

Corporate Report

REPORT NUMBER 077-2024-City Manager's Office-Office of the City Clerk

DATE

PREPARED

March 11, 2024

FILE

MEETING DATE

March 25, 2024

SUBJECT

Access and Privacy Policy & Delegation under MFIPPA

RECOMMENDATION

WITH RESPECT to Report 77-2024 – City Manager's Office – Office of the City Clerk, we recommend that the Access and Privacy Policy, as appended to this Report, be approved;

AND THAT this policy be included within the corporate policy manual and will replace the current Corporate Policy 03-03-05, Municipal Freedom of Information and Protection of Privacy;

AND THAT the necessary by-law amendment outlined in this Report to By-law 54-2004 be presented to City Council for ratification on April 8, 2024 in addition to the repeal of Chapter 525 of the City of Thunder Bay Municipal Code.

EXECUTIVE SUMMARY

This Report presents the Access and Privacy Policy, which will allow for greater public trust in The Corporation of the City of Thunder Bay (the "City") and demonstrates the City's commitment to protecting the privacy of individuals. This policy will also replace the current Corporate Policy 03-03-05, Municipal Freedom of Information and Protection of Privacy. The updated policy provides for a more comprehensive policy, which integrates accountability per the requirements of the Ontario *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA").

The intent of this policy is to demonstrate the City's commitment to protecting the privacy of individuals, while also providing individuals with access to information in accordance with MFIPPA. The policy outlines the roles and responsibilities with respect to access to information and the protection of privacy. Although a policy alone is not enough with respect to the protection of privacy, this policy demonstrates the City's commitment to an open, accessible and transparent government.

This Report also outlines the need for an amendment to By-law 54-2004 with respect to the designation of the Head and the confirmation of the delegated duties of the Director – Legislative Services & City Clerk under MFIPPA to better reflect the current state of how MFIPPA requests are managed.

DISCUSSION

MFIPPA came into effect on January 1, 1991. The City's requirements under MFIPPA were going to be too demanding to be added to an existing position (Report 358/89, Access and Privacy Award of Excellence Submission, 1992). The establishment of two positions were recommended in Report No. 358/89:

- Freedom of Information & Protection of Privacy Coordinator
- Record Manager & Archivist

The Freedom of Information & Protection of Privacy Coordinator was hired in 1989 and was later expanded in 1991 to introduce job-sharing with an FOI Coordinator (Plan of Action, Access and Privacy Award of Excellence Submission, 1992). The first task of the City with the enactment of the new legislation was to obtain training and then to develop an implementation plan for the City (Plan of Action, Access and Privacy Award of Excellence Submission, 1992). The implementation laid out responsibilities of City Council and City employees, mainly the City Clerk, Information/Privacy Coordinator and Records Coordinator (Plan of Action, Access and Privacy Award of Excellence Submission, 1992). The years following, privacy bulletins, training material and Corporate Policy 03-03-05 were established. However, in later years the resources were removed and the workload was reallocated to other areas without a dedicated resource.

The City understands their obligations under MFIPPA, which can be demonstrated through many examples, such as:

- Privacy training provided to all staff during orientation;
- Privacy training provided to supervisors during orientation;
- Privacy training per request of managers; and
- Privacy articles and reminders published.

As a result of the increasing number and complexity of Freedom of Information (FOI) requests, the Director – Legislative Services & City Clerk completed a re-organization in the Archives, Records and Privacy Section of the Office of the City Clerk Division in 2022. This reorganization eliminated an administrative position within the Archives and Records team and created the position of an Access & Privacy Officer. Due to budget constraints, there had not been a designated position to manage this work for over fifteen years. As a result, the Archives team took on these responsibilities as part of their workload, with the duties of the position sometimes being split between three or more employees at a time.

With the increased advancements in technology and the approval of the City's Digital Strategy, the City has evolving privacy obligations. The City must ensure that it strengthens the protection of privacy of individuals in today's digital world, while also being open and transparent with members of the public.

Policy

The Director – Legislative Services & City Clerk and the Access & Privacy Officer completed a scan analysis consulting other municipalities' policies and/or directives with respect to privacy. Specifically of notable reference, the City of Guelph, the City of Cambridge, the City of Burlington and the City of Toronto. Although there is no direct size comparison to these cities noted, the City is a single-tier municipality which manages services which can be divided between an upper-tier and lower-tier municipality. Therefore, due to the volume of services that the City provides, which can include personal information being collected, used and disclosed, it is prudent that this policy be established.

This policy provides a better understanding of roles and responsibilities with respect to access to information and protection of privacy. Privacy is a responsibility of all employees of the City and this policy provides a clear depiction of the roles and responsibilities for the institution. Including strengthening privacy awareness, this policy provides for a more comprehensive policy than the policy currently in place.

By-law Amendment

In addition to the policy, this Report outlines the need for an amendment to By-law 54-2004 for greater clarity relative to administrative roles. The current by-law designates the Mayor as the Head and empowers the City Clerk or Deputy City Clerk to carry out the administrative duties of the Head to make decisions on requests, including the approval, denials, and severance of information per MFIPPA. It would be practical and appropriate for this to be clarified and to further confirm all legislative obligations are fulfilled. This change is in keeping with best practice in many municipalities.

Therefore, an update to the language of By-law 54-2004 is required and repeal of Chapter 525 of the City of Thunder Bay Municipal Code is recommended. Specifically, it is recommended to designate Council as the Head and to clarify that the powers and duties of the Head be delegated to the Director – Legislative Services & City Clerk. The update to the language will provide for alignment with other municipalities and provide more clarity in the Director – Legislative Services & City Clerk's role with respect to matters of MFIPPA, which includes both access to information and the protection of privacy. In addition, the Director – Legislative Services & City Clerk is responsible for corporate and archival records for the City of Thunder Bay. This amendment reflects the current state of operations where all access requests are managed by the Office of the City Clerk and the Director – Legislative Services & City Clerk is the contact for the City on all access and privacy matters with the Information and Privacy Commission of Ontario.

FINANCIAL IMPLICATION

There are no financial implications directly associated with this Report at this time.

CONCLUSION

It is concluded that the Access and Privacy Policy should be approved and that the amendment proposed to By-law 54-2004 be brought forward for ratification and that Chapter 525 of the City of Thunder Bay Municipal Code should be repealed.

BACKGROUND

MFIPPA came into effect on January 1, 1991.

Corporate Policy 03-03-05, Municipal Freedom of Information and Protection of Privacy was approved by City Council on October 15, 1996.

By-law 54-2004 respecting Freedom of Information – Protection of Privacy, Designation of Head was approved by City Council on March 9, 2004.

In 2022, a reorganization of the Archives, Records and Privacy Division took place to create the position of an Access & Privacy Officer.

REFERENCE MATERIAL ATTACHED

Attachment 1 – Access and Privacy Policy

Attachment 2 – Draft By-law 82-2024 A By-law to amend By-law 54-2004 and to repeal Chapter 525 of the City of Thunder Bay Municipal Code

REPORT PREPARED BY

Stefanie Kirk, Access & Privacy Officer

REPORT SIGNED AND VERIFIED BY

Norm Gale, City Manager

03/15/2024