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DATE: May 11, 2012

REPORT TITLE: **PRIVACY AND ACCESS TO INFORMATION PROGRAM – RESPONSE TO REQUEST FOR ADDITIONAL INFORMATION 2012 BUDGET**

FROM: Norma Trim, Chief Financial Officer and Commissioner of Corporate Services

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## RECOMMENDATION

**That the request for one (1) Full Time Equivalent (FTE) for the Clerk's division to support the Privacy and Access to Information program, to be managed within the 2012 Region of Peel Budget, be approved.**

## REPORT HIGHLIGHTS

- Staff recommended to Regional Council that one new full time staff position be approved and added to the Privacy and Access to Information Program as part of the 2012 Budget.
- Regional Council under Resolution RCB-2011-70 deferred the approval of the staffing request and instructed staff to report back to Council with additional information.

## DISCUSSION

### 1. Background

Staff brought forward a report to the November 24, 2011 Regional Council meeting titled "Access to Information and Protection of Privacy Program Delivery at the Region of Peel – 2011 Update" which updated Council on the pressures that the program is experiencing. The November report to Council was deferred to the 2012 Budget Process (Resolution 2011-1169). At the time of the Internal Services 2012 Budget presentation Council raised a number of questions related to this single staffing request resulting in the matter being deferred pending a report from staff, Resolution RCB-2011-70 and RCB-2011-71.

The principle of open and transparent government is fundamental to the democratic process and good government. The movement to adopt Freedom of Information (FOI) Legislation began in the 1970's and now there are over 80 countries worldwide that have Freedom of Information legislation. Canada was amongst one of the first dozen nations to pass FOI legislation in 1983. The federal government and every province in Canada now have FOI legislation, Ontario's came into force on January 1<sup>st</sup>, 1988. The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA-The Act) was effective as of January 1<sup>st</sup> 1991. In Ontario there is now public sector FOI legislation that applies to the province, municipalities, police, libraries, hospitals, transit providers, school boards, colleges and

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universities. Access to information is a business requirement and not an optional service in the Ontario public sector. Data from 2009 reveals that in that year 37,090 formal access requests were made in Ontario.

The Act sets out legislated obligations for the Corporation under two broad headings; the first being to enable access to information and the second being the duty to protect the privacy of the information in the custody and control of the Region. Through the full range of programs and services provided by the Region we are authorized to collect information about our residents and clients. Broadly speaking these records include personal information, personal health information, financial records, proprietary and copyrighted materials, legal records and third party information.

**2. Findings**

During the course of the December 15, 2011 Regional Council Budget meeting staff was asked to consider a number of questions regarding the program. The following is additional information responding to the questions posed by Regional Council.

**a) Cost of Program Delivery**

Staff was instructed by Council to report back on the cost of compliance under MFIPPA. Currently the Access to Information and Privacy program is resourced with 1.5 FTEs. The 1.0 dedicated FTE position predates MFIPPA and was a Records Analyst Clerk redeployed from paper records. The additional 0.5 FTE was approved by Council in 2005 and enabled the program to address more complex issues related to MFIPPA appeals and privacy matters. For 2011, the total program staff cost was approximately \$193,000. This included additional temporary staff costs required to achieve legislated timelines of approximately \$68,000. In addition staff within the Clerk's division was reassigned from the other areas such as Corporate Policy and Emergency Management to fulfill MFIPPA requirements.

The new FTE request will cost approximately \$87,000. It is projected that if the additional staff request is approved that the cost of delivering the program in 2012 will be approximately \$212,000 in staffing costs.

Considerable effort has been made by staff to route information requests where possible via routine disclosure. Requests for documents such as, Environmental Planning Studies, Maps and the Regional Official Plan are available directly from the custodial departments for a fee outlined in the Regional User Fees and Charges By-law. This approach ensures the formal MFIPPA process is not burdened by reviewing materials that should be made readily available to the public upon request of program staff. This approach simultaneously demonstrates fiscal responsibility and our commitment to open and transparent government.

At the Region of Peel all formal access to information requests under MFIPPA are dealt with centrally, the rationale for this approach is three fold:

1. Regional Council has delegated responsibility under MFIPPA to the Regional Clerk to administer;
2. Efficiencies are realized by having a small corporate resource available to all departments instead of each department having to resource the process; and
3. Centralized processing ensures the application of the legislation is consistent and administered by staff with expertise.

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For the year 2010 approximately 40 per cent of FOI requests related to provincially mandated social service programs, in 2011 that had risen to 55 per cent of requests by number (request count). It is important to highlight that two thirds of volume of materials released are social service related (pages released) matters. See Appendix II for additional analysis.

**b) Comparison of FOI programs between the Area Municipalities and Region**

All of the area municipalities have Privacy and Access to Information/FOI programs. An analysis of the number and types of FOI requests received by these municipalities illustrate the workload demands of the Region's Privacy and Access to Information Program. See Appendix III for a summary of the activity by municipality.

In 2010, the City of Brampton received 953 FOI requests. The City's building division processed 913 of these requests and 40 of the requests were processed through the City's FOI Office. The City of Mississauga received a total of 669 requests in 2010. The City's building division processed 442 of these requests and 227 requests were processed through the City's FOI office. Similarly, the Town of Caledon received 33 FOI requests in 2010. 11 requests were processed by the Town's building division and 22 by the FOI office.

In 2010 the Region Peel received 184 formal FOI requests. All 184 requests were processed through the Region's Privacy and Access to Information program.

An examination of the total number of pages released per request is essential to understand the current workload pressures experienced by the Region's Privacy and Access to Information program. It is estimated that the City of Brampton and the City of Mississauga each released 5,000 pages of documents in 2010 representing an average of 5-7 pages per request. The Region, however, released over 30,000 pages of documents representing an average of 160 pages per request.

This year the Privacy and Access to Information program received 98 FOI requests to date. The Program has released an estimated 17, 000 pages of documents, averaging 305 pages per request.

The City of Brampton currently has 1 FTE devoted to processing FOI requests. The City of Mississauga has 2 FTE's and the Town of Caledon currently has 1 FTE devoted to processing FOI requests. Both the City of the Brampton and City of Mississauga receive assistance from staff in the building division. All formal FOI requests received by the Region are currently processed by 1.5 FTE's.

**c) Revenue and Cost Recovery**

MFIPPA does consider the principle of "user pay", but it also endorses the notion that fees are not to be a barrier to access personal information. Any decision that the institution makes regarding fees is appealable to the Information and Privacy Commissioner (IPC) of Ontario. An institution is also required to waive a fee if charging that fee would result in economic hardship for the requestor. In 2003, a document released by the IPC set out guidelines for institutions regarding fees, summarized as follows (in accordance with the Act and Regulation 460/823):

Fees that can be charged:

- \$5 statutory application fee

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Costs that can be recovered:

- 20 cents per page copying cost of material released or \$10 for a disk (CD)
- \$7.50 per 15 min search and preparation time for general records
- \$15 per 15 min for computer programming cost for general records
- Shipping costs

Costs that are not recoverable:

- Information reviewed and deemed non responsive or withheld in full
- An institution can not charge for search and/or preparation time to produce a requestor's personal records (note: the majority of requests processed by the Region are personal)
- Time considering or interpreting the provisions of MFIPPA or associated legal costs
- Time applying redactions (information withheld) to the responsive documents
- Cost associated with providing third party notice
- Time for copying, assembling or proofing the information prior to release
- Costs associated with the retrieval of the record
- Time spent with the requestor or the IPC regarding the request or an appeal

Council asked staff to report on the value of fees and cost recoveries by the program. In 2010 the program recovered \$4,800 and in 2011 the program recovered \$6,100 in accordance with the Act and Regulation 460/832. There are no further opportunities available to the Region to recover costs or charge fees directly from the requestor.

**d) Possible Penalties or Imposed Remedies**

Staff was asked to advise Council of possible penalties for failure to comply with the Act. Certain types of willful non-compliance with the Act or with an order of the IPC are punishable upon conviction with a fine of up to \$5,000. The Corporation is not liable to prosecution under MFIPPA or otherwise for failure to achieve legislated timelines. It is conceivable that failure to do so might result in a remedial IPC order, the willful contravention of which could trigger a prosecution, but this is highly speculative.

As mentioned above the Privacy Commissioner can make an order against the institution under MFIPPA. The implications of an order can be very significant to implement. Examples of costs associated with IPC orders have included the adoption of a particular technology to mitigate or prevent a future breach of privacy.

**e) Possible Changes to the Legislation**

Program staff would like to acknowledge that we have a good working relationship with the Office of the Information and Privacy Commissioner of Ontario. IPC staff has demonstrated a strong willingness to work with the Region and to provide guidance in matters related to access to information and privacy. Staff was asked by Regional Council to consider possible changes to MFIPPA that could be discussed with the province. Set out in Appendix I are some possible Legislative reforms staff have identified.

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**3. Proposed Direction**

In advance of the 2012 Regional budget process, the Executive Management Team and other senior staff reviewed and prioritized every staffing request. The Management team concluded that the additional staff request for the Regional Clerk's division was necessary to ensure the Region satisfied its legislated obligations. Furthermore, the request for one additional FTE for the Access to Information and Privacy Program continues to be supported by the number of FOI requests received each year, the volume of pages released per request and the cost of temporary staff, which is utilized to manage the workload pressures. As was highlighted in the November report and as was demonstrated in the December Budget meeting, the use of temporary staff and redeploying staff in Regulatory Compliance is not sustainable and potentially jeopardizes other program deliverables.

Access to information requests are managed in a manner that ensures compliance with the legislation in keeping with the duties delegated by Regional Council to the Regional Clerk. Staff have achieved significant process efficiencies that have allowed the Region over the past number of years to keep up with demand, but the current model will eventually lead to non-compliance by the Corporation. Approval of additional staff will enable the Region to achieve our duties and respond to FOI requests in a manner that supports both the letter and the spirit of MFIPPA.

**FINANCIAL IMPLICATIONS**

In the 2012 Regional Budget the cost for one additional staff member was set out as being \$87,000. In 2011 approximately \$68,000 was spent on additional staffing resources to address workload pressures. Within the first four months of 2012, approximately \$31,500 was spent on temporary staff resources. This year the Access to Information and Privacy Program is in line to spend more on additional staff resources, than incurred in 2011 to ensure compliance with MFIPPA.

The cost of the FTE is manageable within the 2012 approved Regional Budget. The cost for the FTE will be subject to gapping as the position will not be filled until such time as it is approved by Regional Council. The position, if approved by Council, would be included in the 2013 base budget.

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Table 1 below sets out a cost comparison between 2011 with the approved staff complement of 1.5 FTE and proposed cost with staff at 2.5 FTE including the additional staff requested in the budget process.

**Table 1**

	<b>2011 (Based on the existing 1.5 FTE) \$</b>	<b>Proposed (1.5 FTE + requested FTE At \$87,000 for 12 months)</b>
<b>Cost to deliver mandated services under MFIPPA*</b>	125,000	212,000
<b>Cost for additional staff resources***</b>	68,000	0 Assuming additional FTE
<b>Subtotal</b>	193,000	212,00
<b>Fee and cost recoveries capped by MFIPPA/O.Reg**</b>	(6,100)	(7,000) Projected for 2012, Approximately \$2800.00 has been collected in fees for 2012
<b>Net cost of the program services delivery</b>	\$186,900	\$205,000

\*Note: the staffing costs identified do not include time spent by staff outside the program area locating responsive documents.

\*\*Note: The 2011 value includes all \$5 fees collected and the other costs that can be recovered under O.Reg. 460/832.

\*\*\*Note: In 2011 to ensure legislated timelines under MFIPPA were achieved, temporary staff was used to address workload pressures.

**CONCLUSION**

This report has focused only on the FOI process and has not addressed requirements and obligations of the Corporation to protect the privacy of information in the custody and control of the Corporation. Responsibilities regarding information management and the protection of privacy are also a rapidly growing area of risk, regulation and litigation. These matters were not considered in the development of this report.

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Access to information (FOI) is a public sector requirement in the broader Canadian context. The Region of Peel is committed to open and transparent government. The single full time staff request in support of the Privacy and Access to Information program at the Region of Peel is both necessary and responsible to ensure compliance by the Region under MFIPPA.



Norma Trim  
Chief Financial Officer  
and Commissioner of Corporate Services

**Approved for Submission:**



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D. Szwarc, Chief Administrative Officer

*For further information regarding this report, please contact Carol Reid, Regional Clerk at extension 4545 or via email at [carol.reid@peelregion.ca](mailto:carol.reid@peelregion.ca)*

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c. Legislative Services

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**APPENDIX I**

**Discussion**

Possible Changes to MFIPPA – Requested By Regional Council

1. Response Time

Staff was asked to consider if the 30 day period for response under the Act was sufficient. It is important to note that the 30 day response period is generally the standard in Canada. In the UK institutions generally have 20 days to respond to a formal request. The FOI process federally in the United States also allows for 20 days with a possible 10 day extension. Other jurisdictions require almost immediate release, especially for personal information.

A key consideration in FOI legislation is the timely production of information to the requestor. As such the 30 day legislated time period in Ontario is considered to be a reasonable balance between being responsive to the requestor and permitting the institution time to respond. If we look at the annual report from the IPC municipalities are generally capable of responding to the majority of requests within 30 days. Statistics for the Province and the Federal Government are less favourable. The more challenging issue is that organizations do not have any provision to deal with a significant number of simultaneous requests. In circumstances where an institution may have a high number of requests the institution has very few options to achieve legislated timelines. The Region has approved extra hours for staff, cross trained staff and used temporary staff to meet our requirements.

The Act does contain provisions for extensions but they are limited to situations involving a significant volume of materials to review. Prior IPC orders have given a very narrow interpretation to the use of extension provisions. The Region does from time-to-time seek extensions from requestors under circumstances that are inline with IPC guidelines. The Province could be requested to consider 30 business days instead of 30 calendar days; this change would provide municipalities with additional response time when required.

2. Application Fee

The five dollar fee, like the 30 day processing requirement, is standard in Canada. The purpose of the fee is to formalize the request and the procedure and is not intended to cover the cost of responding to the request. The FOI process should not be considered to be a service. Having access to information regarding ones personal information or information about the decision making process of a public institution is considered a fundamental right. The cost of recovering and processing the five dollar application fee is an administrative nuisance in many cases. The fee could be increased and still not be a barrier, especially in light of provisions in MFIPPA that address economic hardship. The Province could be asked to consider a fee increase to \$10 or \$25 that would demonstrate some appreciation for the administrative costs to process the transaction.



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**APPENDIX I**

**3. Commercial Interest Requests**

One area of weakness for the legislation is in regard to requests that are driven by purely economic interest. The Region of Peel has very rigorous purchasing procedures and processes regarding the selection of vendors to provide goods and services. The FOI process is, on occasion, used by commercial interests to access successful and failed bids of competitors. Access to information requests of this nature can be extremely time consuming and costly to the organization. Requests of this nature are outside of the intent of MFIPPA as the requestor is not questioning the decision making process of the institution rather, they use FOI to gain access to otherwise confidential competitive information. Full municipal cost recovery should be permitted regarding commercial interest requests given the negative impact upon the institution and its ability to respond to requests that align with the intent of the legislation.

**4. Frivolous Requests**

There are provisions in the Act to counter requests that are frivolous (Section 20), the IPC has had a number of Orders related to this section and has applied a relatively narrow interpretation. The Region of Peel has not encountered a significant challenge regarding frivolous requests. If we look back to the introduction of the legislation in 1991, the Region has only had two or three requests that could be considered under this section of the Act. FOI requests at the Region generally pertain to personal records and are one time requests.

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**APPENDIX II**

**Access to Information Request – Differential Analysis**

Factors	Area Municipalities	Region of Peel
<p align="center"><b>Most Frequently Processed Request Under MFIPPA</b></p> <p>Note: approx 2/3rds of all requests processed under MFIPPA</p>	<p align="center"><b>Building Division Plan Request</b></p>	<p align="center"><b>Social Services Personal File Request (Ontario Works)</b></p> <p>Note: Legislated Social Service Programs – Provided by the Human Services Department</p>
<p><b>Key Consideration of FOI office when processing request under MFIPPA</b></p>	<p><b>Proprietary Information requiring 3<sup>rd</sup> party consent for release</b></p> <ul style="list-style-type: none"> <li>-Site Plans</li> <li>-Architectural drawings/plans</li> <li>-Structural drawings</li> <li>-Mechanical drawings</li> </ul> <p>(the owner's consent is usually required and security concerns surrounding the release of these are considered )</p>	<p><b>Personal Eligibility Information</b></p> <ul style="list-style-type: none"> <li>- <b>Financial Information:</b> tax records, assets, bank accounts, credit search, statements of expenses, rental agreements</li> <li>- <b>Emergency Payments:</b> shelter, food, special diets, clothing, funeral</li> <li>- <b>Personal Information:</b> age, gender, family unit, address, personal contact information, next of kin</li> <li>- <b>Dependent Minors:</b> age, gender, educational records, ID, special needs or accommodations</li> <li>- <b>Personal Medical Information:</b> disability, medical documentation, medical analysis</li> <li>- <b>Employment History:</b> Past employment, skills testing, employment sought</li> <li>- <b>Government Issued ID:</b> Immigration, citizenship, passport, drivers license, health card, SIN, birth certificate</li> <li>- <b>Eligibility reviews</b></li> <li>- <b>Case worker notes</b></li> <li>- <b>Application forms:</b> completed annually – multiple version</li> <li>- <b>Law enforcement matters:</b> Trespass orders, victim of violence, risk to minors</li> <li>- <b>Legal documents:</b> divorce judgments, spousal/child support orders, settlement agreements.</li> </ul>

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APPENDIX III

Detailed Comparisons of Area Municipalities

2010	City of Brampton	Town of Caledon	City of Mississauga	Region of Peel
Total number of Pages Released	Not tracked, estimate number 5,000	1,600 (estimate)	Not tracked, estimate number 5,000	30,000+
Total Number of FTE	1 FTE + some support in Building Div.	1 FTE Other duties	2 FTE + some support in Building Div.	1.5 FTE + temporary staff costs
Total # of MFIPPA Requests	40 FOI <u>913 Build Div.</u> 953 Total	22 FOI <u>11 Build Div</u> 33 Total	227 FOI <u>442 Build Div</u> 669 Total	<u>184 FOI</u> 184 Total
Avg # of Pages/ Request	5+ (estimate)	50 (estimate)	7.5+ (estimate)	160+
Revenue Collected \$	1,454 FOI <u>3,111 Build Div.</u> 4,565 Total	150	24,770	5,000 FOI