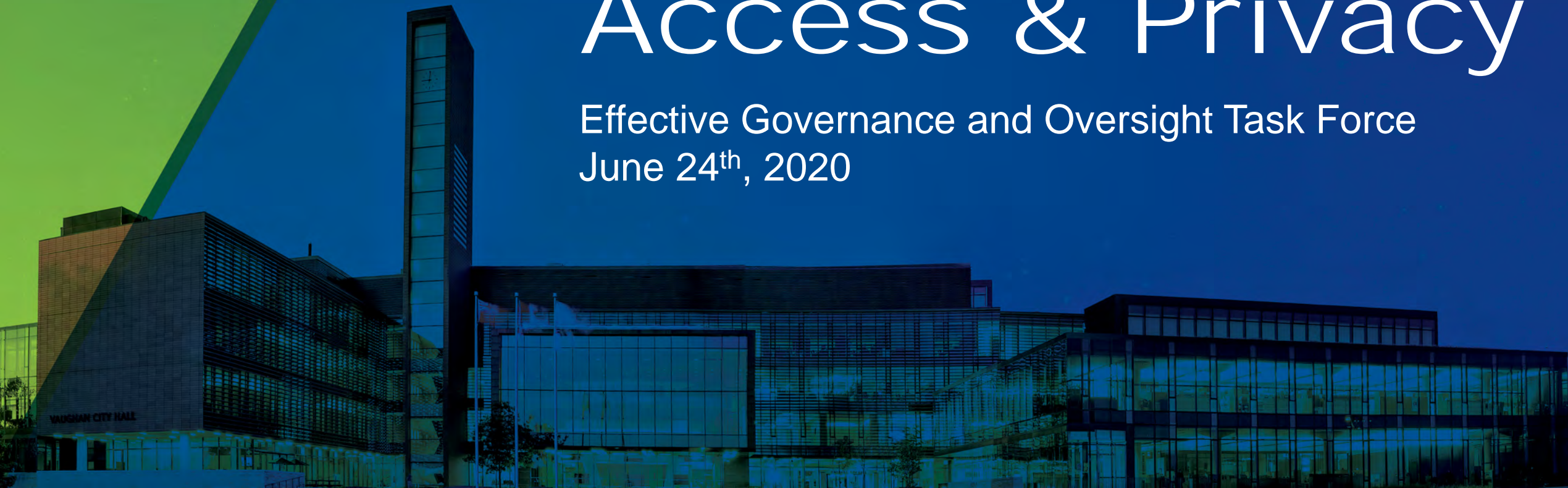


Freedom of Information: Access & Privacy

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)

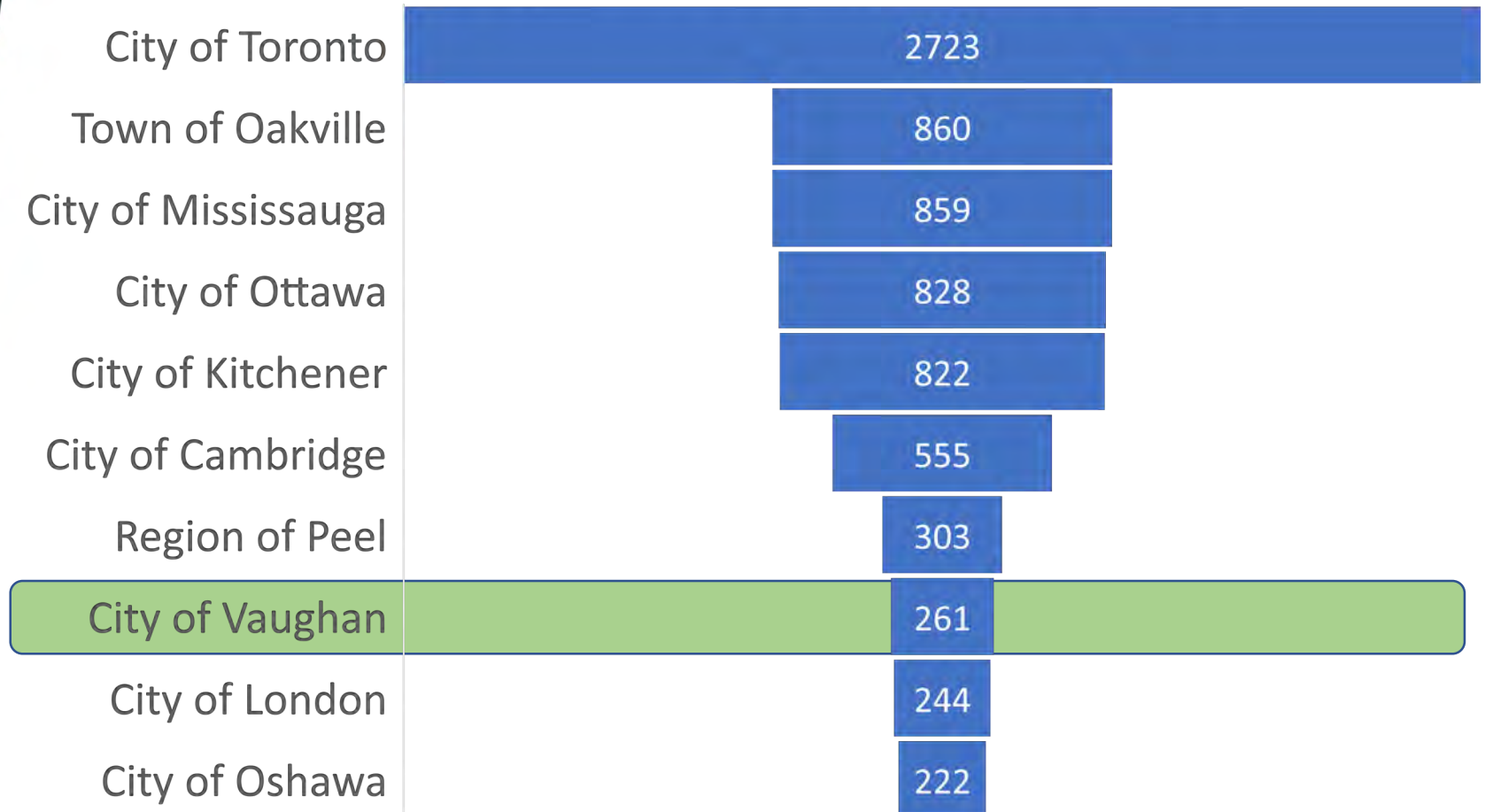
Access & Privacy Snapshot

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 children. The children are wearing blue and white soccer uniforms with 'macron' logos. They are holding small flags and a banner. The background is a bright blue sky with some clouds. The image is partially obscured by a white diagonal line.

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.

