



*The Corporation of the Municipality of Wawa  
Staff Report*

*Clerk*

<b>Prepared For: Council</b>	<b>Report No.: CC-2021-03</b>
<b>Agenda Date: May 18, 2021</b>	<b>File No.: 18</b>

**Subject**

The purpose of this report is to support the need for a review and change to the Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”).

**List of Stakeholders**



The list of Stakeholders includes:

The Municipality of Wawa  
Residents  
Province of Ontario

**Summary of Recommendation**

**RESOLVED THAT** Council of the Municipality of Wawa hereby:

1. Receive the Clerk’s Report as information regarding the request for the need for a review and change to the MFIPPA legislation.
2. Support the passage of a motion for the Ministry of Government and Consumer Services to consider the following recommendations:
  - a. That MFIPPA assign the Municipal Clerk, or designate to be the Head under the Act;
  - b. That MFIPPA be updated to address current and emerging technologies;
  - c. That MFIPPA regulate the need for consistent routine disclosure practices across institutions;

<b>Respectfully Submitted By:</b> Cathy Cyr Clerk	<b>Reviewed By:</b> Maury O’Neill CAO-Treasurer
<b>Name/Signature/Title</b> 	<b>Supervisor’s Name/Signature/Title</b> 

- d. That the threshold for frivolous and/or vexatious actions be reviewed, and take into consideration the community and available resources in which it is applied;
- e. That the threshold for frivolous and/or vexatious also consider the anonymity of requesters, their abusive nature and language in requests to ensure protection from harassment as provided for in Occupational Health and Safety Act;
- f. That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process;
- g. That administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized; and
- h. That the integrity of the Act be maintained to protect personal privacy and transparent governments.

## **Background and Analysis**

The current MFIPPA legislation dates back 30 years. Agencies and municipalities have seen drastic changes in government operations, public expectation, accountability and transparency measures, technology, and other legislations – particularly with respect to the digitalization of corporate records and automation of business processes. MFIPPA has not been revised to keep up with the progressions that have occurred over the years.

The creation, storage and utilization of records has changed significantly, and the Municipal Clerk of the Municipality is responsible for records and information management programs as prescribed by the Municipal Act, 2001. The current MFIPPA legislation states that a member of Council be appointed as the “Head”. Over the years, many municipalities in Ontario changed its delegation of authority to the Clerk to act as the “Head” for MFIPPA. Councils have recognized that the Municipal Clerk is responsible for the corporate records and is also the person that would make determinations on access based on legislation. It makes sense that the statutory officer responsible for the corporate records be the appointed as the “Head” under the MFIPPA legislation.

The Municipality of Wawa over the past few years has experienced a financial burden from the out-dated legislation as it does not provide for cost-recovery, and these shortfalls are borne the municipal taxpayer. Currently there are only two steps in the process that are recoverable – searching and preparing records for disclosure. Appeals can be lengthy and costly and the municipality cannot recover these costs. The request fee is still set at \$5.00.

The threshold to establish frivolous and/or vexatious requests is unreasonably high and allows for harassment of staff and members of municipal councils, and unreasonably affects the operations of the municipality. The Act fails to recognize how multiple requests from an individual, shortage of staff resources or expense of producing the record due to its size, number or physical location does not allow for time extensions to deliver requests and unreasonably affects the operations of the municipality. Too often staff are required to spend numerous hours attempting to determine how many records it may have in its possession and determining a cost estimate; and then the requestor withdraws its request. All of these costs are borne by our local taxpayer.

The name of the requestor is not permitted to be disclosed to anyone other than the person processing the access request, and this anonymity is used by requesters to abuse the MFIPPA process and does not align with the spirit of openness and transparency embraced by municipalities. The intent of the anonymity of the requester is to ensure that there is protection from harassment as provided for under the Occupational Health and Safety Act.

The Municipality of Wawa receives very few requests for information in accordance with the provisions of MFIPPA. Generally, information is shared with residents as requested and at no cost so long as there is no information contained within the request that falls into one of the exemption categories outlined in MFIPPA. With the continued digitalization of corporate records, this makes responding to requests for information received from the public much more efficient and we are able to respond in a timely manner.

Although the Municipality has a low volume of Freedom of Information requests received under the Act, staff agree that the modernization of the legislation, with an open and transparent process, resources for administrators and requests are needed.

### **Financial Impact**

There are no financial implications to the Municipality of Wawa.

### **Policies & Plans Affecting Proposal**

- Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56
- Municipal Act, 2001, SO 2001, c.25.

## Recommendation

It is the recommendation of staff that Council support the passage of a motion to request the Ministry of Government and Consumer Services to review and update the MFIPPA Legislation to address current technologies; regulate the need for routine disclosure practices across all institutions; review the threshold for frivolous and/or vexatious actions and consider the anonymity of the requester to ensure protection from harassment as provided for in the Occupational Health & Safety Act; and review the application and scalability of the fees to ensure taxpayers are protected from persons abusing the access to information process.

Proposed motion for Council consideration is as follows:

*WHEREAS the Municipal Freedom of Information and Protection of Privacy Act R.S.O. 1990 (MFIPPA) dates back 30 years;*

*AND WHEREAS municipalities, including the Municipality of Wawa, practice and continue to promote open and transparent government operations, actively disseminate information and routinely disclose public documents upon request outside of the MFIPPA process;*

*AND WHEREAS government operations, public expectations, technologies, and legislation surrounding accountability and transparency have dramatically changed and MFIPPA has not advanced in line with these changes;*

*AND WHEREAS the creation, storage and utilization of records has changed significantly, and the Municipal Clerk of the Municipality is responsible for records and information management programs as prescribed by the Municipal Act, 2001;*

*AND WHEREAS regulation 823 under MFIPPA continues to reference antiquated technology and does not adequately provide for cost recovery, and these financial shortfalls are borne by the municipal taxpayer;*

*AND WHEREAS the threshold to establish frivolous and/or vexatious requests is unreasonably high and allows for harassment of staff and members of municipal councils, and unreasonably affects the operations of the municipality;*

*AND WHEREAS the Act fails to recognize how multiple requests from an individual, shortage of staff resources or the expense of producing a record due to its size, number or physical location does not allow for time extensions to deliver requests and unreasonably affects the operations of the municipality;*

*AND WHEREAS the name of the requestor is not permitted to be disclosed to anyone other than the person processing the access request, and this anonymity is used by requesters to abuse the MFIPPA process and does not align with the spirit of openness and transparency embraced by municipalities;*

*AND WHEREAS legal professionals use MFIPPA to gain access to information launch litigation against institutions, where other remedies exist;*

*AND WHEREAS there are limited resources to assist administrators or requestors to navigate the legislative process;*

*AND WHEREAS reform is needed to address societal and technological changes in addition to global privacy concerns and consistency across provincial legislation;*

*NOWHEREFORE BE IT RESOLVED that the Council of The Corporation of the Municipality of Wawa does hereby respectfully request Ministry of Government and Consumer Services to review the MFIPPA legislation, and consider recommendations as follows:*

- 1. That MFIPPA assign the Municipal Clerk, or designate to be the Head under the Act;*
- 2. That MFIPPA be updated to address current and emerging technologies;*
- 3. That MFIPPA regulate the need for consistent routine disclosure practices across institutions;*
- 4. That the threshold for frivolous and/or vexatious actions be reviewed, and take into consideration the community and available resources in which it is applied;*
- 5. That the threshold for frivolous and/or vexatious also consider the anonymity of requesters, their abusive nature and language in requests to ensure protection from harassment as provided for in Occupational Health and Safety Act;*
- 6. That the application and scalability of fees be designed to ensure taxpayers are protected from persons abusing the access to information process;*
- 7. That administrative practices implied or required under the Act, including those of the IPC, be reviewed and modernized;*
- 8. That the integrity of the Act be maintained to protect personal privacy and transparent governments.*