

2013 YEAR END MFIPPA REPORT - SUMMARY

**RAPPORT DE FIN D'ANNÉE SUR L'APPLICATION DE LA LAIMPVP -
SOMMAIRE 2013**

COMMITTEE RECOMMENDATION

That Council receive this report for information.

RECOMMANDATION DU COMITÉ

**Que le Conseil municipal prenne connaissance de ce rapport à titre
d'information.**

DOCUMENTATION / DOCUMENTATION

1. M. Rick O'Connor, City Clerk and Solicitor, report dated May 20, 2014
(ACS2014-CMR-CCB-0019)

M. Rick O'Connor, Greffier municipal et chef du contentieux, rapport daté du 20
mai 2014 (ACS2014-CMR-CCB-0019)

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique**

**and Council
et au Conseil**

**May 20, 2014
20 mai 2014**

**Submitted by
Soumis par:**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2014-CMR-CCB-0019

SUBJECT: 2013 YEAR END MFIPPA REPORT - SUMMARY

**OBJET: RAPPORT DE FIN D'ANNÉE SUR L'APPLICATION DE LA LAIMPVP -
SOMMAIRE 2013**

REPORT RECOMMENDATIONS

That the Finance and Economic Development Committee recommend Council receive this report for information.

RECOMMANDATIONS DU RAPPORT

Que le Comité des finances et du développement économique recommande que le Conseil municipal prenne connaissance de ce rapport à titre d'information.

BACKGROUND

The purpose of this annual report is to outline the operations of the Access to Information and Privacy (ATIP) Office in the City Clerk and Solicitor Department. In order to provide some comparative context to the statistical data contained within this report, such data is being provided for 2011 through to 2013.

Also provided in this report is a brief outline of the status of the departmental Routine Disclosure and Active Dissemination (RD/AD) Plans as required by the Routine Disclosure Policy (ACS2013-CMR-CCB-0044) approved by Council on July 2, 2013. In addition, this report provides information about the City's inaugural Privacy Awareness Week, held during the week of March 24–28, 2014.

As an “institution” defined under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the City of Ottawa is required to appoint a Head of Institution that is responsible for overseeing the administration of and for decisions made under the *Act*. In this regard, the City Clerk and Solicitor has been designated the Head of Institution for these purposes.

In addition to the responsibilities delegated under MFIPPA, the City Clerk and Solicitor also administers access requests related to the *Personal Health Information Protection Act, 2004* (PHIPA). This legislation establishes rules for the collection, use and disclosure of personal health information for the Health Information Custodians (HICs) operating within the Province of Ontario.

DISCUSSION

Requests for Access to Information

As noted in prior year-end reports to Council, requests for access to general and personal information are received and processed pursuant to Part I of MFIPPA. Similarly, access to an individual's own personal health information under the custody and control of one of the City's Health Information Custodians (e.g. Public Health, Paramedic Services, etc.) are prescribed under Part V of PHIPA.

The three charts below show the number of requests for access to general records, personal information and personal health information from 2011 to 2013.

In 2013, the City received 755 requests for general records, which represents a decrease of 12% over 2012 (855 requests). In responding to these requests, the ATIP Office reviewed 52,520 pages of records in 2013, an increase of 8% over 2012 (48,522 pages) and an increase of 38% over 2011 (37,949 pages). Of the pages reviewed in 2013, the ATIP Office released 45,501 pages of those records, an increase of 26% in the number of pages released in 2012 (36,121 pages) and an increase of 56% from 2011 (29,087 pages).

While the overall total of requests for access to general information did decrease by 12% in 2013, the total number of pages reviewed and released increased by 26%.

Compliance Rate

The statutory timeframe to respond to access requests is 30 days without an extension. For the 2013 reporting year, 537 requests for access to general records (71%) were completed within the 30 day timeframe, which represents a 6% decrease from 2012 (77%). This can be attributed to a number of factors, including the increasing complexity of requests while the staff complement has remained static and the volume of requests going to the same offices, which also do not have increased staff. However, where extension on time limits was applied due to either the requirement for external consultation or the complexity of the request, the compliance rate was approximately 85%.

Requests for Access to General Records			
	2013	2012	2011
Number of new formal requests received	755	855	680
Number of formal requests completed	741	854	641
Number of formal requests completed within 30 days	537	660	539
Number of formal requests completed within statutory time limit including time limit for extensions	628	792	613
% of formal requests completed within 30 days	71%	77%	84%
% of formal requests completed within statutory time limit including time limit for extensions	85%	93%	96%

Requests for Access to Own Personal Information			
	2013	2012	2011
Number of new formal requests received	75	35	29
Number of formal requests completed	70	35	29
Number of formal requests completed within 30 days	51	31	20
Number of formal requests completed within statutory time limit including time limit for extensions	59	34	24
% of formal requests completed within 30 days	73%	86%	69%
% of formal requests completed within statutory time limit including time limit for extensions	83%	94%	83%

PHIPA Requests			
	2013	2012	2011
Number of new formal requests received	16	17	19
Number of formal requests completed	16	17	19
Number of formal requests completed within 30 days	14	16	19
Number of formal requests completed within statutory time limit including time limit for extensions	15	17	n/a
% of formal requests completed within 30 days	87%	94%	100%
% of formal requests completed within statutory time limit including time limit for extensions	94%	100%	100%

Third Party Summary

As indicated in previous annual reports, institutions under MFIPPA often acquire information about activities of third parties, such as private sector companies or organizations. Some of this information may represent a valuable asset to the third party and disclosure of the information could negatively affect the third party's competitive position or cause it financial harm. Subsection 10(1) of MFIPPA provides a mandatory exemption from disclosure for certain types of third party information where disclosure could reasonably be expected to cause certain harms. This exemption is not limited to commercial third parties, but may also apply to any supplier information.

Section 21 of MFIPPA provides that before access is granted to a record that might contain such information, the third party must be notified and given an opportunity to make representations to the City before a final access decision is made. The statutory obligation of establishing whether the record is exempt from disclosure rests with the third party. To meet this requirement, the affected third party must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Speculation of possible harm is not sufficient to rely on this exemption.

Access Requests – Third Party Interests			
	2013	2012	2011
Access to General Records – Number affecting interests of a third party	37	58	40

Appeals to the Information and Privacy Commissioner

Mediation

A person who has made a request for information under MFIPPA or PHIPA or whose interests are affected by the records at issue (e.g. a third party) may appeal the City's decision to the Information and Privacy Commissioner of Ontario (IPC) within 30 days after the City has issued its decision.

Mediation is the preferred method of dispute resolution with the IPC. The Mediator assigned is authorized to investigate the circumstances of any appeal and try to achieve a settlement in the matter. To do so, all parties must reach an agreement about the issue under appeal. If such a resolution is unable to be mediated, it may proceed to the adjudication stage. Set out below is the number of appeals to requests for access to general records from 2011 to 2013 received and resolved.

Appeals to Requests for Access to General Records			
	2013	2012	2011
Number of Appeals received and resolved	8	11	6
Average number of days to complete Appeals	40	112	198

There were no appeals received in 2013 for access to personal information. In addition, for the previous three years there have been no appeals received in regards to PHIPA requests.

Orders

The IPC assigns an Adjudicator to conduct an adjudication of matters outstanding from the mediation process. All parties involved are entitled to make written representations to the IPC. Once the representations are received, they are considered by the Adjudicator and an Order is issued to resolve the outstanding matters. The Order is published on the IPC website shortly thereafter setting out whether the IPC upholds or varies the decision taken by the institution.

There were ten Orders issued by the IPC to the City of Ottawa in 2013. Seven Orders upheld the City's decisions in full and three Orders upheld the City's decisions in part, as summarized in Document 1.

Outreach Activities

The ATIP Office completed 15 privacy training sessions during the past year. Training has proven to reduce the risk of privacy breaches as such incidents tend to result from human error due to a lack of guidance and knowledge about privacy and security.

Routine Disclosure/Active Dissemination Policy

Routine Disclosure is the regular or automatic release of certain types of administrative and operational records in response to requests made either informally or formally under the MFIPPA process. Pro-active Disclosure is the periodic release of general records prior to, or in the absence of, a formal or informal request. Pro-active Disclosure, also referred to as "Active Dissemination," is usually applied to general records or statistics.

The Routine Disclosure/Active Dissemination Policy (RD/AD) provides clear guidelines, accompanied by departmental plans for pro-active disclosure. These departmental plans will be listed as schedules to the Routine Disclosure/Active Dissemination Policy. Schedules will let the public know what information can be released without going to the ATIP Office and help City staff understand what information can be routinely disclosed to the public, staff's obligation to disclose that information, and what information requires formal access procedures and must be referred to the ATIP Office.

Following the approval of the Routine Disclosure and Active Dissemination Policy in July 2013, the City Clerk and Solicitor Department made available requests received

under MFIPPA on a quarterly basis on Ottawa.ca. Requests that were closed during the previous fiscal quarter are included through routine disclosure.

While the creation of departmental pro-active disclosure plans has been initiated, it is anticipated that this corporate-wide exercise will take a number of years to fully implement. Identifying records for routine disclosure and authorizing staff to make them available is a labour intensive and time consuming process. This is consistent with the City of Toronto's experience with the implementation of their routine disclosure policy.

The ATIP Office is currently working with the Building Code Services Branch and Ottawa Paramedic Service Branch to identify documents that are frequently requested and to determine which will be proactively listed and which will be routinely disclosed.

Building Code Services has drafted a template for its RD/AD plan by comparing the list of records released as part of the Access to Building Permits Record program (ABPR) to formal access to information requests received by the ATIP Office. The Plan is currently under review by Branch Management, including a thorough review of the ABPR program to clarify the requirements and entitlements to access as well as to expand the definitions and documents that are included under the program. There is ongoing discussion and review surrounding documents that have been identified that could be added to the RD/AD plan.

The Ottawa Paramedic Service is a Health Information Custodian (HIC) and also has custody and control of personal health information (PHI). The public can exercise a right of access to a personal health record held by a HIC as long as sufficient detail and identification is provided to identify and locate the record.

Currently, almost all requests for ambulance call reports are handled directly through the Ottawa Paramedic Service. Occasionally, an individual will file a formal request with the ATIP Office in order to obtain access to information in addition to the ambulance call report. Paramedic Services is reviewing its documentation for the guideline that will be part of the RD/AD policy.

The ATIP Office will next be working with OC Transpo to begin the determination of the types of records most frequently requested. Through the statutory process, the ATIP Office is being asked for records that include incident reports, surveys, accident statistics, and advertising costs. Staff believes such information could be placed in a

Routine Disclosure/Active Dissemination schedule based on the fact that the information is frequently requested and regularly released with few exemptions.

It is important to understand that, whether for MFIPPA release or for routine and pro-active disclosure, each record must be considered on an individual basis. To determine if a record is appropriate for release and should be included in the routine disclosure listing, some of the following will be considered:

Records deemed suitable for routine disclosure

- Records that are regularly released in full in response to formal ATIP requests are potentially good candidates
- Records that are regularly requested (certain contracts)
- Records that contain little or no information to which MFIPPA exemptions would apply
- Records that can be customized easily to omit fields containing personal information

Records deemed unsuitable for routine disclosure

- Records that contain personal information, commercial or law enforcement information
- Records pertaining to legal action
- Records involving sharing of data between the City and the federal or provincial government

The RD/AD Policy applies to all City of Ottawa departments that collect, use, disclose or retain records in any recorded format relating to their programs, services or applications of use. To ensure an effective routine disclosure program, there must be an ongoing commitment to open government, the inclusion of routine disclosure as part of a City-wide access strategy, and the empowerment of front-line staff to carry out an active routine disclosure strategy.

Through routine disclosure, the City is taking steps to streamline access to information; reducing staff time required to respond to formal requests for information; controlling

administrative costs; as well as preserving accountability and transparency in its day to day operations. An informed public is better equipped to participate in the governance of the City. Therefore, the more transparent and accountable the City is, the more engaged its citizens may be.

Until such time as all of the Routine Disclosure and Active Dissemination schedules are complete, when ATIP staff receive an MFIPPA request that they believe should be routinely disclosed, they will work with operational staff to that end.

Privacy Awareness Week

Held on March 24-28, 2014, the City's Privacy Awareness Week was a great success for the ATIP Office and gave City of Ottawa employees an opportunity to meet the ATIP staff as well as to ask questions related to privacy and access. More than 1,000 pamphlets were distributed, as well as information provided by the Information and Privacy Commissioner of Ontario on handling personal records and the MFIPPA process. As a result of the promotion, the ATIP Office received requests for fifteen new privacy training sessions. Privacy Awareness Week will be celebrated annually during the last week of March.

RURAL IMPLICATIONS

There are no rural implications.

CONSULTATION

This is an internal information report and no consultation is required.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a City wide report.

LEGAL IMPLICATIONS

There are no legal impediments to Committee and Council receiving the information in this report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications to receiving this report.

FINANCIAL IMPLICATIONS

There are no financial implications related to this report.

ACCESSIBILITY IMPACTS

There are no accessibility implications with this report.

TECHNOLOGY IMPLICATIONS

There are no technical implications associated with this report.

TERM OF COUNCIL PRIORITIES

This matter is not associated with any Term of Council priorities.

SUPPORTING DOCUMENTATION

Document 1 – Summarization of Orders issued by the IPC to the City of Ottawa in 2013.

DISPOSITION

The City Clerk and Solicitor Department will implement any decisions made by Council in relation to this report.

Document 1

There were ten Orders issued by the IPC to the City of Ottawa in 2013. Seven Orders upheld the City's decisions in full and three Orders upheld the City's decisions in part.

Orders upheld in full

Order MO-2844, dated January 24, 2013: Order upheld the City's decision to grant full access to information about discounts contained in the tenders for the city's towing contracts. One of the towing companies appealed the City's decision claiming the application of the mandatory third party information exemption.

<http://www.ipc.on.ca/images/Findings/MO-2833.pdf>

Order MO-2860, dated March 27, 2013: Order upheld the City's decision to deny access to the name, address and telephone number of an individual who made a complaint about the appellant's cat. It was found that disclosing this information to the appellant would be an unjustified invasion of the complainant's personal privacy.

<http://www.ipc.on.ca/images/Findings/MO-2860.pdf>

Order MO-2880, dated May 3, 2013: Order upheld the City's decision to deny access to some records relating to the termination of the appellant's employment with the City of Ottawa. <http://www.ipc.on.ca/images/Findings/MO-2880.pdf>

Order MO-2926, dated July 30, 2013: Order upheld the City's decision to deny access to some records relating to the appellant's participation in a program during the summer of 2003. <http://www.ipc.on.ca/images/Findings/MO-2926.pdf>

Order MO-2948, dated September 16, 2013: Order upheld the City's decision to withhold portions of by-law occurrence reports as well as the City's search for responsive records. <http://www.ipc.on.ca/images/Findings/MO-2948.pdf>

Order MO-2977, dated November 14, 2013: Order upheld the City's decision to withhold portions of a dog bite incident report. <http://www.ipc.on.ca/images/Findings/MO-2977.pdf>

Order MO-2984, dated November 28, 2013: Order upheld the City's decision to refuse to confirm or deny the existence of the requested documents. <http://www.ipc.on.ca/images/Findings/MO-2984-FR.pdf>

Orders upheld in part

Order MO-2847, dated February 20, 2013: Order upholds the City's decision, in part, and orders the City to disclose a number of records, either in whole or in part, to the appellant for records relating to a third party review of a restoration project involving the Carp River. <http://www.ipc.on.ca/images/Findings/MO-2847.pdf>

Order MO-2905, dated June 25, 2013: Order upheld the City's fee estimate, but disallows the portion of the fee proposed that is related to the cost of severing the responsive records. <http://www.ipc.on.ca/images/Findings/MO-2905.pdf>

Order MO-2955, September 30, 2013: Order found that the substance of a portion of one of the bylaw complaints made about the appellant's actions and/or property is not the personal information of an identifiable individual and therefore not exempt under MFIPPA. However, Order upheld the City's decision to deny access to the identifying information about the complainant in each of the complaints.
<http://www.ipc.on.ca/images/Findings/MO-2955.pdf>