

# Elected Officials Records Management Policy

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## Policy statement

Members of Council and their Office staff manage and access records appropriately in order to fulfill statutory and policy requirements, ensure transparency and accountability, and protect privacy and confidentiality.

## Purpose

This policy identifies the process for the appropriate management of records held by Members of Council, in keeping with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), orders and guidelines issued by the Information and Privacy Commissioner of Ontario (IPC), the Code of Conduct for Members of Council, and the Election-Related Resources Policy.

## Application

This policy applies to all records created, received and maintained by Members of Council, including constituency records, personal records, records created in connection with City business and/or considered to be in the custody or under the control of the City, and records related to the duties of the Mayor.

Provisions of this policy apply to Members of Council as well as their Office staff who act in support of the Member's role. For the purposes of this policy, the term "record" includes any record of information however recorded or stored.

## Policy requirements

### Section 1 – Application of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA)

#### Mayor

1. The Mayor, as the statutory Head of Council and Chief Executive Officer of the City of Ottawa, is considered an officer of the City and, as such, is generally subject to MFIPPA. The Mayor's Office may hold records related to the duties of the Mayor, constituency matters, personal matters, political matters, and City business. In keeping with orders and guidance from the IPC, these records shall generally be managed as follows:
  - a. Records related to the duties of the Mayor as set out under the *Municipal Act, 2001* are subject to MFIPPA.
  - b. Records created in connection with City business are subject to MFIPPA (e.g., official Council/Committee records; information relating to Office expenses).
  - c. Records related to the Mayor's interactions with constituents as an elected official are not subject to MFIPPA (e.g., emails from constituents). These records are considered the personal property of the Mayor. However, if the record is copied or forwarded to City staff, it will become a record in the custody or under the control of the City and may be subject to MFIPPA.
  - d. Personal records are not subject to MFIPPA (e.g., records unrelated to Council's mandate or services, or to the Mayor's role as a Member of Council). However, if the record is copied or forwarded to City staff, it will become a record in the custody or under the control of the City and may be subject to MFIPPA.
2. The Mayor may from time to time be subject to access requests made under MFIPPA and may be required to provide City staff with records in response to such a request. Despite the general provisions set out in Subsection 1, a careful analysis of all relevant factors is required before determining whether a specific record is considered to be in the custody or control of the City, or otherwise subject to MFIPPA. These matters shall be decided on the particular facts and circumstances of the case.

#### City Councillors

3. Councillors are generally not considered to be officers or employees of the City unless undertaking certain roles and activities as noted below. Typically, Councillors'

Offices may hold records related to constituency matters, personal matters, political matters, and City business (including records related to assigned Council-related roles and policy requirements). In keeping with orders and guidance from the IPC, these records shall generally be managed as follows:

- a. Councillors' records are subject to MFIPPA when:
  - i. The Councillor is acting as an officer or employee of the municipality or performs a duty assigned by Council, such that they might be considered part of the institution (e.g., a Councillor acting in a liaison role assigned by Council, participating on a municipal Committee or board, or exercising administrative or management functions on behalf of the municipality); or
  - ii. The records are in the custody or under the control of the municipality.

The IPC has issued orders regarding the determination of custody or control, and numerous factors must be considered, as set out in Appendix A.

- b. Records created in connection with City business are subject to MFIPPA (e.g., official Council/Committee records; information relating to Office expenses), even if sent from or received by a personal or political email account.
  - c. Constituency records related to Councillors' interactions with their constituents as elected officials are not subject to MFIPPA (e.g., email from constituents). These records are considered the personal property of the Councillor. However, if the record is copied or forwarded to City staff, it will become a record in the custody or under the control of the City and may be subject to MFIPPA.
  - d. Personal records are not subject to MFIPPA (e.g., records unrelated to Council's mandate or services, or to the Councillor's role as a Member of Council). However, if the record is copied or forwarded to City staff, it will become a record in the custody or under the control of the City and may be subject to MFIPPA.
  - e. Political records are generally not subject to MFIPPA (e.g., emails exchanged with another Councillor, or with the Councillor's own staff). However, if the record is copied or forwarded to the Mayor's Office or City staff, it may become a record in the custody or under the control of the City and may be subject to MFIPPA.
4. Councillors may from time to time be subject to access requests made under MFIPPA and may be required to provide City staff with records in response to such a

request. Despite the general provisions set out in Subsection 3, a careful analysis of all relevant factors is required before determining whether a record is considered to be in the custody or under the control of the City, or otherwise subject to MFIPPA. These matters shall be decided on the particular facts and circumstances of the case.

### **Members' Office staff**

5. Members' Office staff are City employees. However, such staff are selected and instructed by the Member to assist in their role as an elected official. For the purposes of custody or control of records, the IPC has found that a Member's Office may be considered as a whole, and that Member's Office staff are more properly considered to be an extension of the Member than employees of the municipality. As such, provisions of subsections 1 and 3 relating to the Mayor and City Councillors also apply to their staff.
6. Members' Office staff may be subject to access requests made under MFIPPA and may be required to provide City staff with records in response to such a request. Despite the general provisions set out in subsections 1, 3 and 5, a careful analysis of all relevant factors is required before determining if a record is considered to be in the custody or under the control of the City, or otherwise subject to MFIPPA. These matters shall be decided on the particular facts and circumstances of the case.

## **Section 2 – Managing records during the term of Council**

### **Protecting privacy and confidentiality**

1. Members of Council and their Office staff who receive access to personal information or other confidential information in the performance of their duties have a responsibility to protect this information while in their possession, in keeping with their obligations under the Code of Conduct for Members of Council. Members should therefore ensure that the privacy of the individual to whom the information relates is protected at all times, and must keep the information secure to avoid unauthorized disclosure or destruction [e.g., Documents and devices should not be left unattended in vehicles or in offices; data stored on laptop computers, USB drives or similar devices should be encrypted or otherwise password protected; care should be taken to ensure that personal information is not disclosed during public meetings without prior, written consent of the affected individual(s)]. In addition to MFIPPA, the *Municipal Act, 2001*, the City's Code of Conduct for Members of Council and the *Procedure By-law* also include requirements and prohibitions with respect to the disclosure of confidential information.
2. Members should minimize the personal information collected to only what is necessary to provide the service and collect personal information directly from the

individual unless another manner is specifically authorized. Notice of collection should be provided (e.g., verbally, in a letter, or by notice on a form). Examples of such notice are available from the Office of the City Clerk. If an individual's contact information will be retained in a Member's database for a purpose other than the initial reason for its collection, express permission must be obtained from the individual.

### **Disposal of temporary records**

3. Members and their Office staff shall dispose of temporary records by way of methods appropriate to their level of confidentiality (e.g., recycling for non-confidential records and shredding, deletion or other means of destruction for confidential records).

### **Members' office staff who leave employment**

4. Members' Office staff who leave their employment with the Member during the term of Council must ensure that any records they possess that were created in connection with the Member's role shall be provided to the Member prior to leaving office. Such staff may retain personal records but may not retain any constituency, political or City records.
5. Members' Office staff who leave their employment with the Member during the term of Council but remain employed by the City in a different capacity (e.g., in a City department or with another Member of Council) shall only be permitted to carry over personal records to their new role. To ensure this, such staff may be required to obtain a new Network ID and/or e-mail inbox.

### **Accountability Officers – Access to Members' records**

6. The City's Auditor General and Integrity Commissioner shall have access to Members' records as may be required in accordance with relevant statutory and policy authorities.

### **During an election year**

7. Members and their Office staff shall ensure any records of personal information that they possess (e.g., records of constituent information) are used only for the purpose for which they were collected. In accordance with the City's Election-Related Resources Policy, constituent information (e.g., telephone numbers, email addresses and mailing addresses) that is collected, stored, accessed, maintained or updated using City resources shall not be used for election-related purposes.

## **Section 3 – Managing records at the end of a Member’s time in office**

1. Before leaving Office, outgoing Members of Council shall provide to the City Clerk any records created in connection with City business and/or considered to be in the custody or under the control of the City (e.g., invoices, formal letters to other levels of government or elected officials, speeches, and proclamations) that City staff have not already received through the course of their business. This includes any such records stored on any City-issued technology such as cellphones and hard drives. The Mayor’s Office shall also provide to the City Clerk any records relating to duties of the Mayor that City staff have not already received through the course of their business, for retention in accordance with the *Records Retention and Disposition By-law*.
2. Members’ constituency, personal or political records are generally not in the custody or under the control of the City and therefore do not need to be retained or provided to the City at the end of a Members’ time in Office. That said, the following provisions apply to such records:
  - a. Outgoing Members should ensure that all personal information and all constituency matters, lists, files, correspondence, service requests, personal notes, etc. are removed from their office.
  - b. Any personal information collected by the Member who held Office at the time of collection, which was provided with consent to be used only for the purpose it was collected, with no consent given to provide the constituent’s personal information to the incoming Member and cannot be provided to the incoming Member. Upon the Member’s departure, there may be outstanding service requests that are still in the process of being acted upon by a City department. If this is the case, the new Member, if contacted by the constituent, will be able to receive and complete the request upon receiving the appropriate consent from the constituent.
  - c. Outgoing Members may work with Archives staff to assist in the identification and transfer of archival records, such as information regarding historically significant political and constituency interactions. In accordance with Subsection 52(2) of MFIPPA, records placed in the City’s Archives by or on behalf of a person other than the City are not subject to MFIPPA.
    - i. In keeping with Subsection 13(5) of the Code of Conduct for Members of Council, those gifts received by Members of Council which have significance or historical value for the City of Ottawa shall be left with City Archives when the Member ceases to hold Office.

### **City-issued technology and related data**

3. Members shall be provided an opportunity to purchase and retain their City-issued technology when they leave Office. Should an outgoing Member not purchase and retain their City-issued technology, the data contained on such devices will be wiped as of 12:01 am on the day following the end of the term of Council (i.e., November 15 of an election year). Outgoing Members shall sign the Data Destruction Authorization Form attached as Appendix B prior to the end of the term of Council.

### **Members' Office staff**

4. Members' Office staff who leave their employment with the City or are to remain employed by the City in a different capacity (e.g., in a City department, or with another Member or an incoming Member within the same Ward Office) at the end of the term of Council must ensure that any records they possess that are created in connection with City business, or considered to be in the custody or under the control of the City, are provided to the City Clerk. Such staff may retain any personal records but may not retain any constituency or political records. Staff in the Mayor's Office also may not retain any records held in relation to the duties of the Mayor as set out under the *Municipal Act, 2001*. This subsection also applies to any Members' Office staff who may be elected to Office.
5. Members' Office staff who remain employed by the City in a different capacity (e.g., in a City department, or with another Member or an incoming Member within the same Ward Office) shall receive a new Network ID (e.g., email inbox, etc.).

## **Responsibilities**

### **Members of Council**

Members of Council are required to adhere to this policy and its governing provisions. Members are also responsible for adhering to requirements under MFIPPA, particularly in response to requests for information submitted under the Act.

### **City Employees**

City employees are required to adhere to this policy and its governing provisions. Employees must ensure relevant policy requirements are fulfilled in any duties and activities undertaken in their official position as a City employee, or in support of an elected official's role.

### **City Clerk**

The City Clerk is the delegated “Head” of the institution for the purposes of MFIPPA, and therefore is responsible for overseeing the administration of and for decisions made under the statute. With respect to this policy, the City Clerk must:

- Ensure the administration, communication, interpretation, maintenance and monitoring/enforcement of this policy.
- Receive any complaints and/or concerns related to this policy, subject to the Monitoring/Contraventions section of the policy.
- Delegate in writing any designate(s) assigned to administer any or all of this policy.
- Review this policy at least every two years through the City’s governance reviews and as required by changes to legislation.

The City Clerk is authorized to make minor administrative updates as may be necessary to maintain consistency with legislation and the organizational structure, while respecting and preserving the intent of the policy.

## **Monitoring/Contraventions**

### **City Clerk/Integrity Commissioner**

The City Clerk shall be responsible for receiving complaints and/or concerns related to this policy. Upon receipt of a complaint and/or a concern, the City Clerk shall notify the relevant party as appropriate and take necessary action.

In the case of a complaint respecting the conduct of a Member of Council in relation to their responsibilities under the Code of Conduct for Members of Council, the City Clerk shall refer the complaint to the Integrity Commissioner for intake and action as necessary under the Complaint Protocol (Appendix “A” to the Code of Conduct for Members of Council).

### **IPC**

The IPC may review and investigate matters relating to MFIPPA, including appeals with respect to access requests, privacy complaints and complaints regarding contraventions of the legislation. Section 48 of MFIPPA includes provisions with respect to contraventions, including prohibitions with respect to altering, concealing or destroying a record, or causing any other person to do so, with the intention of denying a right under the Act to access the record or the information contained in the record.

## **References**

Information and Privacy Commissioner of Ontario, “Working with the *Municipal Freedom of Information and Protection of Privacy Act: A Councillor’s Guide*” (November 2001)



Information and Privacy Commissioner of Ontario, "FOI Fact Sheet 1: The *Municipal Freedom of Information and Protection of Privacy Act* and Councillors' Records" (April 2016)

Information and Privacy Commissioner of Ontario, "What is Personal Information?" (October 2016)

## **Legislative and administrative authorities**

Code of Conduct for Members of Council

Employee Code of Conduct

Election-Related Resources Policy

*Municipal Act, 2001*

*Municipal Freedom of Information and Protection of Privacy Act*

*Procedure By-law*

Records Management Policy and Procedures

*Records Retention and Disposition By-law*

Routine Disclosure and Active Dissemination Policy

## **Definitions**

Official Business Records (OBRs): City record/record created in connection with City business. OBRs include but are not limited to work-related decisions and actions including emails, charts, presentations, briefing notes, etc. OBRs show what happened, when, who was involved, what was decided or recommended and by whom. OBRs provide evidence of City decisions and decision-making, policies, procedures, services, operations (including transactions, activities, etc.).

Constituency record: Documents and information received or created by Members, including their Office staff, which relate to matters dealing with their constituents.

Personal information: Recorded information about an identifiable individual, including:

- information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual;
- information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the 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.

Personal record: Documents and information unrelated to City business, Council's mandate and services, or the Member's role as an elected official, such as personal correspondence from residents and responses to them.

Political record: Documents and information received or created by Members in relation to political matters.

Record: Any record of information however recorded or stored, whether in physical form, electronic form or otherwise.

Temporary record: A record that is of limited usefulness and can be destroyed immediately or when no longer needed. A temporary record:

- is of limited usefulness, created or received by staff in carrying out their activities;
- has no value beyond an immediate and minor action and are not required to meet legal or fiscal obligations;
- is often created in preparation of a subsequent Official Business Record (e.g., a draft of a completed report); and
- does not provide evidence of decision-making or work-related operations (including transactions, activities, etc.).

## **Enquiries**

For more information on this policy, contact:

Caitlin Salter MacDonald

City Clerk

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Karen Shepherd

Integrity Commissioner

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## **Appendices**

Appendix A – IPC factors in determining whether a record is in the custody or control of a municipality

Appendix B – Data Destruction Authorization Form

## **Appendix A – IPC factors in determining whether a record is in the custody or control of a municipality**

The Information and Privacy Commissioner of Ontario has developed a list of factors to consider in determining whether a record is in the custody or control of an institution, as set out in the fact sheet titled, “The *Municipal Freedom of Information and Protection of Privacy Act* and Councillors’ records” (April 2016).

The list below is not intended to be exhaustive. Some of the listed factors may not apply in a specific case, while other unlisted factors may apply.

- Was the record created by an officer or employee of the institution?
- What use did the creator intend to make of the record?
- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?
- Is the activity in question a “core,” “central” or “basic” function of the institution?
- Does the content of the record relate to the institution’s mandate and functions?
- Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?
- If the institution does have possession of the record, is it more than “bare possession”?
- If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purposes of his or her duties as an officer or employee?
- Does the institution have a right to possession of the record?
- Does the institution have the authority to regulate the record’s content, use and disposal?
- Are there any limits on the use to which the institution may put the record, what are those limits, and why do they apply to the record?
- To what extent has the institution relied upon the record?
- How closely is the record integrated with other records held by the institution?
- What is the customary practice of the institution and other similar institutions in relation to possession or control of records of this nature, in similar circumstances?

In cases where the record is not held by an institution, such as where it is solely held by a Councillor, the IPC looks at the factors set out in Appendix A within the framework of the following two-part test from *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, 2011 SCC 25 (CanLII):

1. Do the contents of the record relate to the institution’s business?

2. Could the institution reasonably expect to obtain a copy of the record upon request?

On the second question, the Supreme Court of Canada stated:

...*all* relevant factors must be considered in order to determine whether the government institution could reasonably expect to obtain a copy upon request. These factors include the substantive content of the record, the circumstances in which it was created, and the legal relationship between the government institution and the record holder... The reasonable expectation test is objective. If a senior official of the government institution, based on all relevant factors, reasonably *should* be able to obtain a copy of the record, the test is made out and the record must be disclosed, unless it is subject to any specific statutory exemption. In applying the test, the word “could” is to be understood accordingly (*National Defence*).

If you answer **yes** to each part of the two-part test above, then the records are in the control of the municipality, the *Municipal Freedom of Information and Protection of Privacy Act* applies, and the institution must issue an access decision.

## Appendix B – Data Destruction Authorization Form

### Data Destruction Authorization Form for the Mayor

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In accordance with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the Information and Privacy Commissioner of Ontario (IPC) has found that records that are maintained or held in relation to the duties of the Mayor are considered records subject to MFIPPA. However, any records of a Mayor that were not created or received in connection with mayoral duties and are not otherwise in the custody or control of the municipality would not be subject to MFIPPA.

As such, records that do not relate to the duties of the Mayor as an officer of the municipality, and are maintained separately as constituency or political papers, would not be in the custody or control of the City of Ottawa and therefore do not need to be retained at the end of a Mayor's term of Office.

The Mayor is encouraged to ensure that any records considered to be in the custody or control of the City of Ottawa, such as Budget-related documentation, are retained by providing such records to Mayor Support Services prior to the end of the **[Insert term]** Term of Council. This includes any records stored on City-issued devices, including cellphones and hard drives.

Should the outgoing Mayor not purchase and retain their City-issued technology, the data contained on such devices will be wiped as of 12:01 am on November 15, **[Insert year]**.

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Name of the Mayor (please print)

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Mayor Representative's Signature of Acceptance

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Date of Authorization

# Data Destruction Authorization Form for City Councillors

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In accordance with the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the Information and Privacy Commissioner of Ontario (IPC) outlines two situations when records in the possession of a City Councillor are considered in the **custody or control of the City of Ottawa**:

1. The Councillor is acting as an officer or employee of the municipality or performs a duty assigned by council, such that they might be considered part of the institution, or
2. The records are in the custody or control of the municipality.

As such, Councillor records that are **constituency or political records** (i.e., communications with constituents or with another Councillor) are not in the custody and control of the City of Ottawa and therefore do not need to be retained at the end of a Councillor's term of Office.

Councillors are encouraged to ensure that any records considered to be in the custody or control of the City of Ottawa, such as Constituency Services Budget-related documentation, be retained by providing such records to Council Support Services prior to the end of the **[Insert term]** Term of Council. This includes any records stored on City-issued devices, including cellphones and hard drives.

Should an outgoing City Councillor not purchase and retain their City-issued technology, the data contained on such devices will be wiped as of 12:01 am on November 15, **[Insert year]**.

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Name of Elected Representative (please print)

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Elected Representative's Signature of Acceptance

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Date of Authorization