

**CITY OF VAUGHAN
EFFECTIVE GOVERNANCE AND OVERSIGHT TASK FORCE
AGENDA**

Wednesday, June 24, 2020

5:00 p.m.

Committee Rooms 242/243

2nd Floor, Vaughan City Hall

2141 Major Mackenzie Drive

Vaughan, Ontario

Pages

This is an Electronic Meeting.

1. **CONFIRMATION OF AGENDA**
2. **DISCLOSURE OF INTEREST**
3. **COMMUNICATIONS**
4. **DETERMINATION OF ITEMS REQUIRING SEPARATE DISCUSSION**
 1. **FREEDOM OF INFORMATION** 2
Presentation of the City Clerk with respect to the above.
 2. **OUTSTANDING LIST DATED JUNE 24, 2020** 28
5. **ADOPTION OF ITEMS NOT REQUIRING SEPARATE DISCUSSION**
6. **CONSIDERATION OF ITEMS REQUIRING SEPARATE DISCUSSION**
7. **NEW BUSINESS**
8. **ADJOURNMENT**

Freedom of Information: Access & Privacy

Effective Governance and Oversight Task Force
June 24th, 2020

Agenda

Overview of Legislation – MFIPPA

Information and Privacy Commissioner (IPC)

Access & Privacy Office Overview

Councillor Records

Closed Session Meetings

What is MFIPPA?

MFIPPA is an acronym for the **Municipal Freedom of Information and Protection of Privacy Act** (the *Act*) which is a provincial law that governs the City on access and privacy matters.

What is MFIPPA?

The Ontario Government established the Commission on Freedom of Information and Individual Privacy in 1977 to look at ways to improve public information policies and public sector access and privacy legislation. The Commission was headed by Dr. D. Carlton Williams and is known as the “Williams Commission”.

What is MFIPPA?

The framework for Ontario's legislation is set out in the Commission's report entitled "Public Government for Private People, The Report of the Commission on Freedom of Information and Individual Privacy" published in 1980.

MFIPPA, came into force on January 1, 1991.

What is MFIPPA?

In Ontario, there are four main laws that deal with access to information and privacy. Other federal and provincial legislation and municipal by-laws have specific access and privacy provisions that may also apply. The four main laws are:

What is FIPPA?

Freedom of Information and Protection of Privacy Act (FIPPA):

Applies to the provincial government of Ontario, universities, colleges, hospitals and designated agencies. FIPPA came into force on January 1, 1988.

What is MFIPPA?

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA):

Is the local government equivalent of FIPPA and covers municipal institutions such as municipalities, cities, towns, school boards, police services and many other local government entities. MFIPPA came into force on January 1, 1991.

What is PHIPA?

Personal Health Information Protection Act (PHIPA):

Provides rules specific to personal health information in the custody of health information custodians. Health information custodians include health care practitioners such as hospitals, long-term care facilities, pharmacies and more. PHIPA came into force on November 1, 2004.

What is PIPEDA?

Personal Information Protection and Electronic Documents Act (PIPEDA):

Federal legislation that governs how private companies and not-for-profit organizations engaging in commercial activities can handle personal information. PIPEDA came into force for federally regulated industries on January 1, 2001 and for all other companies and not-for-profit organizations on January 1, 2004.

What is MFIPPA?

Purposes of the *Act*:

- To provide a right of access to information (records) under the control of the City; and
- To protect the privacy of individuals with respect to personal information about themselves held by the City, including a right of access to that information.

What is MFIPPA?

Basic Principles:

- information should be available to the public; the public has the right to know what government is doing and how decisions have been reached.
- exemptions to the right of access should be limited and specific

Information and Privacy Commissioner of Ontario (IPC)

- The IPC acts within the scope of a quasi-judicial tribunal
- The authority is set out in MFIPPA
- The IPC generally intervenes on matters of access to information appeals

Information and Privacy Commissioner of Ontario (IPC)

- Similar to Ombudsman except IPC can issue binding orders
- Can also intervene on privacy matters (breaches, complaints, personal information corrections)
- All institutions subject to the *Act* (and its provincial counterparts FIPPA & PHIPA) are required to submit annual statistics reports to the IPC

Access & Privacy Program - Office of the City Clerk

- Is responsible for ensuring the City's compliance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA);
- promotes accountability, transparency and open government while balancing with the need for privacy protection

Access & Privacy Program - Office of the City Clerk

Our role:

- To process requests for City records from the public;
- Provide advice to City staff on access and privacy related matters; and,
- Serve as the liaison with the Information and Privacy Commissioner of Ontario (IPC)

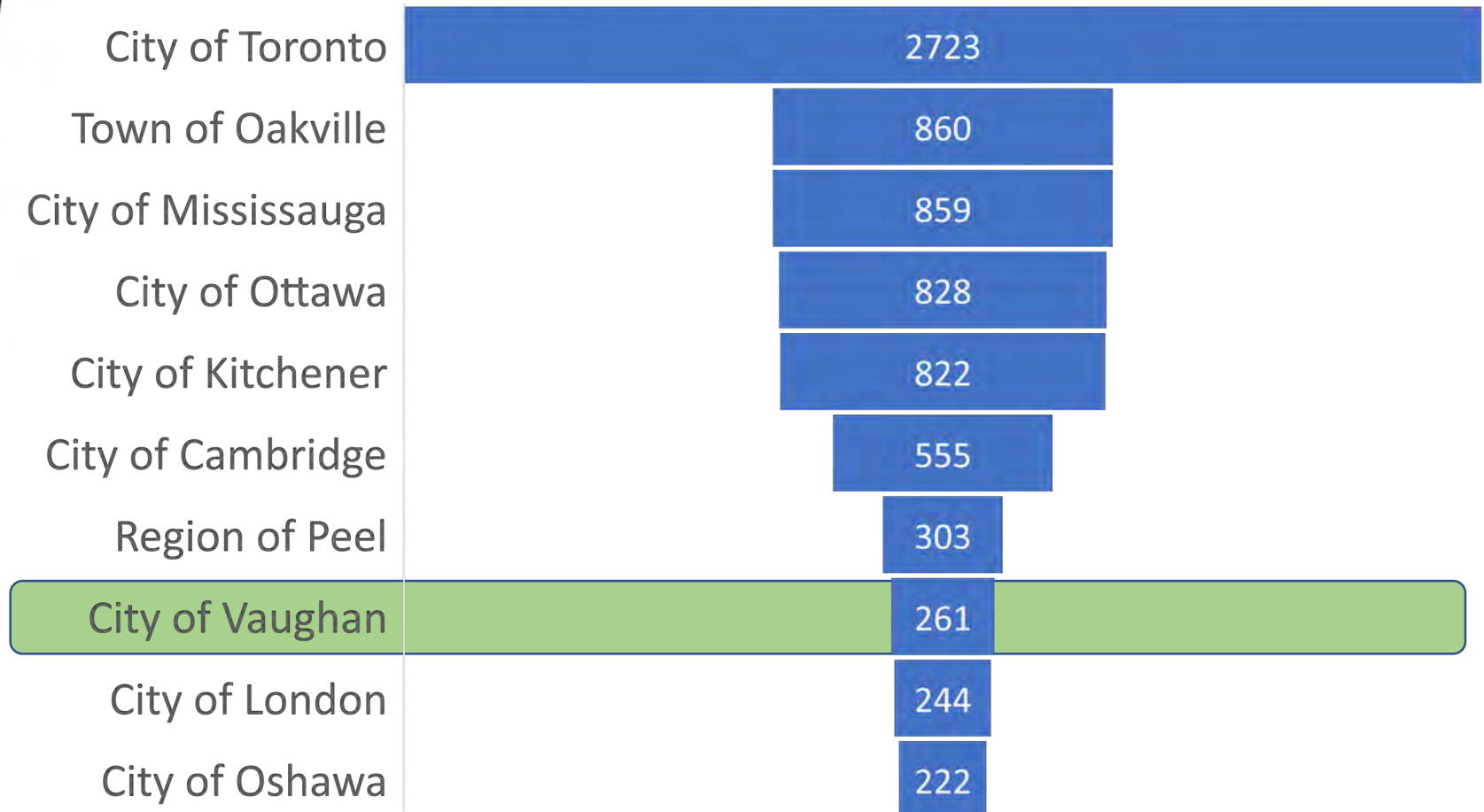
Access & Privacy Snapshot

Most common requests:

- By-Law complaint reports
- Environmental records
- Request for Proposal (RFPs)

Access & Privacy Snapshot

Total Requests Completed - 2019



Councillor Records – When are they subject to MFIPPA?

Councillors' records are subject to *MFIPPA* when:

- A councillor is acting as an officer or employee of the municipality, or performs a duty assigned by council
- The records are in the custody or control of the municipality

City of Oshawa example:

- Councillor Nancy Diamond sent an email using her personal email account. The email asked an investigator for feedback on the terms of his eventual hiring by the city.
- The city's FOI department argued that since the Councillor did not use the city's server to send the email, the email was not covered by *MFIPPA*.
- The Information Privacy Commissioner said:
"It's not a matter of what email was used or what device was used. If the matter relates to city business, it's subject to the act. I think this will help clarify for everybody that you're not avoiding access-to-information legislation simply because you use your own device or your own private email account."

Constituency Records vs. City Records

Constituency records are documents and information received or created by councillors, including their staff, that relate to matters dealing with their constituents.

Constituency records are not subject to MFIPPA when they are not related to the discharge of the councillor's responsibilities as a member of council or to some aspect of a City council's mandate.

For example: Correspondence between residents & councillors with regards to snow removal issues within their ward, would be considered a constituency record and not a City record.

Mayor's Records

The mayor of a municipality is an officer of that municipality. Therefore, records created or received in connection with his or her duties as Mayor are covered by MFIPPA, in the same manner as the records of City employees or other officials of the City.

Closed Session Meetings

Section 6(1)(b) of *MFIPPA* states:

This subsection permits the head to prevent disclosure of a record which reveals the substance of deliberations of a closed meeting of a council, board, commission or other body or a committee of one of them. In order to qualify for this exemption, the institution must establish:

- that a meeting was held in the absence of the public, and
- that a statute authorizes the holding of the meeting in the absence of the public, and
- that disclosing the record would reveal the actual substance of deliberations of the meeting.

A photograph of a man in a dark suit and tie standing behind a group of young soccer players. The players are wearing blue and white uniforms with 'macron' logos. They are holding a blue and white striped banner. The background is a grassy field under a blue sky with clouds.

Closed Session Meetings

Reports and materials prepared for consideration at closed session meetings are records that may be subject to FOI requests.

In the event of an IPC appeal, the City could be ordered to release records that were previously denied.



Example: The City of St Catharines denied access to a financial management services report that was submitted to City council in a closed meeting.

The IPC found that City council did not have the authority to consider the subject matter of most of the report in a closed meeting.

Council should have gone into closed session for portions of the report dealing with "disposition of land".

Thank You.

EFFECTIVE GOVERNANCE & OVERSIGHT TASK FORCE OUTSTANDING LIST

June 24, 2020

Meeting / Date	Rpt(Item) / Title	Issue Outstanding/Question	Comments	Date Complete
June 5/20	Letter to Previous Councillors, Senior Staff	Letter requesting contribution to the EGOTF.	Sent June 18/20 Waiting for comments.	
June 5/20	Email from Councillor Carella	Please add to the long-term agenda for EGOTF "why should we have a separate audit committee?"		
May 19/20	RPT 3(1) PRESENTATION ON MUNICIPAL ACT	Q - How does the City's Lobbyist Registry compare to Toronto and other municipalities? Are we planning on reviewing it? (JR) Q - Should there be a periodical review of Statutory Committees? (FN) Q – Attachment 1 to this document – questions submitted by Fausto Natarelli		
May 19/20	RPT 3(2) DISCUSSION ON GOVERNANCE AND ADMINISTRATION - REFLECTIONS FROM DR. LEBLANC'S PRESENTATION	Deferred to a future meeting.		

**Effective Governance and Oversight Task Force
City of Vaughan
May 19, 2020 Meeting**

Questions

Governance and Oversight (General)

- 1) When was the last time someone had a fundamental look at the function of council, committees and related supports? What were the findings of that effort? Were the recommendations implemented and if not why?
- 2) Is there an intent to review and comment on the governance structure say once every 5 years?
- 3) What's appointment process for City of Vaughan boards and committees?
- 4) What is the current state or character of the relationship between Council and the Administration and what efforts are made to ensure effective collaboration?
- 5) Are respective roles and responsibilities generally well known and understood? Is there a clear appreciation of the political-administration dichotomy?
- 6) What approaches are used to arrive at a determination of the *public interest*, to help guide the City's decisions and actions in particular circumstances? Are there general guiding principles used?
- 7) How does Council know that the discretion that is often conferred on administration officials is being reasonably exercised?
- 8) Is there a lessons-learned culture within the City? If so, what might be the proof-points?

Presentation: *Best Organizational Governance Practices* – Dr. LeBlanc

- 13) How would the City determine what is in the best interest "of the organization as a whole"?
- 14) What has been the City's experience with COI and how has it modified its practices in response to these developments?
- 15) What is the City's approach to the determination, establishment and maintenance of 'Duty of Care'?
- 16) What's the reaction to suggestions on pg 17?
- 17) How does the City currently try to achieve the considerations on pg 19?
- 18) What would the City's answers be to the questions on pg 25?
- 19) What's the City's approach to ensuring strategic focus and achievement of key outcomes (as per suggestions on pgs 28 & 29?)
- 20) How does the City contend with disrupters and disruption?
- 21) How does the City ensure that it is not saddled with old think and traditional high-cost administrative models and practices? What out 'nudging' or 'freak-economic' evidence to bring about desired constituent behaviours with few unintended consequences?
- 22) How does the City's performance monitoring process compare to the "Strategic Value Creation" cited on pg 32?
- 23) How does Council strive to leverage competencies or traits of its members to either lead or contribute to sub-committees?
- 24) What does the City's overall committee and decision-making structure look like and how does it compare to considerations on pg 51? What is the flow and character of supporting information?
- 25) How is City accounting for risk (both financial and non-financial)?

Presentation: Municipal Act and Governance – City of Vaughan

- 26) What processes and procedures does Council have for ensuring that the City's by-laws, policies, practices, and activities remain in compliance with applicable Governing Legislation?
- 27) How does the City ensure that its authorities granted as "natural persons" are not abused? Is there a process for example to review and react to pertinent case law developments and if so, what does that process look like?
- 28) How does Council delegate authority to administration staff and is there a periodic review to ensure that delegation is being exercised in the public interest?
- 29) Same for delegation to local boards, committees, municipal service boards, municipal services corporations etc?
- 30) How does Council keep track of the implementation of its direction? Is there a secretariat within the City Manager's Office that compiles reports and/or KPIs? As per Section 227 of the Municipal Act and pg 16 of the presentation?
- 31) What "other duties" are assigned to the CAO (City Manager) and how is that process managed? Are the duties on-going, or time-limited or both?
- 32) Are there specific arrangements and protocols in place that pertain to the authority of Statutory Officers? If so, what are they?
- 33) What is Council's relationship with its various Accountability Officers and is it responsive to their reports and findings? How so? Are the interactions post-facto only?
- 34) Does the City have a preferred or ideal Bylaw Development Process that clearly sets out expectations for quality, thoroughness, due diligence, comprehensiveness, adherence/compliance to various internal strategic objectives, mandatory policies, operational requirements?
- 35) How does Council know that it is effective and efficient in regards to its role as per page 13 of the presentation and Section 224 of the Municipal Act?
- 36) Are the "Other governing docs" cited on pg 17 available/accessible? If so how?
- 37) How does Council know that delegation of authority as indicated on pg 18 is unfolding as intended? What is the monitoring or feedback mechanism? Are policy/procedure/practice attestations used in the City?
- 38) Transparency is key to accountability. How does Council ensure it strives for maximum transparency? What principles or practices does it strive to follow? How would the City tell a compelling story that it is a leader in regards to the obligations/practices on page 21?
- 39) What has the City's performance been vis-à-vis the complaints submitted to the Provincial Ombudsman (pg 21)? Assuming they have jurisdiction since a Municipal Ombudsman has not been established in Vaughan?
- 40) What has the City's experience been with its Code of Conduct (pg 22)? They can be well-meaning but challenging to implement given the many situation specific considerations that may arise.
- 41) What might be the legal tests for the examples of Bad Faith cited on pg 31? Wouldn't unethical or unprofessional conduct also constitute Bad Faith? How does one prove "improper motive"?
- 42) How does the City know that it is achieving the desired outcomes of the Governance elements cited on pg 37?

Fausto Natarelli
Woodbridge, Vaughan