Township of Cramahe Special Council Meeting

Agenda

Date: Thursday, September 3, 2020, 9:30 a.m.
Location: Virtual Meeting

1. MEETING DETAILS

Join Zoom Meeting: https://us02web.zoom.us/j/87590457146
Meeting ID: 875 9045 7146
Dial by your location: 1 647 558 0588 / 1 647 374 4685

Please note, that the meeting will be open to the public and will take place at the Keeler Centre. We encourage members of the public to participate electronically. If members of the public plan on attending the meeting in person, please contact the Clerk's Office 905-355-2821 or holly@cramahetownship.ca to be provided with a copy of our policy and procedure and to fill out the necessary forms related to COVID-19.

Any one in attendance (inclusive of Council and staff) at the meeting will be required to wear masks.

This meeting will not have open Forums as it is a training session for Council and Staff.

2. CALL TO ORDER

As we gather, we are reminded that the Township of Cramahe is situated on treaty land that has a rich Indigenous history. As a municipality, we have a responsibility for the stewardship of the land on which we live and work. Today we acknowledge the Anishnabek, Huron-Wendat, Haudenosaunee (Iroquois) and Ojibway/Chippewa on whose traditional territory we are meeting.

This territory is covered by the Williams Treaty.
3. **RECORDING EQUIPMENT**

In accordance with By-Law 2020-17, members of the Public are to advise the Mayor or the Clerk of the use of devices for transcribing or recording the proceedings of open session by auditory or visual means prior to the meeting.

*An individual must be granted permission by the Mayor and/or the Clerk of the Township of Cramahe to audio/visual record any meeting. As per The Township of Cramahe Records Retention By-law 2020-17, the Digital Privacy Act and The Personal Information Protection and Electronic Documents Act, individuals must swear that they will not attempt to alter the audio/video recordings of today’s meeting. Subject to the Municipal Freedom of Information and Protection of Privacy Act, the Digital Privacy Act and The Personal Information Protection and Electronic Documents Act, the Mayor and/or the Clerk may at any time request a copy of the recording and individuals will be required to produce the recording within 5 business days.*

4. **CONFIRMATION OF AGENDA**

*Be it resolved* that Council approve the agenda, as presented.

5. **DECLARATION OF PECUNIARY INTEREST**

Members can declare now or at any time during the meeting.

6. **DELEGATIONS/PRESENTATIONS**

6.a **Else Khoury, Principle, Shesat Consulting regarding Municipal Freedom of Information and Protection of Privacy Act**

*BE IT RESOLVED THAT Council receive the presentation by Else Khoury, Principle, Shesat Consulting, regarding the Municipal Freedom of Information and Protection of Privacy Act, for information.*
7. **CLOSED MEETING (IF REQUIRED)**

   **Be it resolved that** Council move into closed session at TIME for the purposes of Training provided by Principles Integrity regarding the Township of Cramahe Council Code of Conduct and Litigation or Potential Litigation (ADMIN-12-20C); and

   **That** CAO/Treasurer A. McNichol, Manager of Transportation and Environmental Services D. MacPherson, Manager of Planning and Development H. Sadler, Manager of Parks, Recreation and Facilities J. Hoskin, CBO G. Sproule, Library CEO M. Norton, Fire Chief T. Burgess, Deputy Clerk H. Grant, and Clerk J. Hyde remain in attendance.

   **BE IT RESOLVED THAT** Council come out of closed session at TIME.

   7.a Potential Litigation Updates, ADMIN-12-20C

   7.b Principles Integrity - Council Code of Conduct and Municipal Conflict of Interest Training

8. **CONFIRMING BY-LAW**

   **Be it resolved** that Council approve By-law 2020-67, being a By-law to confirm the proceedings of the Corporation of the Township of Cramahe Special Council Meeting held on September 3rd, 2020, be read a first, second and third time, finally passed, signed by the Mayor and the Clerk, sealed and entered into the By-law book.

9. **ADJOURNMENT**

   **Be it resolved** that Council adjourn the meeting at TIME.
MFIPPA for Municipal Councillors

TOWN OF CRAMAHE

SEPTEMBER 3 2020
• 16+ years in municipal government
• Masters in Information Studies
• Instructor – University of Toronto School of Continuing Studies
• Columnist with Municipal World
• Trainer/consultant
Agenda

1. Introduction to MFIPPA
2. Applying MFIPPA day-to-day
3. Your own accountability and limitations
Municipal Freedom of Information and Protection of Privacy Act: Core Tenets
Freedom of Information

All government information is public information, because government is funded by taxpayers

Access must be paramount in all access decisions

Any exemptions should be limited and specific

Strict timelines must be adhered to

Disclosure decisions can be reviewed independently by the Office of the Information and Privacy Commissioner (IPC) of Ontario

Penalties, orders, litigation and bad publicity may result from non-compliance
Access

Right of access to information is paramount

There are some legitimate exemptions

Limited and specific

Exemptions are governed by strict timelines

Independent adjudication through the IPC

Application fee of $5 plus additional fees (search time, copying, preparation, etc.)

MFIPPA holds public sector organizations accountable
On receipt of a valid request, contact requester to acknowledge and clarify request

Circulate request to relevant department(s) that may hold records/information that are potentially responsive

Responding department(s) should make it a priority to compile the responsive information and return it to the Head/MFIPPA Coordinator

Responding department(s) should track search time to retrieve, and page count of, responding materials

Responding department(s) should also tag any sensitive documents and include recommendations for potential exemptions with reasons where appropriate
Responding to MFIPPA Requests

Staff should then complete a Record Index summarizing documents provided by responding department(s).

Staff then review documents to ensure that no other documents are obviously missing. If missing documents identified, go back to responding department(s).

Once all responsive documents collected, staff review the records to confirm whether any Exemptions or Exclusions apply and make recommendations to the Head.

Consider whether 3rd party input required.

Head will make the final decision.

Records may have to be redacted before release.

Decision and responsive records sent to requester.

Requester can appeal timing, decision and/or fees to IPC.
Deadlines

- Typically, 30 days to respond
- BUT extensions should be communicated ASAP (i.e. before 30 days since request received)
- Must have a good reason for extension
- Extension can be appealed
Exemptions

- Draft by-laws, etc. D
- Advice or recommendations D
- Law enforcement D
- Civil Remedies Act, 2001 D
- Prohibiting Profiting from Recounting Crimes Act, 2002 D
- Relations with governments M
- Third party information M
- Economic and other interests D
- Solicitor-client privilege D
- Danger to safety or health D
- Personal privacy M
- Information soon to be published D
Exceptions

Act does not apply to:

1. Proceedings or anticipated proceedings before a court, tribunal or other entity relating to labour relations or to the employment of a person by the institution.

2. Negotiations or anticipated negotiations relating to labour relations or to the employment of a person by the institution between the institution and a person, bargaining agent or party to a proceeding or an anticipated proceeding.

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest. 1995, c. 1, s. 83.
A request is frivolous or vexatious if it is:

- part of a pattern of conduct that amounts to an abuse of the right of access
- interferes with the operations of the institution
- made in bad faith or
- made for a purpose other than to obtain access

Frivolous and Vexatious is very hard to prove.
Procurement

What does your procurement language look like?

Do vendors/contractors understand that they will be taking on MFIPPA obligations of the municipality?

Do staff understand the Third Party exemption?
- Records contain business information
  - Trade secrets
  - Scientific information
  - Technical information
  - Commercial information
  - Financial information
  - Labour relations information
- The information was supplied in confidence, implicitly or explicitly
- Disclosure would cause harm to the third party
Procurement

Revisit your procurement policies

Consider including clear language for vendors regarding MFIPPA applicability

Consider a checklist that asks vendors what information they would NOT want to be released through the FOI process – this will force them to consider MFIPPA applicability

https://www.ipc.on.ca/resource/open-contracting-proactive-disclosure-of-procurement-records/
Third Party Information

If you plan to release third party information, you must apply the third party exemption and contact the third party for their input.

Head still makes final decision.

If Head’s decision is to disclose, notify Third Party first (they may appeal interim disclosure decision).
What if the Third Party Says No?

What is their reason?
Does it have merit?
Final decision is with the Head
Before release, Head must inform the third party of their access decisions
3rd party may appeal the access decision,
Head may decide to not release
Decision can be appealed by requestor
Open Government/Open Data
Routine Disclosure/Proactive Dissemination

Consider developing a Routine Disclosure/Proactive Dissemination policy

Reduce number of FOI requests and increase understanding in your organization as to what constitutes public information

E.g. Planning Act

**Information and material to be made available to public**

1.0.1 Information and material that is required to be provided to a municipality or approval authority under this Act shall be made available to the public. 2006, c. 23, s. 2.
Confidentiality and the MFIPPA Process

Institution is not permitted to reveal the identity of the requester UNLESS it is necessary to locate the relevant records.

Requester does not have to advise why the information is being requested.

Institution shouldn’t engage in speculation as to why information is requested.

However, Institution can (should) ask for clarification to facilitate response.
Protection of Privacy Obligations

To protect the privacy of our residents with respect to their personal information

To allow individuals access to their own personal information

To allow individuals the right to correct their personal information

Rules and obligations for how we collect, use, retain and disclose of personal information
Personal Information

Personal Information:

Name
Contact information
Gender, sexual orientation
Race, ethnicity, religion, political opinions
Employment/educational/financial history
Personal Health Information
Identifiable or Not?

- GENDER
- AGE
- MEDICAL DIAGNOSIS
- EMPLOYMENT HISTORY
- RESIDENTIAL ADDRESS
- WORK EMAIL ADDRESS
- EMPLOYEE IDENTIFICATION NUMBER
- OHIP CARD NUMBER
Context is King
Covid 19 Challenges

Privacy in the workplace in response to Covid-19 threat – should we be telling people if an employee has/might have Covid-19?

◦ Operational decision
◦ Consult with your employment lawyer
◦ Generally, MFIPPA and PHIPA provide for exceptions to address public risk

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.
Covid 19 Challenges

What about all the work we are doing online?

Consider developing guidelines for staff re: taking PI or confidential materials home

Provide guidance on what email and other tools to use

Consider keeping a schedule and staggering when people are in the office

Using personal phones for work purposes?

Web conferencing for meetings

Just because time is of the essence, doesn’t mean we get to throw privacy out the window.
Role of the Head and the Information/Privacy Commissioner

The Head has accountability for MFIPPA compliance in municipalities
- Council
- Chair of Council/Mayor
- Often delegated to Clerk

IPC can review any MFIPPA decision
- Order disclosure
- Impose fines
- Make a municipality’s life unpleasant
“Every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the institution.”
“No person shall, alter, conceal or destroy a record, or cause any other person to do so, with the intention of denying a right under this Act to access the record or the information contained in the record.”
Former top Ontario Liberal aide sentenced to 18 months in jail for role in gas plants scandal

David Livingston was chief of staff for former premier Dalton McGuinty

CBC News - Posted: Apr 10, 2018 6:35 PM ET | Last Updated: April 11
What is a Record?

any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

(a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and

(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”
Pretty much anything
Historically, there have been questions about whether or not Councillor records fall under MFIPPA.

Issue has evolved over time.

Short answer: MAYBE.

If you are a municipal Councillor, the decision will depend on several factors.
MFIPPA and Municipal Councillors

*Working with the Municipal Freedom of Information and Protection of Privacy Act; A Councillor's Guide* (joint City of Ottawa/IPC publication, 2001) -- councillors' constituency records are considered "personal" and not subject to the Act

*Elizabeth Home Society v. Hamilton (Ont. Sup. Ct. 2005)* -- it is a "long-standing principle of municipal law that an elected member of a municipal council is not an agent or employee of the municipal corporation in any legal sense."

IPC Order MO-2821 (2012) -- Councillor’s ‘personal’, ‘constituency’ and ‘political’ records “are not generally subject to access requests”
The Requester sought copies of all correspondence sent/received by the City solicitor or his assistant relevant to the solicitor’s volunteer work with the Children’s Aid Society.

The City initially identified 417 records (later reduced to 26 after mediation) but stated that as the records did not relate to the solicitor’s role as a City employee, the City did not have ‘custody or control’ of the records. Therefore, the records fell outside the scope of MFIPPA and the City refused to process the request.

The Requester disagreed and asked the IPC to issue an Order directing the City to process his request.

**How would you rule and why?**
IPC—City permits employees to use the e-mail system for incidental personal use on condition that personal use may be monitored. Even if employees are permitted to dispose of these records at will, it does not follow that the e-mails that remain on the City’s e-mail system are not within its custody or control.

City of Ottawa v. Ontario, 2010 ONSC 6835, Divisional Court—it is not reasonable for emails belonging to a private individual to be subject to access by members of the public merely because they are sent or received on a government owned email server. That is not a sensible or logical result whether as a question of fact or a question of law. The implications for the many thousands of employees who work in government offices across this country are staggering.

- Notwithstanding IPC’s position, purely personal communications, even on a government server, are NOT responsive records.
A member of the media requested records relating to communications between a specific city councillor and outside parties about bringing an NFL team to Toronto.

The city issued a decision claiming that no records exist in city offices. In addition, the city indicated that any records in the possession of the named Councillor that may exist are not within the city’s custody or control.

How would you rule and why?
IPC held records were not within City’s control or custody because:

a. the records were not created by an officer or employee of the City; the City has not relied on the records; and, the City does not have a statutory power or duty to carry out the activity that resulted in the creation of the records;

b. any such records, if they exist, have not been provided to or integrated with City records, regardless of whether they may have been received or created by the councillor at his municipal office. Additionally, I find that the city does not regulate their content, use or disposal; and

c. even if the records could arguably relate to a “city matter,” the City does not have the authority to regulate the use or content of any such records, and could not reasonably be expected to obtain a copy of such records upon request.

Councillor emails unrelated to City sanctioned activities are not within the City’s custody or control.
City council passed a motion to appoint a named lawyer to investigate allegations of misconduct by city employees in relation to the city’s acquisition of a property.

A few hours prior to the meeting, a city councillor had emailed the lawyer from the councillor’s own personal email account, which was not connected to the City’s server, asking for the lawyer’s feedback on a draft motion appointing him as investigator.

The City subsequently received a FOI request for “all communication” between the councillor and the lawyer/investigator.

The City denied the request stating that ‘all responsive records, should they exist, would have been generated by the councillor in their personal capacity or as an elected official and not as an officer or employee of the City .... Accordingly, access cannot be granted as the records are not within the custody and control of the City’.

Are the records within the City’s ‘custody or control’?
IPC ordered production of communications conducted on councillor’s personal (i.e. non-government owned) device with an investigator the City was considering hiring.

IPC concluded that these communications related directly to the City’s mandate and were relied on to retain the investigator. Also, as the City could reasonably expect to obtain a copy of the councillor’s email on request, the email was under the City’s control within the meaning of subsection 4(1) of MFIPPA.

IPC distinguished the prior Toronto decision noting that those discussions were speculative whereas Oshawa’s hiring of the investigator was imminent.

- While not clear how IPC would analyze records a councillor could/would not produce, communications related to a municipal function are within the City’s custody or control even if not in the City’s possession.

IPC decision has been criticized as logically inconsistent with Toronto analysis.
Custody or Control

Custody

- simply put “possession”
- when the institution has responsibility for the collection, storage, preservation or security of a record for a legitimate business purpose
- not unsolicited or accidental possession
- is the information related to the mandate of institution

Control

- Not necessarily physical “possession” ... but institution could reasonably expect to obtain a copy on request
Custody and Control - Assessment

1- Was the record created by an officer or employee of the institution?

2- What use did the creator intend to make of the record?

3- Does the institution have a statutory power or duty to carry out the activity that resulted in the creation of the record?

4- Is the activity in question a “core”, “central”, or basic function of the institution?
Custody and Control – Assessment

5-Does the content of the record relate to the institution’s mandate or functions?

6-Does the institution have physical possession of the record, either because it has been voluntarily provided by the creator or pursuant to a mandatory statutory or employment requirement?

7-If the institution does have possession of the record, is it more than “bare possession”?

8-If the institution does not have possession of the record, is it being held by an officer or employee of the institution for the purpose of his or her duties as an officer or employee?
Is It A Record? Is it Subject to MFIPPA?

1. A voicemail message on a Councillor’s work-provided smartphone from a staff member in which s/he ‘confidentially’ discusses why another Councillor ‘is such an idiot’?

2. Council’s instructions to the HR Director regarding upcoming collective agreement negotiations?

3. Email messages between two Councillors strongly criticizing the spending habits of a resident?

4. The iPhone video of the year end office party?

5. Councillor Smith has a brainwave in the washroom as to how to get a neighbouring municipality to build a wall between the municipalities and grabs the nearest available paper product and jots it down?
How Does This Affect You?

How do you separate your personal/political records from your “work” records?

How do you communicate via email, voice messages, texts, etc.?

Do you “reply all” email a lot?

Are you prepared to respond to an MFIPPA request?

Do you know what staff to contact in your municipality for more information?
Councillor requesting access to personal information of a constituent?

Councillor requesting access to confidential information, e.g. procurement?

Councillor requesting access to confidential information, e.g. hiring/firing?

Protection of privacy: emails, texts, hallway conversations?
Councillor Access to Records

Individual councillors do not have additional rights to information.

Councillors may need to request records through MFIPPA.

Council at large has greater access to information than individual councillors.
N.W.T. employee dug through planters, trash to find stolen laptop, weeks after privacy training

The employee, a manager within the Health Department, did not routinely delete sensitive data off laptop

Priscilla Hwang · CBC News · Posted: Feb 26, 2019 5:00 AM CT | Last Updated: February 26
Ontario town plans to pay ransom after computers locked down
Privacy Breach Response

Preventative Compliance: policy, training, more training...

Develop a Privacy Policy

Develop a Privacy Breach Response Plan

Assign responsibility: who will manage your breach?
Liberals agree to settle class action lawsuit over student loan privacy breach

Government didn’t follow policies to protect sensitive data of more than 583,000 student loan recipients


The loss of personal information for some 583,000 Canada Student Loan recipients five years ago was one of the worst the federal government had ever suffered. (Shutterstock)

The federal government will pay at least $17.5 million to settle a class action lawsuit filed after a major privacy breach involving about 583,000 student loan recipients.
People Get Hurt
Questions?

else.khoury@outlook.com
being a By-law to Confirm the proceedings of the Corporation of the Township of
Cramahe Meeting (Electronic) held Thursday September 3, 2020

Whereas the Municipal Act, 2001, S.O. 2001, c.25, as amended, Section 5 (3), provides
that the jurisdiction of every Council is confined to the municipality that it represents,
and its powers shall be exercised by by-law; and

Whereas the Municipal Act, 2001, S.O. 2001, c.25, as amended, Section 130 provides
that every Council may pass such by-laws and make such regulations for the health,
safety and well-being of the inhabitants of the municipality in matters not specifically
provided for by this Act and for governing the conduct of its members as may be
deemed expedient and are not contrary to law,

Now therefore be it resolved that the Council of the Corporation of the Township of
Cramahe hereby enacts as follows:

1. That the action of the Council at its special meeting held on September 3rd, 2020
in respect to each report, motion, resolution or other action passed and taken by
the Council at its meeting, is hereby adopted, ratified and confirmed, as if each
resolution or other action was adopted, ratified and confirmed by separate by-

2. That the Mayor and the proper officers of the Township are hereby authorized
and directed to do all things necessary to give effect to the said action, or to
obtain approvals where required, and, except where otherwise provided, the
Mayor and Clerk are hereby directed to execute all documents necessary in that
behalf and to affix the corporate seal of the Township to all such documents; and

3. That this by-law, to the extent to which it provides authority for or constitutes the
exercise by the Council of its power to proceed with, or to provide any money for,
any undertaking work, project, scheme, act, matter or thing referred to in
subsection 65 (1) of the Local Planning Appeal Tribunal Act, 2017, S.O. 2017
Chapter 23, shall not take effect until the approval of the Local Planning Appeals
Tribunal with respect thereto, required under such subsection, has been
obtained; and

4. That any acquisition or purchase of land or of an interest in land pursuant to this
by-law or pursuant to an option or agreement authorized by this by-law, is
conditional on compliance with Environmental Assessment Act, R.S.O. 1990,
Chapter E.18.

Read a first, second and third time, finally passed this 3rd day of September 2020.

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Mandy Martin, Mayor

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Joanne Hyde, Clerk