

3. 2018 YEAR-END MFIPPA REPORT

RAPPORT DE FIN D'ANNÉE SUR L'APPLICATION DE LA LAIMPVP 2018

COMMITTEE RECOMMENDATION

That Council receive this report for information.

RECOMMANDATION DU COMITÉ

Que le Conseil municipal prenne connaissance de ce rapport.

DOCUMENTATION/DOCUMENTATION

1. City Clerk and Solicitor's report, dated 24 May 2019 (ACS2019-CCS-GEN-0036).

Rapport du Greffier municipal et avocat général, daté 24 mai 2019 (ACS2019-CCS-GEN-0036).

**Report to
Rapport au:**

**Finance and Economic Development Committee
Comité des finances et du développement économique
4 June 2019 / 4 juin 2019**

**and Council
et au Conseil
12 June 2019 / 12 juin 2019**

**Submitted on May 24, 2019
Soumis le 24 mai 2019**

**Submitted by
Soumis par:**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2019-CCS-GEN-0036

SUBJECT: 2018 Year-End MFIPPA Report

OBJET: Rapport de fin d'année sur l'application de la LAIMPVP 2018

REPORT RECOMMENDATION

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.

BACKGROUND

As the amount of information in the custody or under the control of “institutions” such as the City of Ottawa grows, people expect increased access to government records of decision-making, while at the same time trusting that privacy and confidential information will be protected. Therefore, the City and other institutions must ensure that records are preserved and maintained appropriately, that privacy is protected and that the public is provided access to information in accordance with the principles and purposes set out in the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). In other words, information should be made available to the public, with only limited and specific exemptions from the right of access.

MFIPPA applies to all local government “institutions” in Ontario, including municipalities, police service boards, public library boards, conservation authorities and boards of health as well as other “local boards”. The purpose of the legislation is to provide a balance between the right of access to information held by institutions, with the requirement to protect the privacy of individuals with respect to “personal information”. As such, MFIPPA sets out rules and regulations by which municipal institutions must abide in order to protect the privacy of an individual’s personal information in government records. This includes rules regarding the collection, use, disclosure and disposal of personal information in the custody and control of a municipal institution. As outlined above, these obligations are balanced with the right to access municipal government information, including most general records and records containing an individual’s personal information, subject to very specific and limited exemptions.

As an “institution” defined under MFIPPA, the City may appoint a “Head” of the institution who is responsible for overseeing the administration of and for decisions made under the statute. At the City of Ottawa, Council has, by by-law, designated the

Mayor as the Head of Institution for these purposes. In turn, the Mayor has provided his written delegation to the City Clerk and Solicitor to address all matters with respect to this Act.

In keeping with the general principles outlined in the City's [Accountability and Transparency Policy](#) that “every new delegation of power will have a corresponding accountability mechanism,” the purpose of this report is to outline the operations and responsive metrics of the Access to Information and Privacy (ATIP) Office in the Office of the City Clerk and Solicitor.

City Council has made transparency and open government a priority, approving several related measures such as monthly public disclosure of individual office expenses for Members of Council and the Senior Leadership Team, an online Lobbyist Registry and a Gifts and Ticket Registry as well as Open Data initiatives. On July 17, 2013, Council approved a Routine Disclosure and Active Dissemination Policy that identifies a requirement for City departments to develop plans for routinely releasing or automatically making available certain records to the public. As such, the City of Ottawa is considered a leader in this field.

In 2018, the ATIP Office completed a total of 803 requests under MFIPPA for general records and personal information. In addition to the responsibilities under MFIPPA, the City Clerk and Solicitor also administers access requests related to the *Personal Health Information Protection Act, 2004* (PHIPA), which establishes rules for the collection, use and disclosure of personal health information for Health Information Custodians (e.g. Public Health, Paramedic Services, etc.) operating within the Province of Ontario. In 2018, the ATIP Office completed 22 requests for personal health information under PHIPA on behalf of Ottawa Public Health.

Overall, the ATIP Office completed 825 access to information requests under MFIPPA and PHIPA in 2018.

A summary of the ATIP Office statistics is provided in Document 1. It is based on data included in the City of Ottawa's 2018 annual statistical report to the IPC, which was submitted on March 1, 2019 in accordance with statutory provisions.

It should be noted that the Ottawa Paramedic Service, which received 530 requests for own personal health information in 2018, processes its own PHIPA requests and reports separately to the Information and Privacy Commissioner of Ontario (IPC).

DISCUSSION

Access to Information and Privacy Office Initiatives

Routine Disclosure and Active Dissemination Policy

Routine Disclosure is the regular or automatic release of certain types of administrative and operational records in response to requests made informally and outside of the process set out under MFIPPA. Active Dissemination is the periodic release of general records prior to, or in the absence of, a formal or informal request, and is usually applied to general records or statistics.

On July 17, 2013, Council approved the report titled, "[Routine Disclosure and Active Dissemination Policy](#)", which requires every City department to develop plans for routinely releasing or automatically making available certain records to the public. These plans, which are called Routine Disclosure and Active Dissemination (RD/AD) Plans, let the public know which information can be released without filing a formal request for information with the ATIP Office. RD/AD Plans also help City staff better understand the types of information that can be routinely disclosed to the public and staff's obligation to disclose such information, as well as the types of information that require formal access procedures and must be referred to the ATIP Office.

As noted in previous year-end reports, identifying records for routine disclosure and authorizing staff to make them available is a labour intensive and time-consuming process. In 2018, however, routine disclosure plans were made available on Ottawa.ca/mfippa for the Office of the City Clerk and Solicitor; Community and Social Services; Corporate Services; Emergency and Protective Services, Planning, Infrastructure and Economic Development; Recreation, Culture and Facility Services; Service Innovation and Performance; and Transportation Services.

The plans create a convenient, accessible directory that allows members of the public to identify and obtain information directly from departments. Enhanced plans, as well as additional departmental plans, will be developed and posted to the site throughout 2019.

Training and Awareness

The ATIP Office regularly offers MFIPPA training to raise awareness and reduce the risk of privacy breaches. Training is important since breach incidents tend to result from human error due to a lack of guidance and knowledge about privacy and security. In

2018, 15 training sessions were conducted for approximately 270 employees in Emergency and Protective Services, Transportation Services, and Legal Services. Training sessions dealt with matters including access to information procedures, privacy breach protocols, and conducting “reasonable searches”. In addition, the ATIP Office also provided advice on access and privacy implications for several departmental policies, procedures and services.

2018 Statistical Summary

A summary of the ATIP Office statistics is provided in Document 1. It is based on data included in the City of Ottawa’s 2018 annual statistical report to the IPC, which was submitted on March 1, 2019 in accordance with statutory provisions.

Amendments to the Personal Health Information Protection Act, 2004

Recent amendments to the PHIPA now require Health Information Custodians (HICs) to submit an annual report to the IPC. Specifically, in accordance with Section 6.4 of *Ontario Regulation 329/04*, on or before March 1 in each year beginning in 2019, HICs are required to provide to the IPC an annual report that includes the number of times in the previous calendar year that each of the following occurred:

1. Personal health information in the custodian’s custody or control was stolen.
2. Personal health information in the custodian’s custody or control was lost.
3. Personal health information in the custodian’s custody or control was used without authority.
4. Personal health information in the custodian’s custody or control was disclosed without authority.

Document 1 also includes information as it relates to this new mandatory reporting requirement for the four HICs at the City of Ottawa: Employee Assistance Program, Long-term Care, Ottawa Public Health, and Ottawa Paramedic Service.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

This is an internal information report and did not require public consultation.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

LEGAL IMPLICATIONS

There are no legal impediments to receiving this information report.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

There are no Term of Council priorities associated with this report.

SUPPORTING DOCUMENTATION

Document 1 – 2018 MFIPPA Statistical Summary

DISPOSITION

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

Document 1 – 2018 MFIPPA Statistical Summary

Under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the “Head” of the institution is responsible for overseeing the administration of and for decisions made under the statute. At the City of Ottawa, Council has, by by-law, designated the Mayor as the Head of Institution for these purposes. In turn, the Mayor has provided his written delegation to the City Clerk and Solicitor to address all matters with respect to this Act. In addition to the responsibilities 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 Health Information Custodians within the Province of Ontario.

Under Subsection 26(1) of MFIPPA, the Head of the Institution is required to submit an annual report to the Information and Privacy Commissioner of Ontario (IPC) that provides statistics related to requests for access to information. This document provides a summary of statistics included in the City of Ottawa’s 2018 annual report to the IPC, which was submitted on March 1, 2019. Data from 2017 and 2016 is also provided for comparative purposes.

As noted in previous year-end reports to Committee and 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.) is prescribed under Part V of PHIPA.

By way of background, two types of information requests are captured in statistics pertaining to MFIPPA, as follows:

- **“General Records”**: Requester is asking for general information or information that includes personal information about someone else; and
- **“Personal Information”**: Requester or an authorized representative is asking for information about the requester (this document refers to such information as “own personal information”).

In addition, this document includes statistics related to requests for **“Personal Health Information”** under PHIPA that the ATIP Office processed on behalf of Ottawa Public

Health, as well as information relating to personal health information privacy breaches that must also be submitted in an annual report to the IPC.

MFIPPA provides the Head of the Institution the discretion to charge fees for processes related to access requests. Fee charges for MFIPPA requests are prescribed by Section 45 of MFIPPA and Section 6 of *Regulation 823* made under the Act. A requester is required to pay an initial, mandatory application fee of \$5, with the possibility of additional fees depending on the nature of the request. For a Personal Information request, an additional fee will be assessed for photocopies if the cost of the copies requested exceeds \$5. For General Records requests, additional fees may be charged for Search Time, Record Preparation and Photocopying. In 2018, the ATIP Office recovered \$20,053 related to such costs. In most cases, additional fees were related to the reproduction of records, followed by search time. In keeping with the spirit of the Act to make records accessible to the public and the IPC's direction that "fees should never be used as a deterrent or barrier to access," the ATIP Office does not charge fees for requests that take under four hours to process, where under 50 pages of records will be provided, or in other circumstances where a fee waiver may be considered appropriate.

All Requests – MFIPPA

Table 1 – Number of new requests received (General Records and Personal Information)

Request Type	2018	2017	2016
General Records	742	756	784
Personal Information	66	56	44
Total	808	812	828

Number of Requests Completed

Each year, staff receive and complete new requests for general records while also completing requests that have been carried forward from the previous year. Requests are carried forward from a previous year for a variety of reasons, most often because the requests were received and entered in December and therefore have automatic legislative deadlines in the following year (i.e. January). However, this may also be due to matters such as the size and scope of a request, and consultations with internal staff

and/or third parties. As a result, in any given year there may be a difference in the number of new requests received and the number of requests completed.

In 2018, the ATIP Office completed 803 requests made under MFIPPA, comprised of 738 requests for access to general records and 65 requests for access to own personal information. In addition, there were 22 requests completed for access to own personal health information under PHIPA.

Table 2 – Number of requests completed

Request Type	2018	2017	2016
General Records (under MFIPPA)	738	715	773
Personal Information (under MFIPPA)	65	51	46
Sub-total (records requested under MFIPPA)	803	766	819
Personal Health Information (under PHIPA)	22	9	8
Total	825	775	827

Source of Requests

Requests made under MFIPPA for general records and personal information are received from a variety of sources, as indicated in the following table.

Table 3 – Source of requests – Overall (General Records and Personal Information)

Requester	2018	2017	2016
Individual/Public	422	396	366
Individual by Agent	17	13	0
Business	80	81	133
Academic/Researcher	0	2	0
Association/Group	7	22	7
Media	85	85	139

Government (All Levels)	26	31	26
Other (Lawyers)	166	136	148
Total Requests	803	766	819

Time to Completion

The time required to complete requests can vary due to factors such as the complexity of a request, consultations that may be required and department retrieval times. The following table provides data with respect to the absolute amount of time that was required to complete requests made under MFIPPA, regardless of compliance with timelines set out in the legislation.

Table 4 – Time to completion – Overall (General Records and Personal Information)

Time to Complete	2018	2017	2016
30 days or less	617	509	657
31-60 days	107	174	108
61-90 days	32	45	29
91 days or over	47	38	25
Total	803	766	819

In addition to the factors set out above, the time it takes to complete requests can be particularly affected by staffing changes. This is due to the nature of the work required to review requests for information, apply specific legislative provisions, and correspond with departments and requesters.

Each Analyst within the ATIP Office works on multiple files at any given time. Should an Analyst leave the office, these files must be redistributed within the Office and resumed by another Analyst. This new Analyst must become familiar with the files, the parties involved and any outstanding issues or considerations relating to the request. Furthermore, any new employee hired to fill a vacancy requires extensive training with respect to the relevant legislation and its application within the context of the City of

Ottawa. These staffing matters can affect completion times and compliance with the statutory timelines set out in MFIPPA.

Compliance with MFIPPA

MFIPPA provides timelines for the completion of requests made under the statute. There is a statutory timeframe of 30 days for completion of an access request (i.e. giving written notice to a requester regarding whether access to all or part of the record will be provided, and providing access if so), unless an exemption is applied under Subsection 20(1) and/or 21(1) of the legislation, as follows:

- Under Subsection 20(1) of MFIPPA, the Head of the Institution may extend the 30-day time limit (i.e. issue a “Notice of Extension”), “for a period of time that is reasonable in the circumstances, if,
 - a) 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
 - b) consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.”
- Under Subsection 21(1), the Head of the Institution must give written notice to the person to whom the information relates (i.e. a “Notice to Affected Person”) before granting a request for access “to a record,
 - a) that the head has reason to believe might contain information referred to in subsection 10 (1) [a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly] that affects the interest of a person other than the person requesting information; or
 - b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy”

The written notice described above triggers extensions on the time period in which the request must be completed.

In 2018, 689 requests were completed within the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person, as indicated in the following table. It is important to note that a number of requests were completed within days of the 30-day statutory timeframe expiring, but a Notice of Extension was not issued because the request was often substantially complete near the end of the 30-day timeframe. In addition, the statutory 30-day timeline set out under MFIPPA includes weekends and statutory holidays.

Table 5 – Compliance with MFIPPA – Overall (General Records and Personal Information)

Requests Completed	2018	2017	2016
Number of requests completed within the 30-day statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	689	572	708
Number of requests completed in excess of the 30-day statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	114	194	111
Total	803	766	819

Disposition of Requests

MFIPPA provides for a Head to withhold some or all of a requested record by applying various exemptions based on the type of information contained within the record, as detailed in Sections 6 to 16 of the legislation. For example, information related to law enforcement, advice or recommendations, and economic and other interests may be exempt in particular situations. In 2018, the most common exemption applied with respect to general records was made under personal privacy provisions of Section 14 of MFIPPA. The following tables provide statistics related to the disposition of requests made under MFIPPA.

Table 6 – Disposition of requests – Overall (General Records and Personal Information)

Disposition	2018	2017	2016
All information disclosed	196	203	249
Information disclosed in part	380	297	391
No information disclosed	35	34	85
No responsive records exist	97	89	0

Request withdrawn, abandoned or non-jurisdictional	95	143	94
Total	803	766	819

It should be noted that the increased number of “no responsive records exist” in 2017 and 2018 is the result of how the ATIP Office’s internal access to information reporting software was categorizing files. In 2016 and 2015, the reporting software was incorrectly categorizing files as “no information disclosed” rather than “no responsive records exist”. The “no information disclosed” disposition is for instances where records exist, but access is denied due to exemptions set out under the Act. The “no responsive records exist” disposition reflects instances where the requester was seeking records that do not exist. Staff corrected this anomaly in 2017.

Table 7 – Exemptions and Exclusions Applied – Overall (General Records and Personal Information)

Exemptions and Exclusions Applied	2018	2017	2016
Section 6 – Draft By-laws, etc.	0	1	1
Section 7 – Advice or Recommendations	28	28	30
Section 8 – Law Enforcement	82	57	64
Section 8(3) – Refusal to Confirm or Deny	0	0	0
Section 8.1 – <i>Civil Remedies Act, 2001</i>	0	0	0
Section 8.2 – <i>Prohibiting Profiting from Recounting Crimes Act, 2002</i>	0	0	0
Section 9 – Relations with Governments	3	1	0
Section 10 – Third Party Information	11	12	12
Section 11 – Economic/Other Interests	23	11	22
Section 12 – Solicitor-Client Privilege	33	17	29
Section 13 – Danger to Safety or Health	3	2	1
Section 14 – Personal Privacy (Third Party)	310	249	364
Section 14(5) – Refusal to Confirm or Deny	3	7	4
Section 15 – Information Soon to be Published	8	13	9

Section 20.1 – Frivolous or Vexatious	1	1	0
Section 38 – Personal Information (Requester)	0	0	1
Section 52(2) – Act Does Not Apply	0	0	0
Section 53(3) – Labour Relations and Employment Related Records	11	7	14
Section 53 – Other Acts	5	0	3
PHIPA Section 8(1) Applies	1	0	0
Total	522	406	554

The sections below provide additional details for each category of request under MFIPPA (general records and personal information) and PHIPA (personal health information).

General Records Request – MFIPPA

The ATIP Office completed 738 requests for general records in 2018, which follows the 2016 and 2017 trend of more than 700 requests per year.

The following table provides a summary of the absolute time to completion for general records, regardless of compliance with timelines set out in the legislation.

Table 8 – Time to completion – General Records

Time to Complete	2018	2017	2016
30 days or less	563	482	616
31-60 days	101	160	104
61-90 days	31	39	28
91 days or over	43	34	25
Total	738	715	773

With respect to compliance related to general records requests during the 2018 reporting year, 631 requests (or 86 per cent) were completed within the initial 30-day

statutory timeframe or within the time limits permitted under a Notice of Extension and/or a Notice to Affected Person.

It is important to note that a number of requests were completed within days of the 30-day statutory timeframe expiring, but a Notice of Extension was not issued because the request was substantially complete near the end of the 30-day timeframe. In addition, the statutory 30-day timeline set out under MFIPPA includes weekends and statutory holidays.

With respect to the 107 requests completed in excess of statutory time limits in 2017, some of these requests involved late retrievals from departments or complex files that crossed multiple departments and included significant amounts of materials. Other requests required clarifications from the requester or secondary searches to locate additional records. In other cases, requesters agreed to go beyond the legislated deadline without a formal extension when working with the ATIP Office, or files were abandoned by requesters and extended beyond time limits before being formally closed. These situations are not reflected in the statistics provided to the IPC.

The following table shows compliance with MFIPPA timelines for general records requests.

Table 9 – Compliance with MFIPPA – General Records

Requests Completed	2018	2017	2016
Number of requests completed within the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	631	514	666
Number of requests completed in excess of the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	107	201	107
Total	738	715	773

Personal Information Requests – MFIPPA

Personal information is defined in the statute as recorded information about an identifiable individual including, among other things, information related to race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital or family status, as well as education, medical, criminal or employment history of an individual. Personal information files tend to be very voluminous and can range from hundreds to thousands of pages. The ATIP Office has been working with City departments to encourage the direct and automatic release of own personal information to individuals without the need for a formal access request.

Table 10 – Time to completion – Personal Information Records

Time to Complete	2018	2017	2016
30 days or less	54	27	41
31-60 days	6	14	4
61-90 days	1	6	1
91 days or over	4	4	0
Total	65	51	46

With respect to compliance with timelines set out in MFIPPA, 58 requests for personal information (or 89 per cent) were completed within the initial 30-day timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person.

Table 11 – Compliance with MFIPPA – Personal Information Requests

Requests Completed	2018	2017	2016
Number of requests completed within the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	58	28	42
Number of requests completed in excess of the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	7	23	4
Total	65	51	46

Personal Health Information Requests under *the Personal Health Information Protection Act, 2004*

In 2018, the ATIP Office processed 22 requests for information under PHIPA on behalf of Ottawa Public Health. It should be noted that the Ottawa Paramedic Service processes its own PHIPA requests and reports separately to the IPC.

With respect to compliance, 19 of 22 requests were completed within the statutory limit (30 days) and/or the limit permitted under a time extension and notice under Subsections 54(3) and 54(4) of PHIPA. The Act provides for an extension of up to 30 days if meeting the initial 30-day timeline would unreasonably interfere with the operations of the Health Information Custodian because the information consists of numerous pieces of information, locating the information would require a lengthy search, or if additional time is required to undertake necessary consultations.

Table 12 – PHIPA Requests

PHIPA Requests	2018	2017	2016
Number of requests completed within the statutory limit or the time limit permitted under a Time Extension Notice	19	8	8
Number of requests completed in excess of the statutory limit or the time limit permitted under a Time Extension Notice	3	1	0
Total	22	9	8

Personal Health Information Privacy Breaches

Pursuant to Section 6.4 of *Ontario Regulation 329/04*, on or before March 1 in each year beginning in 2019, Health Information Custodians (HICs) are required to provide to the IPC an annual report that includes the number of times in the previous calendar year that personal health information in the custodian’s custody or control was stolen, lost, or used or disclosed without authority. The following table includes information relating to the four HICs at the City of Ottawa.

Table 13 – Personal Health Information Privacy Breaches

Health Information Custodian	2018	2017	2016
Long-term Care	0	N/A*	N/A*
Employee Assistance Program	0	N/A*	N/A*
Ottawa Paramedic Service	6	N/A*	N/A*
Ottawa Public Health	5	N/A*	N/A*

* Mandatory reporting requirement took effect for reports submitted in 2019.