31 – 60 days	4
61 – 90 days	2
More than 91 days	3

Compliance refers to whether the City provided records within a given timeframe.

The basic compliance rate measures how often files were completed within the basic 30-day window. The City's basic compliance rate in 2020 was 38%. This was due to a number of large requests, multiple requests that required notice to an affected person and the need to extend response times to address the difficulties created by COVID-19 (staff layoffs, staff working from home without access to the network, etc.).

The extended compliance rate measures how often files were completed within the timeframe provided by the City. The City's extended compliance rate in 2020 was 92%. There was a single file that required an extra two days beyond the original timeframe to complete.

Staff involvement

Divisions involved in FOI requests in 2020 include Building, By-law Enforcement, Clerks, Engineering, Fire, IT, Planning, Purchasing and Tax.

Fees

Fees for FOI requests are nominal and are set by legislation. The fee to make an FOI application is \$5.00; fees to search and prepare general records for release are calculated at \$7.50 for each 15 minutes spent by any one person (\$30/hr); and fees for reproduction are \$0.20 per page. Fees for search and preparation time are not charged for personal information.

The fees collected in 2020 for FOI requests were \$1,005.70. The City waived \$12.50 in fees because it was of the opinion that the waiver was fair and

equitable as the disclosure of the record would benefit public health or safety.

Administration

There are a number of activities related to completing FOI requests that cannot be charged back to the requester. Most of these activities are undertaken by the Clerk and Manager of Legislative Services. Some examples are: communicating with the requester and staff about the request; deciding whether an exemption applies; identifying records that require redaction; identifying and preparing records that require third party notice; caselaw review; and consultation with municipal advisors or legal counsel.

The coordination of FOI files in 2020 is estimated to have been 25% of the workload for the Manager of Legislative Services and 10% of the workload for the City Clerk. Beginning in 2021, the Manager of Legislative Services is tracking the time they spend coordinating FOI requests and will add this information to the next annual report.

The current implementation of a digital records management platform will reduce the time spent searching for and preparing records but will not have a substantial impact on the time needed for administration of each file, continuing education or statistical reporting. The planned implementation of an email archiver/e-discovery tool will positively impact the amount of time spent by the Manager of Legislative Services and IT staff on retrieving email correspondence that is responsive to a request.

Legislative reform

Many Clerks across Ontario have been expressing their frustrations and remarking on their experiences with MFIPPA legislation over the years, and have been looking for a mechanism to affect change.

In September 2019, a committee of Clerks in Simcoe County formed with the mandate to seek changes to MFIPPA, improve interactions with the office of the Information and Privacy Commissioner ("IPC"), and improve public education on the legislation.

The committee has worked to examine the legislation, identify the problems that are faced by administrators and taxpayers, and come up with recommendations for reform. A presentation of the committee's findings was developed and delivered before the Honourable Lisa Thompson, Minister of

Government and Consumer Services in early October 2020. The presentation was positively accepted, and the committee was encouraged to continue its advocacy locally and through other agencies and associations.

Since then, the presentation has been delivered to the Association of Municipal Clerks and Treasurers (AMCTO) Legislative and Policy Committee, and several municipalities and counties across Ontario, including to a meeting of Grey County Clerks.

The committee is advocating for the following changes from the IPC:

1. Create a Communication Portal to provide a connection between the IPC and institutions to enhance communication, facilitate requests for documentation, process enquiries, and track status of appeals. (similar to those of the Local Planning Appeal Tribunal and the Municipal Property Assessment Corporation).
2. Designate the Clerk as the 'head' under the Act. Few municipalities do not have the clerk designated. It makes sense that the statutory officer responsible for the municipality's records, is also the person that would make determinations on access based on the legislation. In our research, PEI and Nova Scotia have already made this change.
3. Create a Stakeholder Advisory Committee representing different interest groups to provide advice to the Information and Privacy Commissioner on public education, policy and identifying emerging issues affecting access and privacy.
4. Require Routine Disclosure Policies be adopted, and develop a template through coordination of the IPC office, and AMCTO to share collective expertise, allowing for a level of consistency across the province.
5. Update the threshold for frivolous and vexatious actions and take into consideration the community and available resources, as well as that the anonymity of requestors and their abusive nature and language requires protection for staff from harassment as provided for in the *Occupational Health and Safety Act*.
6. The application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process. Currently there are only two steps in the process that are recoverable – searching and preparing records for

disclosure. Appeals can be lengthy and costly and yet those costs are not recoverable.

7. The regulation be updated to address current and emerging technologies. Most computers do not support CD-ROMs.
8. The administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized.

Modernization of the MFIPPA legislation, with open and transparent processes, resources for administrators and requestors, communication and technology improvements, administrative practice improvements, and respect and accountability for the taxpayer are greatly needed.

A resolution is attached to this report and staff are recommending that it be endorsed by Council, wherein it would be circulated to Clerks across the province, local MPPs, the Minister of Consumer Services, the Minister of Municipal Affairs and Housing, the Information and Privacy Commissioner of Ontario, the Association of Municipalities of Ontario (AMO), and the Association of Clerks and Treasurers of Ontario (AMCTO).

Financial Implications:

Administrative time spent on FOI requests has not historically been tracked but is in the hundreds of hours. Beginning February 2021, the City is tracking this time in order to be able to provide this data in future reports.

Communication Strategy:

Inclusion of this report on the Committee's agenda. Annual statistics are also required by the Information and Privacy Commissioner and have been submitted for 2020. If endorsed, the resolution will be circulated as detailed above.

Consultation:

City Clerk, Director of Corporate Services

Attachments:

1. Draft resolution of support for MFIPPA review.

Recommended by:

Kristen Van Alphen
Manager of Legislative Services

Signature on file

Reviewed by:

Briana Bloomfield
City Clerk

Signature on file

Kate Allan
Director of Corporate Services

Signature on file

Submission approved by:

Tim Simmonds
City Manager

Signature on file

For more information on this report, please contact Kristen Van Alphen,
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