

2020 Report on MFIPPA

BACKGROUND

Under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the “Head” of an “Institution” such as a municipality is responsible for overseeing the administration of the statute and for decisions made under the statute. At the City of Ottawa, Council has, by by-law, designated the Mayor as the Head of the Institution for these purposes. In turn, the Mayor has provided his written delegation to the City Clerk to address all matters with respect to this Act. In addition to the responsibilities under MFIPPA, the City Clerk also supports the administration of 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, and Long Term Care).

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 2020 annual report to the IPC, which was submitted on March 15, 2021. Data from 2019 and 2018 is also provided for comparative purposes.

In 2020, the ATIP Office within the Office of the City Clerk completed a total of 506 requests under MFIPPA for general records and personal information. The ATIP Office also completed five requests for personal health information under PHIPA on behalf of Ottawa Public Health.

It should be noted that the Ottawa Paramedic Service processed 505 requests for personal health information in 2020, while Long Term Care processed 11 requests for personal health information.

DISCUSSION

2020 – Summary and statistics

Overall, the ATIP Office within the Office of the City Clerk completed 511 access to information requests under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and the *Personal Health Information Protection Act, 2004* (PHIPA) in 2020. A summary of the ATIP Office statistics is provided below. It is based

on data included in the City of Ottawa's 2020 annual statistical report to the Information and Privacy Commissioner of Ontario (IPC), which was submitted on March 15, 2021, in accordance with statutory provisions. The summary also includes information as it relates to the mandatory reporting requirement for the three Health Information Custodians (HICs) at the City of Ottawa: Long Term Care, Ottawa Public Health, and the Ottawa Paramedic Service.

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 HICs 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 2020, the ATIP Office recovered \$10,133 related to such costs. In most cases, additional fees were related to the preparation of the records (i.e. the redaction of information pursuant to MFIPPA), followed by search time and the reproduction of records. 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 in the year (General Records and Personal Information)

Request Type	2020	2019	2018
General Records	446	801	742
Personal Information	56	68	66
Total	502	869	808

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. in 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 2020, the ATIP Office completed 506 requests made under MFIPPA, comprised of 453 requests for access to general records and 53 requests for access to own personal information. In addition, there were five requests completed for access to own personal health information under PHIPA.

The significant decline in the number of requests received and processed by the ATIP Office in 2020 can largely be attributed to the ongoing COVID-19 pandemic. Following the State of Emergency declared by the Province under the *Emergency Management and Civil Protection Act*, City operations were scaled to essential services in order to minimize risks to health and safety. While the ATIP Office maintained its operation in order to ensure compliance with its enabling legislation, and delays in processing requests were kept to a minimum, the pandemic had a tangible effect on the ability for operational staff to retrieve responsive records in a timely manner.

In addition, the Information and Privacy Commissioner of Ontario (IPC) noted that the suspension order issued under the *Emergency Management and Civil Protection Act* effectively froze statutory time limits from March to September 2020. Due to this order suspending statutory time limits, the ATIP Office was unable to complete requests for third party records, as the Head is required under MFIPPA to allow for a 30-day appeal period to elapse before releasing third party records. During the suspension period, the IPC was not processing third party appeals, and therefore the Head could not release affected records and close requests. It is the understanding of the Head that the appeal process at the IPC continues to be delayed due to COVID-19 precautions.

Table 2 – Number of requests completed

Request Type	2020	2019	2018
General Records (under MFIPPA)	453	762	738
Personal Information (under MFIPPA)	53	66	65
Sub-total (records requested under MFIPPA)	506	828	803
Personal Health Information (under PHIPA)	5	14	22
Total	511	842	825

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	2020	2019	2018
Individual/Public	247	436	422
Individual by Agent	9	11	17
Business	55	111	80
Academic/Researcher	0	2	0
Association/Group	1	7	7
Media	51	95	85

Government (All Levels)	3	6	26
Other (Lawyers)	140	160	166
Total Requests	506	828	803

Time to completion

The time required to complete requests can vary due to factors such as the complexity of a request, third party 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	2020	2019	2018
30 days or less	265	546	617
31-60 days	124	203	107
61-90 days	59	48	32
91 days or over	58	31	47
Total	506	828	803

In addition to the factors set out above, including the COVID-19 pandemic and the work-from-home program the City initiated, the time it takes to complete requests can be particularly affected by factors such as complexity of files and requests for a broad scope of information. This is due to the nature of the work required to review requests for information, read and comprehend a number of different documents, apply specific legislative provisions, and correspond with departments and requesters.

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 2020, 282 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	2020	2019	2018
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	331	641	689
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	175	187	114
Total	506	828	803

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 2020, 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	2020	2019	2018
All information disclosed	115	213	196
Information disclosed in part	234	369	380
No information disclosed	24	50	35
No responsive records exist	53	105	97
Request withdrawn, abandoned or non-jurisdictional	80	91	95
Total	506	828	803

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

Exemptions and Exclusions Applied	2020	2019	2018
Section 6 – Draft By-laws, etc.	1	0	0
Section 7 – Advice or Recommendations	12	33	28
Section 8 – Law Enforcement	59	91	82
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	3
Section 10 – Third Party Information	12	18	11
Section 11 – Economic/Other Interests	14	17	23
Section 12 – Solicitor-Client Privilege	18	44	33
Section 13 – Danger to Safety or Health	0	1	3
Section 14 – Personal Privacy (Third Party)	198	316	310
Section 14(5) – Refusal to Confirm or Deny	2	6	3
Section 15 – Information Soon to be Published	13	17	8
Section 20.1 – Frivolous or Vexatious	0	0	1
Section 38 – Personal Information (Requester)	0	0	0
Section 52(2) – Act Does Not Apply	0	0	0
Section 53(3) – Labour Relations and Employment Related Records	5	25	11
Section 53 – Other Acts	11	0	5
PHIPA Section 8(1) Applies	2	0	1
Total	350	569	522

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 453 requests for general records in 2020.

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	2020	2019	2018
30 days or less	236	491	563
31-60 days	112	194	101
61-90 days	50	46	31
91 days or over	55	31	43
Total	453	762	738

With respect to compliance related to general records requests during the 2020 reporting year, 295 requests (or 65 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 158 requests completed in excess of statutory time limits in 2020, some of these requests involved late retrievals from departments or increasingly 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	2020	2019	2018
Number of requests completed within the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	295	583	631
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	158	179	107
Total	453	762	738

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	2020	2019	2018
30 days or less	29	55	54
31-60 days	12	9	6
61-90 days	9	2	1
91 days or over	3	0	4
Total	53	66	65

With respect to compliance with timelines set out in MFIPPA, 36 requests for personal information (or 68 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	2020	2019	2018
Number of requests completed within the statutory timeframe or time limits permitted under a Notice of Extension and/or a Notice to Affected Person	36	58	58
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	17	8	7
Total	53	66	65

Personal health information requests under *the Personal Health Information Protection Act, 2004*

In 2020, the ATIP Office processed five requests for information under PHIPA on behalf of Ottawa Public Health. It should be noted that the Ottawa Paramedic Service and Long Term Care process their own PHIPA requests.

With respect to compliance, two of five 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 on behalf of Ottawa Public Health

PHIPA Requests	2020	2019	2018
Number of requests completed within the statutory limit or the time limit permitted under a Time Extension Notice	2	11	19

Number of requests completed in excess of the statutory limit or the time limit permitted under a Time Extension Notice	3	3	3
Total	5	14	22

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	2020	2019	2018
Long Term Care	0	0	0
Ottawa Paramedic Service	0	2	6
Ottawa Public Health	2	1	5