

**MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT, 1989:**

**ORGANIZATIONAL CHANGE IN THE  
REGION OF HAMILTON-WENTWORTH**

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## INTRODUCTION

The Municipal Freedom of Information and Protection of Privacy Act 1989 (MFIPPA), is a very important Act. Given the growth in governmental institutions and the use of personal information as a process, legislation had to be created which allowed for some kind of consistency in the collection, use and disposal of information in governmental organizations. This is what the MFIPPA was created to address. Through a careful balancing act of allowing information access while at the same time protecting personal privacy, The Ontario Provincial government has legislated changes in the way municipalities in Ontario deal with information.

The implementation of this Act at the municipal level has not been without resistance and resentment on the part of municipal administrators. The major part of their disagreement with the province over this Act lies in the lack of support which the province gave towards implementing the Act. This failure on the part of the province has been both financially and structurally evident.

In dealing with the structural changes which the MFIPPA has brought about, there seems to be differences amongst municipalities. In looking at the Region of Hamilton-Wentworth it is hoped that insight will be gained into the type of organizational changes that have been introduced in dealing with the Act.

However in narrowing the focus of the paper even more it is hoped that insight will be gained into looking at two specific departments within the region. These are the regional clerk's

department and the regional police department. In concentrating on these two departments, a comparison will be made in how each department reacted to the organizational change. Specific attention will be paid to the regional police department since it is here where the most fundamental preparation and organization was accomplished. As a result of an analysis of each department's change strategy it is hoped an understanding can be reached as to what developments take place within organizations in viewing organizational change.

This paper was inspired through a keen interest in dealing with organizational structures and organizational change. As a result of this interest, the MFIPPA seemed the perfect vehicle to use to analyze its effects on municipal departments. It is hoped that this paper could be presented in a way which documented what organizational changes have taken place in the Region of Hamilton-Wentworth as a result of the MFIPPA's implementation in January of 1991. It is hoped that <sup>the</sup> ~~this~~ paper has attained its purpose.

I wish to thank my research project advisor, Dr. Carol Agocs for her criticisms of earlier proposals and her helpful comments which have been incorporated into this presentation.

CHAPTER 1: THE MUNICIPAL FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT, 1989

The Municipal Freedom of Information and Protection of Privacy Act of 1989 (MFIPPA) was an attempt to try and strike a balance between the need to secure privacy of the individual and freedom to have access to governmental information about individuals by the community. This Act was in fact an outgrowth of the Provincial Freedom of Information and Protection of Privacy Act of 1988 (PFIPPA).

The need for laws regulating information and privacy grew out of the expansion of the public sector which took place after the second world war. The newly enlarged, educated middle class became more aggressive in fighting for their civil rights. Changes were also occurring in the acquisition, storage, processing, retrieving and transmitting of information. Since governments were one of the largest users of information, there grew an increasing need for citizens to have more access to the elements of governmental decision making and information sources.<sup>1</sup>

Structurally, governmental organizations were attempting to not only keep pace with their own changes and growth but also to try and make their structures more accommodating to the public they served. This became an enormously difficult task since the nature of bureaucracies was to process information in a rational, hierarchical fashion. This became one of the central dilemmas. The question became how does an organization maintain an open form of administration while at the same time preserve

<sup>1</sup> Mark Hopkins, "Access and Privacy for Ontario Municipalities: Will it Help or Hinder Research?", Urban History Review, XVII (October 1988), 118.

its organizational effectiveness and efficiency?

The Ontario provincial government attempted to obtain the answers to some of these questions by establishing the Williams Commission in 1978. In its final report the Commission suggested that a Freedom of Information and Protection of Privacy Act should be modeled upon the assumption of the free flow of information, particularly governmental information. A legislated Freedom of Information Act would thereby enhance public debate on policy issues and help to ultimately ensure the accountability of the governmental organization.<sup>2</sup> The Williams Commission further suggested that local governments be covered by the PFIPPA. This seemed logical enough as municipalities were creatures of provincial statute. However, it did not take into account the differences which existed among municipalities.

Structurally, the Act was not created to force municipalities to change all of their current access and privacy protection practices, nor to require the public to make formal applications for all of their information requirements. What it attempted to do was to ensure a consistency of process in accordance with the provisions of the Act. Given that the existing practices and procedures of municipalities in this area were already informal and varied, it can be argued that what the Act permitted, was to allow municipalities to continue to follow past practices of access but within a more formalized structure.<sup>3</sup>

On January 1, 1991, the MFIPPA came into force. Its

<sup>2</sup> Information and Privacy Commissioner, Ontario Newsletter (Toronto: Publications Ontario, Winter 1989) p.2

<sup>3</sup> "January 1, 1991. Herald's new FOIPOP Act for Ontario", Municipal World, October 1990, p.15. See also section 50(2) of the MFIPPA.

provisions extended to about 3,000 municipal institutions including, among others, municipal corporations, school boards and public utilities commissions. The MFIPPA was similar to the PFIPPA in scope, purpose and formalized procedures. However, it was modified to take account of the particular circumstances of municipal corporations and school boards. The PFIPPA had only covered provincial government ministries and many provincial agencies, boards, commissions and corporations.<sup>4</sup>

Four basic principals were incorporated into the MFIPPA. They were, firstly, a comprehensive and basic right of access to all records<sup>5</sup> provided that, secondly, the exemptions to access records were extensive and specific.<sup>6</sup> Hence it is permissible to keep some records secret.<sup>7</sup> Thirdly, if the applicant is not satisfied with the governmental institution's reply, there is a right of appeal.<sup>8</sup> Fourth, every individual has the right of access to personal information about that individual that is maintained by a municipality or local board.<sup>9</sup> The legislation therefore provides rules on how personal information is to be collected, used and disclosed.<sup>10</sup>

Further, another important principal with which the Act is concerned, is that of individual privacy.<sup>11</sup> It seems that information, including personal information, has increasingly become a commodity of exchange. Compared to an other time in

<sup>4</sup> Ontario, Management Board Secretariat, Municipal Freedom of Information and Protection of Personal Privacy Act, 1989 (Toronto, Publications Ontario, December 1990), pp. 1-2.

<sup>5</sup> Ontario, Statutes, 1989, An Act to provide for freedom of information and protection of individual privacy in municipalities and local Boards, c. 63; (see section 4)

<sup>6</sup> Ibid; see sections 6-15.

<sup>7</sup> Ibid; see sections 9, 10 and 14.

<sup>8</sup> Ibid; see section 39.

<sup>9</sup> See Ontario, Statutes, 1989, section 36.

<sup>10</sup> Ibid; see sections 31 and 32.

the past, acquiring personal information is presently easier and cheaper. This poses a danger in that data bases which are being used frequently in the interest of organizational efficiency or effectiveness may lead to oversights and violations of personal privacy. The MFIPPA gives individuals the power to have access to records about governments and themselves.<sup>12</sup> It appears that in a decision to release information under the Act, municipalities should err on the side of privacy. The dangers of wrongfully disclosing information may result in an inability to retrieve or correct the information.<sup>13</sup> The possibility of lawsuits resulting from personal torts also exists.<sup>14</sup>

The Act therefore can be seen to be a response to public perceptions of secrecy at all levels of government. In this way the Act imposes explicit limits on municipal corporations and local boards.<sup>15</sup> Prior to this Act being passed, information was provided on a voluntary basis where there was no obligation on the part of the holder of the information to give or deny a citizen access to that information which was requested.<sup>16</sup>

Requests for information made under the provisions of the Act can be made formally or informally. The formal method is through a written request. An example of an informal method would be by a verbal request. The institution would then decide whether it was able to comply with the request.<sup>17</sup> A request for information under the Act is made to the head of the institu-

11 Ibid; see section 14.

12 Ibid; see section 17.

13 Ann Cavokian "Why is Privacy Important?", Municipal world, 100 (October 1990), 16.

14 See Ontario, Statutes, 1989, section 49(3).

15 "Freedom of Information--preparation in good faith", Municipal World, February 1990, p.2.

16 Hamilton-Wentworth Regional Police, Employee Information: Municipal Freedom of Information and Protection of Individual Privacy Act. (Hamilton: Hamilton-Wentworth Regional Police, December 1990) pp. 1-3.



tion. A decision would then be made as to whether or not to disclose the information. The decision is subject to an appeal to the Information and Privacy Commissioner. Requests for information must be answered within 30 days of the request.

In order to assist the public in their requests for information, the provincial government published a list of governmental institutions and contact people within those institutions. This directory was produced by the information and privacy branch of the Management Board of Cabinet.<sup>18</sup> Municipal corporations are required under the Act to make information available which describes how the institution is organized, its responsibilities, and what general types of records and personal information banks are held by the institution.<sup>19</sup>

As has been mentioned above, the Act restricts the collection of personal information unless it is expressly allowed. Information must be collected from the person it relates to unless it falls under an exemption provided in the Act. When an institution collects personal information about an individual, it must give legal notice to that person as to the collection, its purpose and provide the name of a contact person in the organization.<sup>20</sup> Institutions under the Act must take reasonable steps to ensure that the personal information it uses is accurate. Institutions cannot use or disclose personal information except for the purposes for which it is collected.<sup>21</sup>

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Ontario, Management Board Secretariat, Information Privacy Bulletin (Toronto, Publications Ontario, Fall 1990) p.2.

18

See Ontario, Management Board Secretariat, Municipal Freedom of Information, pp. 3-4.

19

See Ontario, Statutes, 1989, section 25.

20

See Ontario, Statutes, 1989, section 29.

21

Ibid; section 31(b).

If an affected person including a third party, disagrees with the decision of an institution relating to the disclosure of a record or with respect to other matters, that person or party may request the commissioner appointed under the Act, to review the decision of the institution.<sup>22</sup>

The Information and Privacy Commissioner has the power to make binding rulings on the disclosure of information and the related matters as well as commenting on the privacy protection implications of a proposed program of an institution. He may also hear representations from the public regarding the implementation of the Act, faith,<sup>23</sup> The Commissioner also has the power to order an institution to cease information collection practices. All of these rulings take place after a hearing in which the municipality or agency has been found to have contravened the Act. Costs of providing information are to be borne by those persons who are requesting access to information, except in instances where one requests access to one's own personal information. The Act contains certain punishments for improperly using or disclosing personal information, using the legislation under false pretense or disobeying an order of the Commissioner. The maximum fine is \$5,000.<sup>24</sup>

The designation of a "head" within the municipal corporation for the purposes of administering the Act is an important provision which will be referred to later in the paper.<sup>25</sup> In appointing a "head", the municipal corporation, board or agency is designating an individual or a group of

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Ibid; section 39.

23

See Ontario, Statutes, 1989, sections 41 and 43.

24

Ibid; section 48.

people to be responsible for administering the Act and deciding on possible exemptions to information access requests. Further, the head has the power to delegate a power or duty to other officers of the institution. This "head" is not personally responsible for damages resulting from the disclosure or non-disclosure in good faith, of a record or a part of the record, but the institution is liable.<sup>26</sup> The organizational designation of the head in the Region of Hamilton-Wentworth will be examined in Chapter 3.

It is important to note that the MFIPPA has complicated the lives of those municipalities who already have their own access to information by-laws. In fact the Act was seen as "a sledgehammer used to smite a rather local problem more easily handled by local by-laws".<sup>27</sup> In this way the greatest problem with the Act was that the provisions of the Provincial Act were largely included in the Municipal Act. This presented a problem because, although it ensured consistency, it did not simplify the procedures required to gain access to information nor the maze of procedures which have to be followed to decide whether information which has been requested should be disclosed. The reason for this in part is because the province applied the provisions of the PFIPPA, which were meant to deal with large provincial ministries, to municipalities which varied in size from large to small. In return for a consistent process across municipalities, the province created a system which complicated the lives of the municipalities unnecessarily. Thus the implementation of the Act has to be done with care and be

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Ibid; section 3.

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See Ontario, Statutes, 1989, sections 49 and 50.

applied legally and consistently if municipal institutions are to risk appeals to the Commissioner.<sup>28</sup>

The fact that appeals for information requests were taken from the local level of decision making where it properly belongs and was given to a central Information and Privacy Commissioner meant some delays for municipalities in administering the Act. This lack of appeal mechanisms within the local government institution meant that municipalities had to abide by decisions which were made by people outside of their own municipality.<sup>29</sup> Whether these people are better qualified to come to an information access request decision than those at the local level of government is an open question which has generated a lot of debate. However, the most important factor to consider from an examination of the Act is the organizational constraints in administering the Act. In allowing information access and protection of privacy, the Act was assisting individuals and putting organizational burdens on municipal corporations. The resultant structural changes within the Municipality of Hamilton-Wentworth in order to deal with this external pressure resulted in differences amongst departments. The lack of support from the province in pursuing these organizational changes as was alluded to above, will be an important issue which will be re-examined later in the paper.<sup>30</sup>

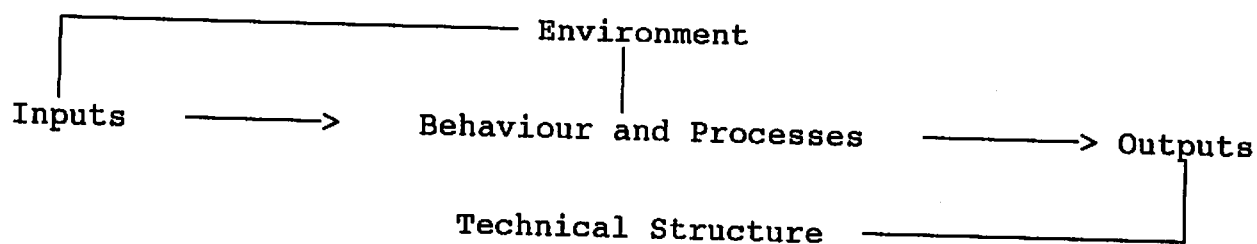
28 Raymond Plant, "Seminar to Staff of Stoney Creek: Freedom of Information and Protection of Individual Privacy for Municipalities in Ontario", (Hamilton, Kingsmill, Ross and McBride, October 1989), pp. 4-9. Information was also attained through a conversation with the above on 22 August 1991.

29 See Raymond Plant, "Current Issues of Interest" February 1988, p.12

30 For a greater review of the provisions in the MIPPA cited in this chapter please refer to Figure 1 in the Appendix.

## CHAPTER 2: THEORY ON ORGANIZATIONAL CHANGE

In viewing the municipal corporation as an organization, one needs to acknowledge that it exists within a larger political system. This system exerts pressure upon the organization to try and get it to adapt and change so it can become more responsive. This process is described as follows:



Inputs can be viewed as the raw materials, money, personnel, information or knowledge that are introduced into the system. Outputs are the products, services or ideas which are a result of organizational action. The technological structure within which the process takes place, involves methods and procedures where resources are transformed into outputs. The surrounding environment outside of the organization can be seen as general or task-related. The difference is that the general environment consists of institutions and conditions which have infrequent or long term impacts on the organization or its task environment. The task environment consequently can only be seen as consisting of all external organizations and conditions which directly relate to the organization's main operations.

The main features of this elementary model illustrate the interactions which occur between the environment and the organization. However, in order to understand not only the whole municipal organization but also individual departments, one needs

to look at the influence of personnel. The existence of people within organizational structures creates a dynamic flux within the organization. Organizational success will therefore depend upon, not only the organization finding a favourable environment within which to operate, but also in its ability to tie people into roles in the organization so as to manage its operation.<sup>1</sup>

The municipal organization has to be seen to be a technical, political and cultural organization. Its technical side is revealed in decision making which is rational and instrumental. Politically, the municipal organization will be exercising its power over less dominant groups. It will also be involved in bargaining with those groups that are more powerful. Culturally, a value system will develop within the organization as individuals start to share common thoughts and beliefs. The bonding of these individuals to form an organizational culture will become an important part of their job.<sup>2</sup>

Traditionally, municipal corporations have been seen as bureaucratic structures. Thus one can see differentiation of specialized tasks where employees are limited in their roles and dominated by a set of rules. A rigid chain of command exists where employees report to an immediate boss or supervisor. Those at the top of the organization are able to see the whole organization and set directions for the institution to follow. The implementation of these directions is followed along vertical lines of command where emphasis is placed on specialized rather than general knowledge.

1 Michael Harrison. Diagnosing Organizations: Methods, Models and Processes. (London: Sage Publications, 1987) pp. 24-26.

2 Noel Tichy. Managing Strategic Change: Technical, Political and Cultural Dynamics (New York: John Wiley and Sons, 1983) p.7.

In facing organizational change, this type of organization will only change if it will mean an increase in organizational efficiency or effectiveness. This is consistent with the theoretical underpinnings of the organization which sees this type of bureaucratic set up as being the best structure to attain efficiency and effectiveness.<sup>3</sup> Thus change within the organization has to be well understood or standardized. The resultant effect will be a predictable or simple change in the immediate task environment. Managers at the top of the hierarchy will have to exert a high level of structure, routine and control upon the lower levels of the organization in order to effectively handle the change. Problems will start to develop if there arises a divergence between operational goals and priorities. Personnel within the organization will start to have problems in role definition, cultural orientation, and belief in actual work procedures. Informal structures, leaders or influence patterns may develop. As a result there will be a lack of adherence to the integration and division process within the organization.<sup>4</sup>

In viewing the municipal bureaucracy as strictly a hierarchical structure we are leaving out of this analysis the employees which operate the institution. Therefore, it is important to see the organization as full of people who are joined together by a variety of links. These links consist of goods and services, information, formal exchanges and informal exchanges amongst individuals.<sup>5</sup> People within the organization are formally structured into either departments or work groups

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See Tichy "Managing Strategic Change" pp. 42-44.

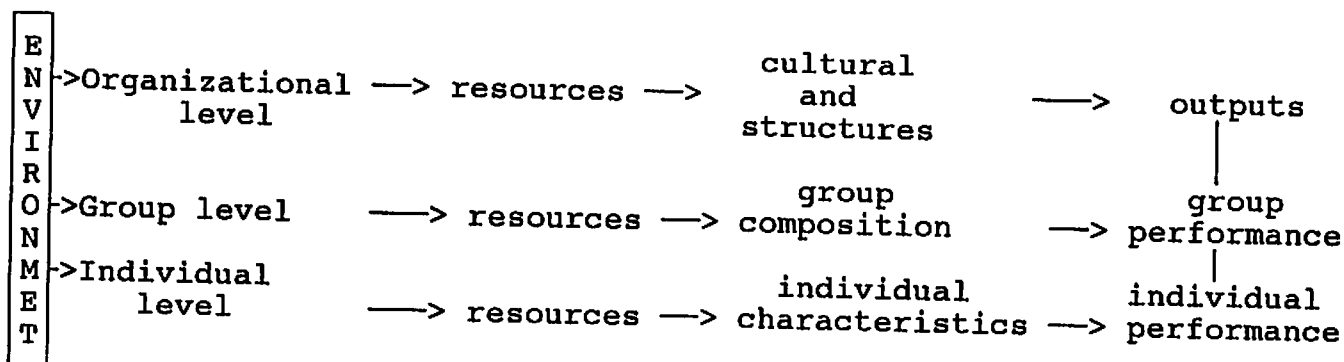
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See Harrison "Diagnosing Organizations" pp. 83-88.

as well as informally structured into coalitions and cliques.<sup>6</sup> Thus organizations can be seen as a social means by which people attempt to accomplish technical, political and cultural ends.<sup>7</sup>

Change within this type of an organization is usually initiated through some form of environmental pressure. Effective management becomes important in diagnosing the proposed change and in forming a strategic plan to deal with the change. In this way it is helpful to management to ask such questions as whether their organization is prepared to accept the change, whether the organization has the capacity to implement the changes or whether the proposed changes can be achieved without having undesirable consequences for the organization.<sup>8</sup>

Taking into consideration these other variables into an organization's unit, we can redesign our organizational model to appear as follows:



5 See Tichy "Managing Strategic Change" p. 70.

6 Ibid., p.20

7 Ibid., p. 117

8 See Harrison "Diagnosing Organizations" pp. 42-44.



This new model incorporates many new subcomponents which were absent from our first model. At the group and individual level there exist a variety of different traits, characteristics, educational and training levels. Individually each member of the organization belongs to a group which has a different social and occupational make up. These groups in turn operate under a certain set of rules and work procedures which allow them to complete their tasks.<sup>9</sup>

Employees within a municipal organization will each view change in a different way. Some will see organizational change as being a technical problem; others, a political or cultural problem. However, in viewing change in this way, each employee is taking a narrow view of the proposed change. Thus the organization as a whole, needs capable scanning and information processing capabilities in order to formulate a co-ordinated response to the change. In devising a good operational strategy, management will have to deal with various economic, political and social pressures. Management will also have to deal with changes in the prescribed organizational networks and communicative structures. Thus in order to allow for the best organizational response to change, there will have to exist within the organization, group problem solving and decision making structures.

Organizational change involves the alteration of individual behaviour and motivation. So as a result, there needs to be effective formal and informal communicative networks in an organization.

If these networks are not established, then there will arise within the organization, various cliques and coalitions. These groups, if not controlled, may ultimately end up subverting the change process taking place in the organization.<sup>10</sup>

In embracing organizational change, municipal managers need to be, not only in touch with their organizational structures, but also with the form of their decision making methods. This can be accomplished in two ways, either through integrative or sequential forms of thought. An integrative decision making process would embrace change and integrate it within the structure and culture of the organization. Problems which arise are treated in a larger perspective with consideration of the implications of one's decision. Secondly, a sequentialist decision making approach to organizational change would compartmentalize the effects of change and isolate it from the whole organization. Problems in such organizations would be seen narrowly independent of their connection to other problems.

Organizations which can easily adapt to change have a large number of integrative mechanisms which encourage the free flow of ideas and empowering people to act on new information. There becomes a sense of unity and identification of purpose with the organization.<sup>11</sup> If organizational change is thrust abruptly upon the employees, then it will result in low levels of security and trust. Further, a constant threat of more change without explanation or participation, will encourage people to focus on the short rather than the long term organizational goals.<sup>12</sup>

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See Tichy "Managing Strategic Change" pp. 5-7.

11

Rosabeth Kanter. The Change Masters: Innovation for Productivity in the American

In order to produce effective results from change, municipal organizations need to persuade employees to buy into the changes and identify with them. This end can be furthered through information, support and resources from management. If this support is not present, then the organization and its employees will be ill-equipped to deal with a proposed change.<sup>13</sup>

Employees within an organization usually wait for direction from above before acting. They bring to the organization attitudes, goals and values which influence their behaviour within the organization.<sup>14</sup> The commitment of the individual employee with the objectives of the organization will be a function of the rewards associated with their achievement. People learn under appropriate conditions, to not only accept responsibility, but to actively seek it. However, under normal conditions the intellectual abilities of people are only partially realized.<sup>15</sup> Every person constructs their own representation or image of proposed changes. Throughout their time in the organization, employees are constantly modifying their outlooks towards the organization. Change, therefore, may not only ultimately bring about a restructuring or organizational norms of behaviour but also changes on how individuals view the restructuring of their environment.<sup>16</sup>

The change agent that is pressuring an organization to

<sup>12</sup> Corporation (New York: Simon and Schuster, 1983), pp. 28-32.

<sup>13</sup> Ibid; pp. 84-85.

<sup>14</sup> Ibid; pp. 157-159.

<sup>15</sup> James March and Herbert Simon. Organizations (New York: John Wiley and Sons Inc., 1958) p.6

<sup>16</sup> Douglas McGregor. The Human Side of Enterprise. (Toronto: McGraw-Hill Book company, Inc., 1960) pp. 47-48.

Chris Argyris and Donald Schon. Organizational Learning: A Theory of Action Perspective. (California: Addison-Wesley Publishing Company, 1978), pp. 16-22.

change its operation must be actually aware of and understand the organization they are affecting. They must be aware that the employees within the organization are capable of learning and growing.<sup>17</sup> Intervention therefore, should be limited to a level no deeper than that required to produce relevant and meaningful solutions. Change must also not be attempted if the organization is not fully committed to the problem and in seeking out solutions to the problem.<sup>18</sup>

Change for change sake is a destructive strategy. Team building and training must be undertaken within an organization to encourage all people to participate.<sup>19</sup> Consideration must be given towards how the individual employee feels about the suggested change. In understanding that individual attitudes and value systems are shaped, not only by organizational norms and values but by individual attitudes and beliefs, management will be able to better shape the organization to deal with the change. New patterns of action occur as people change their formative orientations towards new commitments in the organization. These involve changes in individual attitudes, values and skills. Thus it is wrong for management to view organizational change as just occurring on an informational or intellectual level. In applying a change strategy there must be a judicious application of power. This allows for the compliance of those with less power to suit the plans, directions and leadership of those with greater power.<sup>20</sup>

17 Wendell French and others eds, Organizational Development: Theory, Practice and Research (Texas: Business Publications Inc., 1983) p.405

18 Roger Harrison, "Choosing the Depth of Organizational Intervention" in French and other eds., Organizational Development p. 421.

19 See French Organizational Development. pp. 433-436.

20 Robert Chin and Kenneth Bena "General Strategies for Effecting Change in Human Systems" in

CHAPTER 3: ORGANIZATIONAL STRUCTURES IN THE REGION  
OF HAMILTON-WENTWORTH

Consultations between the provincial government and the municipalities took place before the implementation of the MFIPPA. During 1989 nine working groups were constructed which represented the provincial government and major local government bodies or functions.<sup>1</sup> Representation consisted of staff from the ten provincial ministries most involved with local government as well as The Association of Municipalities of Ontario, The Association of Municipal Clerks and Treasurers of Ontario, and the Regional Solicitors Association. Each working group identified potential issues and problems which they felt were important to address.

Generally, these groups supported the principles of the Act. They found general acceptance of the need for legislation to implement the principles of information and privacy as well as the basic procedures for access, privacy protection and appeal. The major concerns which were expressed dealt with administration and training. The working groups were concerned that since formal procedures for access and privacy were a recent development, that it would be difficult to estimate what impact they would have on the administrative organization. Further, there was a plea for provincial training assistance in the form of workshops, publications and manuals to assist municipal employees in implementing the Act.<sup>2</sup>

Some of these recommendations were followed, others were

<sup>1</sup> Lynne Peterson "Report on the Local Government Consultations" Municipal World, 79 (January, 1989) p.3.

<sup>2</sup> See Peterson "Report on the Local Government Consultations" p.3

not. However the general idea which was incorporated into the MRIPPA was that municipalities would be responsible for

establishing certain structures in their organizations for the purpose of carrying out the Act, but there would be no formal financial assistance from the province to the municipalities in helping them establish these structures. This phenomenon

resulted in both the regional police and the regional clerk's department in Hamilton-Wentworth establishing their own unique process for implementing the provisions of the Act.

In the regional municipality of Hamilton-Wentworth,

regional council designated the Access to Information Committee as the head for the purposes of administering the MRIPPA. As

was noted in Chapter 1 of this report, this power is designated under section 3 of the Act. This access to information

committee was composed of three members of the regional Legislation and Reception Committee. Following section 49 of

the Act proceeded to delegate the powers and duties of the "head" to the Regional Clerk, the Deputy Clerk and the Freedom

of Information and Privacy Co-ordinator. Administration of the act was assigned to the Freedom of Information and Privacy Co-

ordinator. Fourteen departmental staff were subsequently appointed as FIPPA contact people who were to assist the FIPPA

co-ordinator.<sup>3</sup> In designating a committee of Council the "head" under the

provisions of the FIPPA for the purposes of administering the Act, regional council was complying with the Act and setting in

motion a process by which the Act would eventually be

administered by those municipal employees who staffed the municipal departments in the region. It was advantageous though, to designate council as the "head" of the Act. One advantage is that it accords with the principle of the collective responsibility of Council. Another is that it frees Council to delegate the duties and authority to handle the access requests to municipal staff who are more skilled in that function. Further, since there is no right of internal appeal, it is less cumbersome to designate Council as the "head".

Regional Council has also kept the clerk's office as one of the major departments in controlling information flow. This organizational consistency has been enhanced by designating the clerk's office as one of the major departments in administering the Act.

Once the structural components of the organization were set up to administer the RPPA, the regional clerk's department set up a process to get the system in motion. This was established through the use of forms such as is found in Figures 2-6 of the appendix. These forms were not only used for administrative purposes to process information access requests but also to track and record what requests had been filed and what they entailed. In order to allow for an efficient and effective records management system, the clerk's department filed each request under a certain number for easy access. Also, appropriate forms were used for each of the different request which the department received.

As was stated earlier in the chapter, there was no financial assistance from the province in establishing these other organizational structures. Since the municipality itself had to create and finance these organizational structures with little assistance from the external agent who was exerting pressure on the municipal corporation, there was a lack of organization and co-ordination in the department. The overall response to the organizational change was slow moving and change was only undertaken at the last moment. These developments will be reviewed in more detail in the next chapter.

The Hamilton-Wentworth Regional Police force was quite different in implementing the needed structural changes than was the clerk's department. In part the reason for this was that the department was a very visible and important one. The other reason was that they have a unique cultural and operational status under the Police Act. That is, the police department is administered by an Independent Police Service Board. In dealing with the FIPPA, the regional police force designated the chairperson of the Police Services Board as the "head" of the institution for the purposes of administering the Act. The chairperson was then free to delegate to the Chief of Police and members of the force, certain responsibilities for administering the legislation.<sup>5</sup>

The Hamilton-Wentworth Police Services Board is responsible for the governing of the Hamilton-Wentworth Regional Police Department. This Board is composed of five people who are

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Hamilton-Wentworth Regional Police. Municipal Freedom of Information and Protection of Individual Privacy: An Overview of the Act and Guide for Senior Managers and Civilian Managers (Hamilton: Hamilton-Wentworth Regional Police, 1990) p.3



appointed, two by regional council and three by the provincial government. Within this Board, one member is elected as chairperson.<sup>6</sup>

In addressing the probable areas in which information may be accessed from the force, one can include areas such as identification records, criminal intelligence files, employee personal records, firearm records, citizen complaints and investigative and missing people records.<sup>7</sup> However, what would be the area of most interest to information accessors would be the deeds and misdeeds of the police force in the community. In this way, the news media itself would constitute the vital connecting link between the activities of this public body and the general population. Given the intense scrutiny of police forces today, that may result in visible minorities, community activist or the news media itself trying to obtain information that would not ordinarily be disclosed as is provided for under sections eight or twelve of the MFIPPA.<sup>8</sup>

The wide range of exemptions in the Act will ensure that the operations of the police force will not be compromised by the possibility of records falling into the hands of people who would use them for improper purposes. However, it can be expected that the Police Services Board will not use these exemptions unless it was in the best interest of the police force, its employees or the community.<sup>9</sup>

6           Hamilton-Wentworth Regional Police. Municipal Freedom of Information and Protection of Individual Privacy: Directory of General Records and Personal Information Banks (Hamilton: Hamilton-Wentworth Regional Police, 1990) pp.1-2

7           See Hamilton-Wentworth Regional Police. Directory of General Records p.2

8           See Ontario, Statutes, 1989, sections 8 and 12.

9           David Beck Philosophy, Legality and Reality: Police, the Media and the Municipal Freedom of Information and Protection of Privacy Act. (Hamilton: Region of Hamilton-Wentworth, 1991) pp. 3-11.

In order to process requests by the public for information efficiently and effectively, the Hamilton-Wentworth Regional Police Force decided to establish three categories of access. These were access to a record, access to personal information and a request for the correction of personal information. An example of an internal request form is given in Figure 7 of the appendix. Criteria were also established to guide staff to coming to a final information request decision. A summary of access procedures can be seen in Figures 8, 9 and 10 of the appendix. Firstly, if a request was to be received it was to be determined whether a record was being requested and if so, whether a positive response could be given in keeping with the spirit of the Act and in maintaining the balance between access and privacy protection. Secondly, if an exemption was appropriate, then it was to be decided whether this decision would service the mediation and appeal process. If an exemption was used, it was further to be decided whether the objective standard of reasonableness was used or whether there was an override for public interest matters. Finally, it was to be determined whether the severability factor in section 4(2) of the MFIPPA was to be applied and whether all possible consultations between the requester and the department had taken place.<sup>10</sup>

To assist in processing these requests, all original documents such as photographs, crown sheets, officer notebooks, etc., were to be numbered using a sequential stamp which was unique to each department unit. The lower right hand corner or margin of each request form was to be stamped as follows:

Jan. 1, .91 F1002  
 Jan. 1, .91 F1003 etc.<sup>11</sup>

Establishing an elaborate and sophisticated information record retention schedule allowed the police the opportunity to establish a smooth running operation. To assist employees in the intricacies of this new system, various training programmes were established that included video training tapes, publications, and training and awareness sessions.<sup>12</sup> A good record management system also allowed employees to know exactly which records existed, how to retrieve those records efficiently and to be aware of the length of retention of records on file.<sup>13</sup>

The effectiveness in co-ordinating the structures of the police organization to the provisions of the MFIPPA allowed the police organization to develop and monitor procedures for administration of the Act as well as to prepare responses to requests for information and compile statistical reporting and fees calculation techniques. Attention was also paid in the organization to the criteria to be used in replying to information request and to be sensitive to the privacy provisions established under the Act. When in doubt about an information request, employees were told to err on the side of privacy protection. Co-ordination in implementing an organizational response to the demands of the act resulted in

<sup>11</sup> Ibid; p. 17

<sup>12</sup> Hamilton-Wentworth Regional Police. Employee Information: Municipal Freedom of Information and Protection of Individual Privacy Act (Hamilton: Hamilton-Wentworth Regional Police, December 1990) p. 1

<sup>13</sup> Management - Board of Cabinet. Information Privacy Bulletin (Toronto: Management Board of Cabinet, Spring, 1990) p.2

line and middle managers as well as legal advisors becoming part of the process in interpreting and administering the Act. This action ensured a common and participatory approach towards an organizational change.<sup>14</sup>

The approach of the police department towards changing their organization to accommodate the provisions of the Act was very much different than that of the clerk's department. As we shall see in the next chapter, the origin of the organizational change in both departments occurred at drastically different times.

CHAPTER 4 ORGANIZATIONAL REALITY IN THE REGIONAL CLERK  
AND POLICE DEPARTMENTS

Viewing the municipal corporation as an organization within a broader political system allows us to conceptualize the environment surrounding the municipal institution. However, as has been pointed out in Chapter 2, a complete view of the organization must be based on a combination of organizational, group and individual as well as environmental factors. Therefore in addressing the reality of the MFIPPA, we must come to understand the conflicting and accommodating nature of the Act. In this way we can begin to differentiate between the politics and administration of organizational change which takes place within the organization.

Objectively, as of May 31, 1991, the Region of Hamilton-Wentworth had received a total of fifteen requests pursuant to the MFIPPA. Other surrounding municipalities had also received a number of requests as can be seen below.

Metro Toronto	15 requests
city of Toronto	20 requests
City of Ottawa	19 requests
Region of York	16 requests
city of Hamilton	0 requests
Ottawa-Carleton	290 requests <sup>1</sup>

The experience of the Region of Hamilton-Wentworth to date

<sup>1</sup>

The reason for the lack of any formal responses in the City of Hamilton is because all information requests to date have been handled informally--interview with Joanne Hawrylyshyn, June 5, 1991.

in handling information requests raises some interesting issues. One is the need to handle each request on a case-by-case basis. The time it takes to respond to each of these requests varies from two hours to five days depending upon the complexity of the request.<sup>2</sup> Recovering the costs incurred in the administration of the Act is also impossible because the time spent on reviewing records and determining if exemptions apply, is not chargeable to the requester. The experience of the region had also been that the nature of the external requests varied, with a large portion of them related to public health inspection reports. The Hamilton-Wentworth Region had also received one internal request to date which was handled informally.

A high level of co-ordination was necessary when the records requested were under the custody or control of more than one department or the consent of a third party was required. Complications arose when departments such as the City of Hamilton Resource Centre, which administers the needs of both the City of Hamilton, the Hamilton-Wentworth Police and the Regional Municipality of Hamilton-Wentworth, received a request for information. Individual departments also needed guidance in applying the Act and in safeguarding the privacy and confidentiality of personal records.<sup>3</sup>

Organizationally, the MFIPPA seemed to put a fair burden on the regional clerk's department. Even though there was a two year limitation period before the full effect of the Act was in force, the region still waited until virtually the last minute

<sup>2</sup> Joanne Hawrylyshyn. Municipal Freedom of Information and Protection of Privacy Act, (Hamilton: Region of Hamilton-Wentworth, 1991) p.2.

<sup>3</sup> See Joanne Hawrylyshyn. Municipal Freedom of Information, pp. 2-3.

to implement organizational changes. The regional clerk's department had little prior preparation in the possible implementation of the provisions of the Act. The cataloguing of records was not sufficiently completed by January 1, 1991, nor was there a common approach developed within the organization in how to implement the Act. Higher level direction was non-existent in the early stages as the Regional Clerk's departmental staff were given the burden of administering the Act as it was delegated to them by Regional council. Staff were left to their own devices.<sup>4</sup>

As has been alluded to earlier, there was little provincial support from the province in the form of training or providing needed information to regional staff. The only form of information was in informational brochures which were produced by the Provincial Management Board of Cabinet and which came out seasonally. Primarily, there was no financial reimbursement available for municipalities to gain money back from the province in the form of setup costs associated with implementing the Act. When the Act was finally in force January 1, 1991, regional staff were able to review an educational video on how to implement the Act. Unfortunately this avenue of information was only available when the former Regional Solicitor of the Hamilton-Wentworth Region brought it to the attention of the Regional Clerk's Department after he was made Legal Director for the Province's Information and Privacy Commissioner.<sup>5</sup>

Viewing the organizational change from a group and

<sup>4</sup> In fact the Regional Clerk's departmental staff had to seek training in the Hamilton-Wentworth Regional Police force's training seminars. -Interview with Joanne Hawrylyshyn, June 5, 1991.

<sup>5</sup> Interview with Dave Beck, Regional Lawyer, June 5, 1991

individual perspective, we see various phenomena at work. As can be expected, when there is a lack of support for dealing with organizational change, employees from the regional clerk's department started to access their own personal contacts to gain information about the new Act. This led many employees in the clerk's department to seek out an invitation to the Hamilton-Wentworth Regional Police Force's training seminars. These excellent and well organized training sessions allowed all participants a chance to become acquainted with the details of the Act. They also provided the opportunity for seminar participants to discuss amongst themselves possible avenues to access in administering the Act. Without the assistance of these seminars, it would be dismaying to think of the possible state of affairs within the Regional Clerk's Department when it came time to implement the Act.<sup>6</sup>

In reaching out to the Hamilton-Wentworth Regional Police Force's training seminars, the employees in the Regional Clerk's Department were able to make use of an excellent informational service. Attended on their own time and at their own expense, these seminars resulted in employees in both the Regional Clerk's and Police departments to establish close business and personal contacts. These contacts continued throughout the winter and spring of 1991. The close contact between the two groups lent a form of support to each other in facing the administrative obstacles they did. It further developed into the forming of informal groups or cliques which provided direction and support for the individual members.<sup>7</sup>

6

Interview with Joanne Hawrylyshyn, June 5, 1991

7

Interview with Inspector Robert Watts, June 5, 1991



The Hamilton-Wentworth Regional Police Department was initially in favour of having an exemption in the MFIPPA for law enforcement. After this request was denied, the police department was eventually satisfied that the exemptions which were included in sections 6-16 of the Act were sufficient for safely carrying out law enforcement activities. Initially, the setup costs to administer the Act for the police department was \$150,000. As was mentioned above, this cost was not reimbursed by the province. There was a feeling within the department nevertheless, that the Act was an important step forward in information accessing. They felt that the principles and spirit of the Act were in agreement with what had always been the police department's policy regarding information and privacy. The only reservation had been that there existed a standard form of information access and the right of appeal on the rejection of an information request. Thus to cope with the pressure this organizational change exerted upon them, there was a change in the organizational structure. The most significant change for the police force was in the greater degree of accountability in the cataloguing of police records. Unlike the insufficient preparation within the Regional Clerk's Department, the Police Department undertook as early as 1989, a strategy to deal with the new organizational changes. Departmental employees were given sufficient training and introduction to deal effectively with the organizational changes they were about to face. Unlike the chaos which existed within the clerk's department, the police department very early in the change process, implemented an efficient and effective records management system. As was

stated in Chapter 3, this system allowed police employees to deal with the records by using an identifying code. Thus, at the organizational, group, and individual level, there was a high degree of inter-relationship and inter-dependence. This allowed the police department to become the envy of all regional departments in dealing with the MFIPPA.<sup>8</sup>

The most emphatic conclusion which can be drawn from the experience of the Region of Hamilton-Wentworth in implementing the MFIPPA, was the lack of provincial support. Given the fact that the Act was a provincial initiative, one might have expected that the province would have provided adequate support to the lower tier levels of government in order to ensure that the organizational change was accepted and adapted with greater ease. This does not seem to have been the case. As we have learned from Chapter 2 of this paper, organizational changes lead to employees within the organization developing their own beliefs and attitudes towards the change. If there is a lack of external support in facing the change then there will be resistance to the change. The example of the City of Hamilton having no formal requests under the Act is a case in point. Having no formal access to information apparatus leads to one recording no formal requests having been made. Another example can be drawn from the City of Stoney Creek which as of June 1, 1991, had not even put into place any relevant organizational structures to deal with the demands of the public under the Act.<sup>9</sup>

The question becomes whether the provincial government

<sup>8</sup>

Interview with Inspector Robert Watts, June 5, 1991

<sup>9</sup>

A conversation with Jay Berzena, City Clerk in Stoney Creek, June 1991.

wished to have implemented standardized procedures to deal with information requests and also allow each municipality to have flexibility in implementing its own structures which could arise within individual municipalities. The lack of support from the provincial government allowed different municipal departments to implement the procedures under the Act at the speed they felt most comfortable with. Certainly the already noted disparity between the regional police force and the clerk's department in approaching the Act speaks for itself.<sup>10</sup>

The emergence of informal groups or cliques within the Region of Hamilton-Wentworth is a predictable development. As was pointed out in Chapter 2, if there is a lack of direction or co-ordination from above in implementing organizational change, then a power vacuum will develop which will lead to new groups emerging to provide leadership. The emergence of the police department as a control co-ordinator in training and educating of regional staff from the clerk's department provided a necessary function. Informally, the contacts which were established led to a good rapport between fellow employees. This contact helped to sustain the employees from both departments in their level of enthusiasm and support for the Act. The formal structures which had been created under the provisions of the Act did not provide the necessary support which was found outside of the organization.

It is not surprising to observe that the regional police force as an organized unity, was able to provide leadership to

10

A conversation with MPA student Jeff Malpass, revealed that the City of London also decided to basically ignore the Act and continue to process information requests as they had done in the past. May 30, 1991.

other regional departments. The very nature of police forces may be seen as being para-military organizations. These institutions are usually very hierarchical in structure, and also establish strong vertical chains of command and a set of organizational rules to be followed. Such organizations are able to deal with change effectively because their structures are created to accommodate external change.

The employees within the police department were able to adapt their behaviour to suit the new organizational structures and the resulting work demands. Thus the employees were able to discharge their new duties in an efficient and effective manner. The constraints that were put on individual employees did not allow much varied behaviour. Employees were expected to obey the rules and the established chain of command and follow the orders of their superiors. The organization would not tolerate much individual dissent. The regional clerk's department, on the other hand, had a less rigid organizational structure than did the police department. Although both departments were faced with the same external forces of change, the clerk's department was less prepared than the police department to deal with the need for change. The police department was also initially more organized than the clerk's department. One reason for this may be the visible and highly sensitive position which the police department has within the community. Since they are prone to attract more attention particularly from the media, they have to have within their organization, proper structures in place to notice changes taking place within their immediate environment and to deal effectively with them.

The ease with which the police department can affect a coordinated response to any organizational change as a result of the well established lines of communication within the department make dealing with any change easier than it would be for other organizations.

The lack of organizational support which employees in the clerk's department received resulted in them seeking membership in informal groups for support. This support allowed the individual employees to fulfill their duties and roles within the organization. It did not however, endear them towards their own department or the province. Without the existence of a willing department to provide direction and support the employees of the clerk's department would have been even more resistant to change and ineffective in their roles in the organization.

The inability of the Regional Clerk's Department to successfully develop and implement a change strategy until they were forced to confront the organizational change resulted in chaos and disorganization. In part they were able to get away with a more pro-active change strategy because there was not the existence of any other external actors putting pressure on the organization. In the case of the Regional Police Department, organizational change strategies had to be adopted as soon as there were signs that change was imminent. The existence of external actors such as the media and their fascination with the police department meant that all organizational changes would be monitored more closely than in the clerk's department. The police department therefore, wished inexorable to develop the

needed structural changes quickly as to prevent any chance of organizational blame and decline.

### CONCLUSION

Dealing with organizational change at any level in an organization or at any time is always difficult. One of the primary difficulties is that one has to change one's perception of the organization and one's role within it. Some people are better able to do this than other people, as some organizations can change easier than other ones. However, it is always easier to deal with any type of change when there exists support around you to assist you in the change process.

Looking at the changes which have taken place in the Region of Hamilton-Wentworth as a result of the MFIPPA, we can see these exact same principles at work. Organizational change was easier within the Regional Police Department than it was in the Regional Clerk's Department. The primary reason for this was organizational support. When the police department did not receive the needed support from the province to implement and administer the Act, they provided it from within the organization. This resulted in not only a co-ordinated organizational response to change, but also more contented, effective employees. The opposite condition existed within the clerk's department.

The principles of an organization as they were elucidated in this paper stressed the need to see the complete organization as a compilation of the organizational structure, the groups within the organization and the individuals which made up those groups. Failure to recognize the existence of these three different aspects of the organization will bring about some form of organizational decline. Certainly this type of situation

within the clerk's department could have been prevented. However, it is not surprising that it did happen. Some organizational departments are ill equipped to deal not only with change effectively but also with the normal processes of operation. This is not to suggest that the clerk's department in the Region of Hamilton-Wentworth is incompetent but to point out where improvements can be made so as to present a more efficient and effective department.

Organizational change at the municipal level of government is a fact of life. In seeking to point out the differences that existed in the way two departments within the same region dealt with change it was hoped that interesting observations could be recorded. Certainly the emergence of informal groups of support as existed between the police and clerk's departments is an interesting result of the organizational change process. In analyzing these results we can better understand what some of the effects of the MFIPPA were on municipal organizations. In bring about not only structural but also group and individual changes within the police and clerk's departments in the Region of Hamilton-Wentworth, the MFIPPA influenced all parts of these organizations.



**APPENDIX**

# Bill 49

(Chapter 63  
Statutes of Ontario, 1989)

**An Act to provide for  
Freedom of Information and  
Protection of Individual  
Privacy in Municipalities  
and Local Boards**

The Hon. M. Elston  
Chairman of the Management  
Board of Cabinet

<i>1st Reading</i>	July 20th, 1989
<i>2nd Reading</i>	October 10th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Printed under authority of the Legislative  
Assembly by the  
Queen's Printer for Ontario

Figure 1

# Projet de loi 49

(Chapitre 63  
Lois de l'Ontario de 1989)

**Loi prévoyant l'accès à  
l'information et la protection  
de la vie privée dans les  
municipalités et les conseils  
locaux**

L'honorable M. Elston  
Président du Conseil de  
gestion du gouvernement

<i>1<sup>re</sup> lecture</i>	20 juillet 1989
<i>2<sup>e</sup> lecture</i>	10 octobre 1989
<i>3<sup>e</sup> lecture</i>	14 décembre 1989
<i>sanction royale</i>	14 décembre 1989

Imprimé avec l'autorisation  
de l'Assemblée législative par  
l'Imprimeur de la Reine pour l'Ontario

(b) subject to the regulations, any record that is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution; ("document")

"regulations" means the regulations made under this Act. ("règlements")

Personal information

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

Bodies considered part of municipal corporation

(3) Every agency, board, commission, corporation or other body not mentioned in clause (b) of the definition of "institution" in subsection (1) or designated under clause (c) of the definition of "institution" in subsection (1) is deemed to be a part of the municipal corporation for the purposes of this Act if all of its members or officers are appointed or chosen by or under the authority of the council of the municipal corporation.

Designation of head

3.—(1) The members of the council of a municipal corporation may by by-law designate from among themselves an individual or a committee of the council to act as head of the municipal corporation for the purposes of this Act.

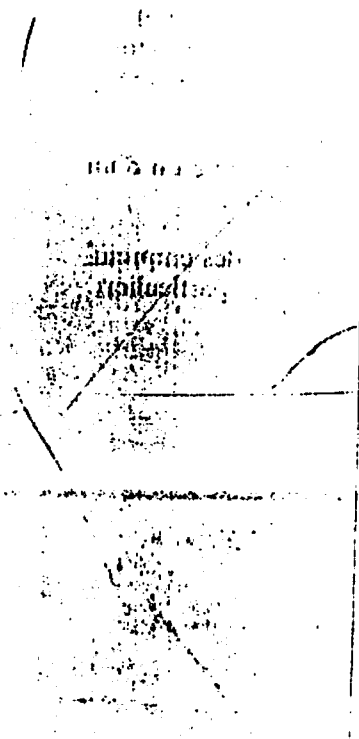
Idem

(2) The members elected or appointed to the board, commission or other body that is an institution other than a municipal corporation may designate in writing from among themselves an individual or a committee of the body to act as head of the institution for the purposes of this Act.

If no designation

(3) If no person is designated as head under this section, the head shall be,

(a) the council, in the case of a municipal corporation; and



- (b) the members elected or appointed to the board, commission or other body in the case of an institution other than a municipal corporation.

## PART I

### FREEDOM OF INFORMATION

#### ACCESS TO RECORDS

Right of  
access

4.—(1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or part falls within one of the exemptions under sections 6 to 15.

Severability  
of record

(2) Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

Obligation to  
disclose

5.—(1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Notice

(2) Before disclosing a record under subsection (1), the head shall cause notice to be given to any person to whom the information in the record relates, if it is practicable to do so.

Contents of  
notice

(3) The notice shall contain,

- (a) a statement that the head intends to release a record or a part of a record that may affect the interests of the person;
- (b) a description of the contents of the record or part that relate to the person; and
- (c) a statement that if the person makes representations forthwith to the head as to why the record or part should not be disclosed, those representations will be considered by the head.

Representations

(4) A person who is given notice under subsection (2) may make representations forthwith to the head concerning why the record or part should not be disclosed.

#### EXEMPTIONS

Draft by-laws, etc.

6.—(1) A head may refuse to disclose a record,

- (a) that contains a draft of a by-law or a draft of a private bill; or
- (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

- (a) in the case of a record under clause (1) (a), the draft has been considered in a meeting open to the public;
- (b) in the case of a record under clause (1) (b), the subject-matter of the deliberations has been considered in a meeting open to the public; or
- (c) the record is more than twenty years old.

Advice or recommendations

7.—(1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record that contains,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator;

- (d) an environmental impact statement or similar record;
- (e) a report or study on the performance or efficiency of an institution;
- (f) a feasibility study or other technical study, including a cost estimate, relating to a policy or project of an institution;
- (g) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (h) a final plan or proposal to change a program of an institution, or for the establishment of a new program, including a budgetary estimate for the program;
- (i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;
- (j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution.

Idem

(3) Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if the record is more than twenty years old.

Law  
enforcement

8.—(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (a) interfere with a law enforcement matter;

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;
- (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an unlawful act or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to confirm or deny existence of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

Exception

(4) Despite clause (2) (a), a head shall disclose a record that is a report prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute of Ontario.

Idem

(5) Subsections (1) and (2) do not apply to a record on the degree of success achieved in a law enforcement program including statistical analyses unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in those subsections.

Relations with governments

9.—(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (b) the Government of Ontario or the government of a province or territory in Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or



- (e) an international organization of states or a body of such an organization.

*Idem*

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

*Third party information*

**10.—(1)** A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

*Consent to disclosure*

(2) A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

*Economic and other interests*

**11.** A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
- (b) information obtained through research by an employee of an institution if the disclosure could

reasonably be expected to deprive the employee of priority of publication;

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person;
- (h) questions that are to be used in an examination or test for an educational purpose;
- (i) submissions under the *Municipal Boundary Negotiations Act, 1981* by a party municipality or other body before the matter to which the submissions relate is resolved under that Act.

1981, c. 70

Solicitor-client  
privilege

**12.** A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

Danger to  
safety or  
health

**13.** A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

Personal  
privacy

**14.—(1)** A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
  - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
  - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
  - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re  
invasion of  
privacy

**(2)** A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

Presumed  
invasion of  
privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

**Limitation**

(4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

**Refusal to confirm or deny existence of record**

(5) A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

**Information soon to be published**

**15.** A head may refuse to disclose a record if,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record

will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Exemptions  
not to apply

**16.** An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

#### ACCESS PROCEDURE

Request

**17.—(1)** A person seeking access to a record shall make a request for access in writing to the institution that the person believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

Sufficiency of  
detail

**(2)** If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Definition  
1987, c. 25

**18.—(1)** In this section, "institution" includes an institution as defined in section 2 of the *Freedom of Information and Protection of Privacy Act, 1987*. ("institution")

Request to  
be forwarded

**(2)** The head of an institution that receives a request for access to a record that the institution does not have in its custody or under its control shall make reasonable inquiries to determine whether another institution has custody or control of the record, and, if the head determines that another institution has custody or control of the record, the head shall within fifteen days after the request is received,

- (a) forward the request to the other institution; and
- (b) give written notice to the person who made the request that it has been forwarded to the other institution.

Transfer of  
request

**(3)** If an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

## INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication  
of  
information  
re institutions

**24.—(1)** The Minister shall cause to be published a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made; and
- (b) the title of the head of the institution.

Idem

(2) The Minister shall cause the compilation to be published within one year of the coming into force of this Act and at least once every three years thereafter.

Information  
available for  
inspection

**25.—(1)** A head shall cause to be made available for inspection and copying by the public information containing,

- (a) a description of the organization and responsibilities of the institution;
- (b) a list of the general classes or types of records in the custody or control of the institution;
- (c) the title, business telephone and business address of the head; and
- (d) the address to which a request under this Act should be made.

Idem

(2) The head shall ensure that the information made available is amended as required to ensure its accuracy.

Annual  
report of  
head

**26.—(1)** A head shall make an annual report, in accordance with subsection (2), to the Commissioner.

Contents of  
report

(2) A report made under subsection (1) shall specify,

- (a) the number of requests under this Act for access to records made to the institution;
- (b) the number of refusals by the head to disclose a record, the provisions of this Act under which disclosure was refused and the number of occasions on which each provision was invoked;

- (c) the number of uses or purposes for which personal information is disclosed if the use or purpose is not included in the statements of uses and purposes set forth under clauses 34 (1) (d) and (e);
- (d) the amount of fees collected by the institution under section 45; and
- (e) any other information indicating an effort by the institution to put into practice the purposes of this Act.

## PART II

### PROTECTION OF INDIVIDUAL PRIVACY

#### COLLECTION AND RETENTION OF PERSONAL INFORMATION

Application  
of Part

**27.** This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

Definition

**28.—(1)** In this section and in section 29, "personal information" includes information that is not recorded and that is otherwise defined as "personal information" under this Act. ("renseignements personnels")

Collection of  
personal  
information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of  
collection

**29.—(1)** An institution shall collect personal information only directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*;
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);



R.S.O. 1980,  
c. 89

- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;
- (g) the information is collected for the purpose of law enforcement; or
- (h) another manner of collection is authorized by or under a statute.

Notice to  
individual

(2) If personal information is collected on behalf of an institution, the head shall inform the individual to whom the information relates of,

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of an officer or employee of the institution who can answer the individual's questions about the collection.

Exception

(3) Subsection (2) does not apply if,

- (a) the head may refuse to disclose the personal information under subsection 8 (1) or (2) (law enforcement);
- (b) the Minister waives the notice; or
- (c) the regulations provide that the notice is not required.

Retention of  
personal  
information

**30.**—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Standard of  
accuracy

(2) The head of an institution shall take reasonable steps to ensure that personal information on the records of the institution is not used unless it is accurate and up to date.

Exception

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes.

Disposal of  
personal  
information

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations.

#### USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of  
personal  
information

**31.** An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act, 1987*.

1987, c. 25

Where  
disclosure  
permitted

**32.** An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is

necessary and proper in the discharge of the institution's functions;

- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
  - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
  - (ii) to another law enforcement agency in Canada;
- (g) if disclosure is to an institution or a law enforcement agency in Canada to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (h) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates;
- (i) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- (j) to the Minister;
- (k) to the Information and Privacy Commissioner;
- (l) to the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs.

Consistent  
purpose

**33.** The purpose of a use or disclosure of personal information that has been collected directly from the individual to whom the information relates is a consistent purpose under clauses 31 (b) and 32 (c) only if the individual might reasonably have expected such a use or disclosure.

RIGHT OF INDIVIDUALS TO WHOM PERSONAL INFORMATION  
RELATES TO ACCESS AND CORRECTION

Right of  
access to  
personal  
information

**36.—(1)** Every individual has a right of access to,

- (a) any personal information about the individual contained in a personal information bank in the custody or under the control of an institution; and
- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Right of  
correction

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

- (a) request correction of the personal information if the individual believes there is an error or omission;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

Request

**37.—(1)** An individual seeking access to personal information about the individual shall make a request for access in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.

Access  
procedures

(2) Subsections 4 (2) and 17 (2) and sections 18, 19, 20, 21, 22 and 23 apply with necessary modifications to a request made under subsection (1).

Compre-  
hensible  
form

(3) If access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general conditions under which the personal information is stored and used.

## Exemptions

**38.** A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information;
- (b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of contracts and other benefits by an institution if the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (d) that is medical information if the disclosure could reasonably be expected to prejudice the mental or physical health of the individual; or
- (e) that is a research or statistical record.

## PART III

## APPEAL

Right to  
appeal

**39.—(1)** A person may appeal any decision of a head under this Act to the Commissioner if,

- (a) the person has made a request for access to a record under subsection 17 (1);
- (b) the person has made a request for access to personal information under subsection 37 (1);
- (c) the person has made a request for correction of personal information under subsection 36 (2); or
- (d) the person is given notice of a request under subsection 21 (1).

Time for  
application

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Notice of  
application  
for appeal

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Mediator to  
try to effect  
settlement

40. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Inquiry

41.—(1) If a settlement is not effected under section 40, the Commissioner shall conduct an inquiry to review the head's decision.

R.S.O. 1980,  
c. 484  
not to apply

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

Inquiry in  
private

(3) The inquiry may be conducted in private.

Powers of  
Commis-  
sioner

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts I and II of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Record not  
retained by  
Commis-  
sioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Examination  
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of  
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination  
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, may have information relating to the inquiry and, for that purpose, the Commissioner may administer an oath.

Evidence  
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

## Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

## Idem

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

R.S.C. 1985,  
c. C-5

## Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

## Representations

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

## Right to counsel

(14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.

## Burden of proof

**42.** If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head.

## Order

**43.—(1)** After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal.

## Idem

(2) If the Commissioner upholds a decision of a head that the head may refuse to disclose a record or a part of a record, the Commissioner shall not order the head to disclose the record or part.

## Conditions

(3) The Commissioner's order may contain any conditions the Commissioner considers appropriate.

## Notice of order

(4) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 39 (3) written notice of order.

## Delegation

44. The Commissioner shall not delegate to a person other than an Assistant Commissioner his or her power to require a record referred to in section 8 to be produced and examined.

## PART IV

## GENERAL

## Costs

45.—(1) If no provision is made for a charge or fee under any other Act, a head shall require the person who makes a request for access to a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

## Exception, personal information

(2) Despite subsection (1), a head shall not require an individual to pay a fee for access to his or her own personal information.

## Estimate of costs

(3) The head of an institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

## Waiver of payment

(4) A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);



- (l) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

## Offences

**48.**—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a personal information bank that contravenes this Act;
- (c) make a request under this Act for access to or correction of personal information under false pretences;
- (d) wilfully obstruct the Commissioner in the performance of his or her functions under this Act;
- (e) wilfully make a false statement to mislead or attempt to mislead the Commissioner in the performance of his or her functions under this Act; or
- (f) wilfully fail to comply with an order of the Commissioner.

## Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000.

Consent of  
Attorney  
General

(3) A prosecution shall not be commenced under clause (1) (d), (e) or (f) without the consent of the Attorney General.

Delegation of  
head's  
powers

**49.**—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution or another institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation.

Protection  
from civil  
proceeding

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

Vicarious liability of institutions preserved

(3) Subsection (2) does not relieve an institution from liability in respect of a tort committed by a head or a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Oral requests  
verbally request  
voluntarily

**50.**—(1) If a head may give access to information under this Act, nothing in this Act prevents the head from giving access to that information in response to an oral request or in the absence of a request.

Pre-existing access preserved

(2) This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force.

Information otherwise available

**51.**—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation.

Powers of courts and tribunals

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document.

Application of Act

**52.**—(1) This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.

Non-application of Act

(2) This Act does not apply to records placed in the archives of an institution by or on behalf of a person or organization other than the institution.

Other Acts

**53.**—(1) This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Idem

(2) The following confidentiality provisions prevail over this Act:

R.S.O. 1980, c. 308

1. Section 90 of the *Municipal Elections Act*.

R.S.O. 1980, c. 31

2. Subsection 57 (1) of the *Assessment Act*.

Request Number

Tracking and Recording (Municipal)
Freedom of Information and Protection of Privacy

Please refer to Guidelines for detailed instructions.

Category A: Request Description
1 Request Type (Check one only)
1a [ ] General Record 1b [ ] Personal Information 1c [ ] Correction to Personal Information
2a [ ] Name of Requester
2b [ ] Authorized Representative of
3 Source of Request
3a [ ] Media 3b [ ] Researcher 3c [ ] Business 3d [ ] Association 3e [ ] Individual 3f [ ] Unknown 3g [ ] Other
4 Subject matter of request

Category B: Dates/Days
1 Date initial request received 2 Response due date 3 Date complete request received 4 Adjusted due date
5 Days extended: Reasons [ ] Volume [ ] Consult [ ] Both 6. Extended due date 7. Extension notification date 8. Adjusted due date (fee est.)
9 Date notified of decision 10. Date records released/file closed 11. No. of days to complete request
12. Transferred in from Date: [ ] Whole [ ] Part 13. Forwarded to Date: [ ] Whole [ ] Part

Category C: Internal Tracking
1. Internally forwarded to 2. Date to be returned by

Category D: Third Party Notification
1. [ ] S.10 [ ] S.14
2. Name 3. Notified of interest Date 4 Response due 5 Access decision due 6. Notified of decision 7. Final appeal date

Category E: Response to Request
1 [ ] All disclosed 2 [ ] Disclosed in part 2a [ ] Partly exempted 2b [ ] Partly non-existent 3 [ ] Nothing disclosed (totally exempt)
4 [ ] Refuse to confirm/deny 5 [ ] No record exists 6 [ ] Request abandoned 7 [ ] Withdrawn
8 [ ] Correction made 8a [ ] Whole 8b [ ] Part 9 [ ] Correction refused 10 [ ] Statement of disagreement filed 11 [ ] Correction request withdrawn/abandoned 12 [ ] Notice of correction

Category F: Exemptions
Exemptions invoked:
[ ] S.6 [ ] S.8 [ ] S.10 [ ] S.12 [ ] S.14 [ ] S.38 b-e
[ ] S.7 [ ] S.9 [ ] S.11 [ ] S.13 [ ] S.15 [ ] S.53

Category G: Access
1 Method of access: 1a [ ] Examination 1b [ ] Copy 1c [ ] Both
2. Records accessed

Category H: Deposit and Fee Information
Table with columns: Date, Amount \$
1. Notified of estimate
2. Deposit requested
3. Estimate acceptance/ deposit received
4. Fee waived 4a. In whole 4b. In part
5. Refund
6. Fee requested
7. Fee received

Category I: Estimated and Actual Fee
Table with columns: Activity, Estimated Fee, Actual Fee
1. Activity: 1a Search (in excess of 2 hours) 1b Reproduction 1c Preparation of record 1d Shipping 1e Computer (programmer's time) 1f Other
4. Total Fee
5. Less deposit received
6. Less amount waived
7. Balance refunded or owing

Category J: Appeals
1. Type of appeal: Whole Part
[ ] [ ] S 8(3), S 14(5) Refuse to confirm/deny [ ] [ ] S 36(2) Correction refused
[ ] [ ] S. 17(1) Access to general records refused [ ] [ ] S 37(1) Access to personal information refused
[ ] [ ] S 20(2) Time extension [ ] [ ] S 37(3) Access method personal information
[ ] [ ] S 21(2) Third party information to be released [ ] [ ] S 45(5) Fee/Fee estimate
[ ] [ ] S 23 Access method general records [ ] [ ] Other
2. Result: [ ] Mediated [ ] Allowed [ ] Partially allowed [ ] Denied
3. Date notified of appeal 4. Date notified of: 4a [ ] Order 4b [ ] Settlement

Category K: Personal Information Banks
Total Number of Personal Information Banks accessed

Category L: Comments

**Research Agreement**  
Freedom of Information and Protection of Privacy

**This agreement is made between**

Name of Researcher (hereinafter referred to as the researcher)	and	Name of Institution (hereinafter referred to as the institution)
The researcher has requested access to the following records containing personal information in the custody or control of the institution.		

**The researcher understands and promises to abide by the following terms and conditions:**

1. The researcher will not use the information in the records for any purpose other than the following research purpose unless the researcher has the institution's written authorization to do so: (Describe research purpose below)
  
2. The researcher will give access to personal information in a form in which the individual to whom it relates can be identified only to the following persons: (Name persons below)
  
3. Before disclosing personal information to persons mentioned above, the researcher will enter into an agreement with those persons to ensure that they will not disclose it to any other person.
  
4. The researcher will keep the information in a physically secure location to which access is given only to the researcher and the persons mentioned above.
  
5. The researcher will destroy all individual identifiers in the information by \_\_\_\_\_ (Date)
  
6. The researcher will not contact any individual to whom personal information relates, directly or indirectly, without the prior written authority of the institution.
  
7. The researcher will ensure that no personal information will be used or disclosed in a form in which the individual to whom it relates can be identified without the written authority of the institution.
  
8. The researcher will notify the institution in writing immediately upon becoming aware that any of the conditions set out in this agreement have been breached.

Signed at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Signature of Researcher		Signature of Official	
Name of Researcher		Name and Position of Official	
Address		Name of Institution	
		Address	
	Telephone No.		Telephone No.

Figure 3

REQUEST NO. \_\_\_\_\_

REQUESTOR: \_\_\_\_\_

F xxa Rev.10/90

PAGE NUM.	PARA NUM.	CORRELATED PAGES	EXEMPTED			SECTION/SUB-SECTION OF ACT APPLIED	REASONS/COMMENTS
			A L L	P A R T	N I L		
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							

Figure 4

Access, Correction Request  
Freedom of Information and Protection of Privacy

Request for: <input type="checkbox"/> Access to General Records <input type="checkbox"/> Access to Own Personal Information <input type="checkbox"/> Correction of Own Personal Information	Name of Institution request made to
--	-------------------------------------

If request is for access to, or correction of, own personal information records:  
 Last name appearing on records:  same as below    or   

<b>Details</b>			
Last Name	First Name	Middle Name	<input type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> Miss

Address (Street/Apt. No./P.O. Box No./R.R. No.)	City or Town	Province
---	--------------	----------

Postal Code	Telephone Number(s) Day <input type="checkbox"/>	Area Code	Evening <input type="checkbox"/>	Area Code
-------------	---	-----------	----------------------------------	-----------

Detailed description of requested records, personal information records or personal information to be corrected. (If you are requesting access to, or correction of, your personal information, please identify the personal information bank or record containing the personal information, if known)

**Note:** If you are requesting a correction of personal information, please indicate the desired correction and, if appropriate, attach any supporting documentation. You will be notified if the correction is not made and you may require that a statement of disagreement be attached to your personal information.

Preferred method of access to records <input type="checkbox"/> Examine Original <input type="checkbox"/> Receive Copy	Signature	Date Day    Month    Year
---	-----------	------------------------------

<b>For Institution Use Only</b>		
Date received Day    Month    Year	Request Number	Comments

Personal information contained on this form is collected pursuant to Freedom of Information and Protection of Privacy legislation and will be used for the purpose of responding to your request. Questions about this collection should be directed to the Freedom of Information and Privacy Coordinator at the institution where the request is made.

Figure 5

THIRD PARTY RESPONSE

DATE:

TO: Regional Municipality of Hamilton Wentworth  
Office of the Clerk  
P.O. Box 910,  
HAMILTON, Ontario  
L8N 3V9

Please check the appropriate number, provide any written explanations required, and sign this form. Should you require additional space, you may use the reverse side of this form.

1. \_\_\_\_\_ I consent to the release of the information described in your letter.
  
2. \_\_\_\_\_ I consent to the partial release of the information described in your letter. (Note: If you select this category, you must clearly describe below, the information you do not wish released and your reasons.)
  
3. \_\_\_\_\_ I do not consent to the release of the information described in your letter for the reasons explained below.

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Signature: \_\_\_\_\_

DATE

MEMORANDUM TO: Liaison Officer  
SUBJECT: Request for Information

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I have received a request for general/personal information from requester requesting all information relating to . . . .

I have attached a copy of this request.

Please forward to me all documentation regarding this request by date. All documentation will be held at this office until finalization of this request. If any of this material is required in the immediate future, please advise at the time of response.

This memorandum with the bottom portion completed should be returned as part of your response.

Coordinator  
Access to Information

Date: \_\_\_\_\_

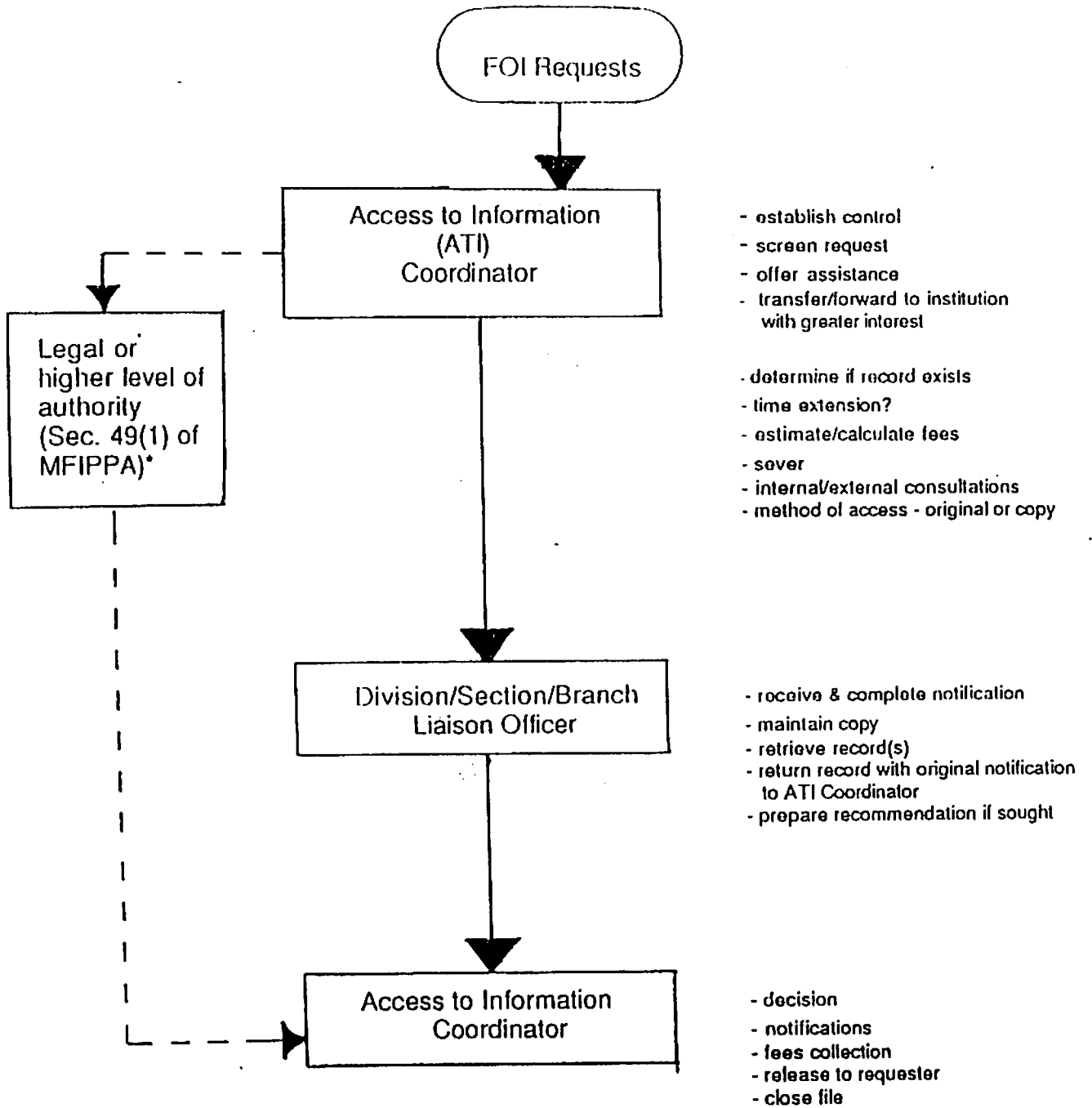
- No records exist at this location
- Attached are the requested records

A total of \_\_\_\_\_ minutes was expended on this request.

Signature: \_\_\_\_\_



# REVIEW PROCESS



\* Municipal Freedom of Information and Protection of Individual Privacy Act 1989

Figure 8

## SUMMARY OF ACCESS PROCEDURES

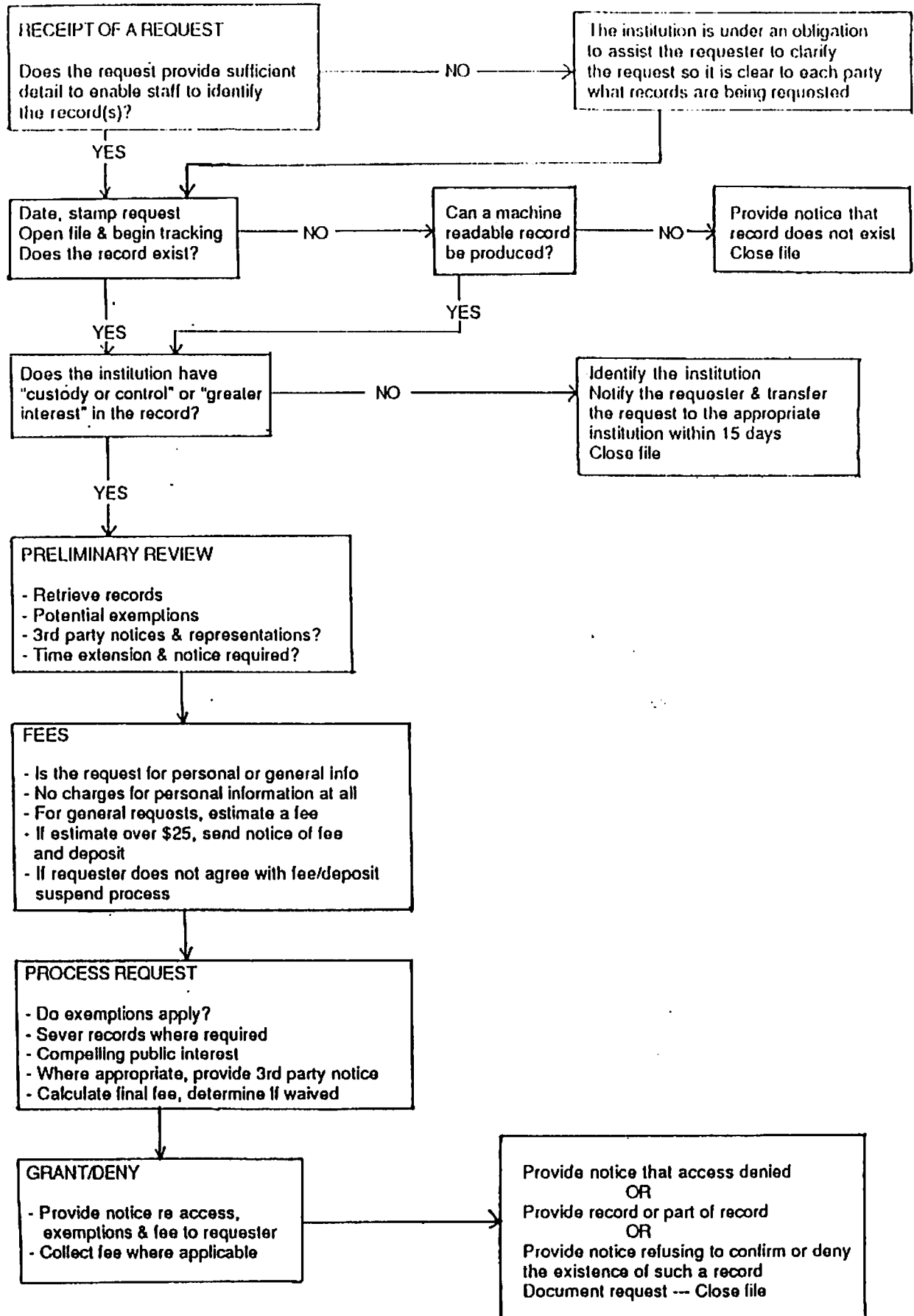


Figure 9

## REPRODUCTION CHARGES

<u>NATURE OF COPY</u>	<u>AMOUNT</u>
Copy of 1 page	20 cents
5" X 7" colour picture	\$10.00
8" X 10" colour picture	\$20.00
Floppy disks	\$10.00 each
Audio cassette, for each cassette 90 minutes or less	\$15.00
Video cassette, 3/4 inch cassette for first hour or part of hour	\$80.00
For each additional hour or part	\$40.00
Preparation of a record - physical severing	\$7.50/15 minutes Total \$30.00/hour
Search time for a record - First 2 hours - Each 15 minute period after	Free \$7.50
Development of a computer program or some other method or producing a record from a machine readable record	\$15.00/15 minutes
Shipping Costs	Postage or Courier charges

Figure 10

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## PERSONS INTERVIEWED

- David Beck, Hamilton-Wentworth Regional Solicitors  
Department
- Joanne Hawrylyshyn, Records Co-ordinator, Region of  
Hamilton-Wentworth
- Raymond Plant, Kingsmill, Ross and McBride law firm
- Robert Watts, Sergeant, region of Hamilton-Wentworth  
police force