

ADMINISTRATIVE PROCEDURES	
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ADMINISTRATIVE PROCEDURE TITLE

Municipal Freedom of Information and Protection of Privacy

1.0 ADMINISTRATIVE PROCEDURE

Accessing Public Information

- 1.1 A Directory of Records for the Board will be compiled by Communication Services and made available for public viewing and access. The Directory describes the kinds of general information kept by the Board.
- 1.2 Access to public records of the Board will be provided upon request.
- 1.3 If a request to access public information is not obtained, a formal freedom of information request can be made in writing under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Freedom of information requests will be processed using the following steps:
 - Step 1: Requesters will complete a Board MFIPPA request form, or write a letter stating that they are requesting information under MFIPPA. (Request forms are available from the Catholic Education Centre and/or all local Catholic schools, or the requester may use the generic Request Form from the Office of the Privacy Commission.)
 - Step 2: All completed formal MFIPPA request forms or letters will be forwarded to the Manager of Communications and Freedom of Information/Protection of Privacy for the Board.
- 1.4 A \$5 application fee will be charged for all requests for access to information and must accompany the request form or letter. As well, charges may be incurred for the time required to locate and prepare records containing the information, photocopying, and shipping costs.

- 1.5 Information requests made under MFIPPA will be responded to within 30 calendar days of receipt of a request. However, under some circumstances, the Board may need to extend this time frame.
- 1.6 The public will have the right to appeal any decision made by the Board in regard to a request for access to information. An appeal must be made within 30 days of the Board making its decision. To appeal, the requester will write a letter to the Registrar at the IPC describing the reasons for his or her dissatisfaction with the Board's decision. Alternatively, requesters who are appealing may use the Information and Privacy Commission (IPC) Appeal Form. This form must be completed and mailed to the Registrar at the IPC at the address on the form. There is a \$25 appeal fee when the information sought is general information. (The appeal fee is \$10 when the information sought is personal information.) Information on filing an appeal will be made available in Board publications and on the Board website.

Accessing Personal Information

- 1.1 Under MFIPPA, with some exceptions, individuals have a right to access and request correction of their own personal information held by the Board. In addition, under the Personal Health Information and Protection Act (PHIPA), with some exceptions, individuals have a right to access and request correction of their own personal health information held by health information custodians.
- 1.2 A Directory of Records that identifies and describes the kinds of personal information kept by the Board will be compiled by Communication Services and made available for viewing and access. All records that contain Personal Information Banks (PIB) for the Board will be identified.
- 1.3 Viewing personal information and/or requesting a correction of personal information will be initiated by the requester by calling, writing, or visiting the Catholic Education Centre.
- 1.4 If the personal information requested is not obtained, or the Board refuses to correct the requester's personal information, a formal freedom of information request can be made in writing. Freedom of information requests will be made following these steps:

- Step 1: Requesters will complete a Board MFIPPA request form, or write a letter stating the request made for information under MFIPPA. (Request forms are available from the Catholic Education Centre and/or all local Catholic schools, or the requester may use the generic Request Form from the Office of the Privacy Commission.)
- Step 2: All completed formal MFIPPA request forms or letters will be forwarded to the Manager of Communications and Freedom of Information/Protection of Privacy for the Board for processing.
- 1.5 A \$5 application fee will be charged to process requests for access to personal information. As well, charges may be incurred for photocopying and shipping costs. No fees are charged for the time required to locate and prepare records containing personal information.
- 1.6 The Board will respond to personal information requests under MFIPPA within 30 calendar days. However, under some circumstances, the Board may need to extend this time frame.
- 1.7 If the Board refuses to correct a record of personal information, a statement of disagreement may be prepared and attached to the record. Any decision made by the Board in regards to request for access and/or correction of personal information may be appealed. An appeal must be made within 30 days of the Board making its decision. To appeal, a letter will be written to the Registrar at the IPC, describing the reason the requester is not satisfied with the Board's decision. Alternatively, the requester may wish to use the IPC Appeal Form. This form must be completed and mailed to the Registrar at the IPC, at the address on the form.
- 1.8 A \$10 appeal fee will be charged when the appeal involves personal information. Information on how to file an appeal will be available in Board publications and on the Board's website.
- 1.9 To appoint a third party (other than a lawyer) to act on your behalf during the appeal process under MFIPPA, the form Authorization to Act as an Agent for Appeal will be used.
- 1.10 Statistical Reports for the Municipal Freedom of Information and Protection and Privacy Act (MFIPPA) and the Personal Health Information Protection Act (PHIPA) shall be submitted to the Information and Privacy Commissioner by February 1 of each year all formal access requests.

- 1.11 The Board shall receive copies of the reports mentioned in 3:11 annually.

Informal Requests

- 1.1 Informal requests will be processed and disclosed by principals or department managers if the record(s) requested is information that the Board has traditionally shared. If staff is unsure about whether or not to disclose the record, they will contact the Manager of Communications and Freedom of Information/Protection of Privacy. If the record(s) is (are) not information that the Board normally discloses, then the individual must make a formal MFIPPA request.

Formal Requests

- 1.1 Formal requests will be forwarded to the Manager of Communications and Freedom of Information/Protection of Privacy for processing.
- 1.2 The Manager of Communications and Freedom of Information/Protection of Privacy will determine if there is sufficient detail in the request to allow staff to locate the record(s) requested. If more clarification is needed she or he will contact the requester. If the request is complete (i.e. sufficient detail and initial fee paid) the Manager of Communications and Freedom of Information/Protection of Privacy will forward the request to the staff person believed to have custody and control of the record.
- 1.3 The Manager of Communications and Freedom of Information/Protection of Privacy will provide school/department staff with the details of the request, and a specific date to complete the search. In consultation with the school/department staff, specific files, data banks, or other records that need to be searched are identified. If there are a large number of files to search it may be necessary to request a time extension. Once the files to be searched are identified, school/department staff should begin the search making sure that they document the date, length, and area of the search. These documents must be sent to the Manager of Communications and Freedom of Information/Protection of Privacy to prepare a fee estimate if necessary. If there is no record the school/department staff will notify the Manager of Communications and Freedom of Information/Protection of Privacy. If other program areas could have responsive records then the Manager of Communications and Freedom of Information/Protection of Privacy will be informed so the other areas can be a record search.

- 1.4 If the record(s) is (are) located, the Manager of Communications and Freedom of Information/Protection of Privacy will review the record and prepare a recommendation. The record(s) will be copied. The Manager of Communications and Freedom of Information/Protection of Privacy will review the records and consider whether the record(s) is (are) subject to any mandatory or discretionary exemptions and determine if any of the record needs to be severed if it is to be disclosed. The school/department staff will flag any information that should not be released or that raises concerns. The Manager of Communications and Freedom of Information/Protection of Privacy will submit the written recommendation and submit it to the Director of Education along with a copy of the requested record(s).
- 1.5 The Manager of Communications and Freedom of Information/Protection of Privacy, and in consultation with legal counsel if necessary, will make a decision about whether the record(s) or parts thereof should be disclosed.

1.6 **Fees for a Formal Request**

MFIPPA regulations allow for the collection of fees for processing a formal MFIPPA request for record(s) other than the requester's own personal information. After the initial fee of \$5 is paid, the Manager of Communications and Freedom of Information/Protection of Privacy will estimate the cost of searching for, and preparing the record(s) for disclosure. If the cost is more than \$100 a fee estimate will be issued to the requester and a 50% deposit is required before processing the request. In all cases, fees must be paid in full before the record(s) is supplied.

Initial Fee: \$5 (payable to the Board)

Photocopies: \$0.20 per page

Computer Print-out: \$0.20 per page

Floppy Disks: \$10 per page

Manual Search: \$7.50 per 15 minutes spent by any person in locating the request

Preparing for Disclosure: \$7.50 per 15 minutes (including severing exempted material from the record(s))

Developing a Computer Program: \$15 per 15 minutes

Other Costs: Costs invoiced for searching for, preparing, and disclosing the record

Shipping Costs: Postage and courier fees incurred may be charged.

If access is requested to one's own personal information the only fee charged is for photocopying.

* GST and PST do not apply to fees charged under MFIPPA.

1.7 **Fee Waiver**

The requester may ask for a fee waiver and must provide sufficient information to demonstrate that the fee is unjustified. The Manager of Communications and Freedom of Information/Protection of Privacy will consider:

- (a) the extent to which the actual cost of processing, collecting, and copying the record varies from the amount of payment required by the section;
- (b) whether the payment will cause a financial hardship to the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety;
- (d) whether the person requesting access to the record is given access to it; and
- (e) if the amount of a payment would be \$5 or less, whether the amount of the payment is too small to justify requiring payment.

The \$5 initial fee cannot be waived.

1.8 **Appeal Fees**

There are mandatory fees for an appeal to the Information and Privacy Commissioner. A \$10 fee applies to personal information request appeals and a \$25 fee applies for general records request appeals. No fee is required for a third party to appeal the Board's decision to disclose information.

1.9 **Timing**

In general, access requests must be completed within 30 calendar days from the time of receipt of a complete request. A complete request includes sufficient information for the Manager of Communications and Freedom of Information/Protection of Privacy to find the record(s), and the \$5 initial fee. The procedures set out later in this Administrative Procedure for processing formal requests contain time limits to ensure that the Board is able to meet the time requirements in the Act.

1.10 Time Extensions

The Manager of Communications and Freedom of Information/Protection of Privacy can extend the 30 calendar day time period for an amount of time which is reasonable in the circumstances, where either:

1. the request is for a large number of records or the request requires searching through a large number of records; or
2. notice to affected third parties cannot be completed within 30 calendar days.

1.11 Timing and Third Party Notices

In some cases the requested record(s) will contain information that requires the Board to notify an affected third party before disclosing the record(s). The notice to third parties must be issued within the 30 calendar day time limit or the extended time limit. The third party has 20 calendar days from the date of the notice to make representations about the disclosure that the Board must consider. After the representations are made, the Board has 10 calendar days to decide whether or not to disclose the record. If the decision is made to disclose the record, then the affected third party has 30 calendar days to appeal the decision to the IPC before the record is actually disclosed to the requester.

1.12 Timing and Fee Estimates

When the cost of preparing the record(s) for disclosure is not significant, usually between \$25 and \$100, the Manager of Communications and Freedom of Information/Protection of Privacy will provide the requester with a fee estimate. The fee estimate must be sent within the 30 calendar day time limit. In this situation the fee estimate does not affect the 30 calendar day time limit. Where the cost of preparing the record(s) for disclosure is more than \$100 the Manager of Communications and Freedom of Information/Protection of Privacy will send a fee estimate to the requester and 50% of the estimate must be paid before processing of the record begins or continues, as the case may be. The 30 calendar day time limit also stops.

1.13 Incomplete Requests

Requests that are too broad will be dealt with in one of three ways. The Board may choose to respond to the request literally, to request more information from the requester to narrow the search, or narrow the search unilaterally. If more information is requested from the requester the time

limit continues from the day that the original overbroad request was received.

1.14 Forwarding and Transferring Requests

In some cases the record(s) requested will not be in the physical custody of the Board or outside of our legal control. In these cases, we must within 15 calendar days of the receipt of a complete request:

- (a) determine if another institution has custody or control of the record, if so then the request and the application fee are forwarded; and
- (b) give written notice to the requester about the new contact institution. In some cases, the Board will have copies of the record(s) requested but another institution might have a greater interest in the record. In these cases the Board is not required to transfer the request but may do so as a courtesy. Greater interest is evident where:
 - (i) the record(s) was originally produced in or for another institution; or
 - (ii) the record(s) was not originally produced in or for another institution but they were the first to receive the record or a copy.

When it is determined that one or more institutions have records that are responsive to a request, the Board will inform the requester of this fact and provide contact names and addresses.

1.15 Continuing Access Requests

A requester may request that he or she be granted access to general records on a continual basis for two years. If a decision is made to disclose the record, then the Manager of Communications and Freedom of Information/Protection of Privacy will develop a reasonable access schedule for the requester. Before each access date the requester must pay a \$5 initial fee.

1.16 Granting Access

In the event that a decision is made to disclose the record(s), then the requester may choose to receive a photocopy of the record(s) or to examine the record(s).

If the requester chooses to examine the record(s), the record(s) must be examined in the presence of an employee of the Board to ensure the integrity of the original record(s).

1.17 Copyright

When a decision is made to release copyrighted record(s) the requester should be informed that he or she is bound by the Copyright Act in the use and reproduction of the record. Disclosed copyrighted record(s) should also indicate the name of the author.

1.18 Exemptions and Exclusions

Not all record(s) held by the Board are accessible under the MFIPPA. The Act outlines a number of specific exemptions and exclusions that allow the Board to refuse to disclose a record(s). The MFIPPA contains two types of exemptions - mandatory exemptions and discretionary exemptions. Mandatory exemptions require the Board to refuse to disclose the record(s) requested. Discretionary exemptions allow for the Board to make its own decision about whether or not to disclose the record(s).

The mandatory exemptions are specifically:

- (a) relations with other governments;
- (b) defense;
- (c) third party information; * and
- (d) personal privacy.

The discretionary exemptions are specifically:

- (a) cabinet records;
- (b) advice and recommendations;
- (c) law enforcement;
- (d) economic and other interests;
- (e) solicitor-client privilege;
- (f) danger to health or safety; *
- (g) fish and wildlife at risk;* and
- (h) information soon to be published.

* These exemptions are subject to override where a compelling public interest in the disclosure of the record(s) exists that outweighs the purpose of the exemption.

The Act also includes several exclusions, or subject matters that are not covered by the Act. The exclusion most relevant to the Board is:

- (a) labour relations and human resource matters;

1.19 Severability

The presence of exemptions in the record requested does not mean that the record(s) cannot be disclosed. Where possible, the Board should disclose as much of the record as can reasonably be severed without disclosing the information that falls within one of the exemptions.

1.20 Duty to Disclose

Despite the presence of the exemptions, if a record(s) reveals a grave environmental, health, or safety hazard to the public and there are reasonable and probable grounds to believe that it is in the public interest to disclose the records, then the Board has an obligation to disclose the record(s).

1.21 Exemptions

Advice and Recommendations

The Board may choose to not disclose a record(s) that contains the advice or recommendations of an employee, or a consultant retained by the Board, made in the course of a deliberative process. A recommendation refers to a formal recommendation about courses of action to be followed which are usually specific in nature and are proposed mainly in connection with a particular decision. Advice refers to less formal suggestions about particular approaches to take or courses of action to follow. It must be more than a list of possible options; the record must point to one option as preferred in order to qualify for the exemption.

The advice or recommendations MUST:

- (i) be communicated between individuals employed by or in the service of the Board;
- (ii) be made in the course of the deliberative process of decision-making and policy-making.

Despite the advice and recommendation exemption, the following information found in such a record must be disclosed:

Exception - Factual Material

"Factual material" means a coherent body of facts which can be separated from the rest of the advice or recommendations. Where factual material and advice or recommendations are contained in the same record, the advice or recommendations may be severed and withheld. However, it may not be possible to sever advice and recommendations and still leave meaningful factual information. In this circumstance, severing may not be appropriate and the information should not be disclosed.

Exception - Statistical Survey

A statistical survey is a record showing the collection, analysis, interpretation, and presentation of aggregate data in relation to a topic or issue which is the object of study, for example, a poll. Any information identifying individuals must be removed before the record is disclosed.

Exception - Valuator's Report

A valuator is someone with specific expertise appointed to determine or estimate the value, price, or merit of an article.

Exception - Environmental Impact

An environmental impact statement is a record containing a technical assessment, including findings and conclusions respecting the social, cultural, economic, and environmental consequences of projects.

Exception - Test Reports

The Board cannot refuse to disclose a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report.

Exception - Report on Performance

A report or study on the performance or efficiency of the Board is not exempt under the Act. The report or study may be of a general nature or about a particular program or policy.

Exception - Feasibility Study

A feasibility or other technical study is prepared by experts in the relevant discipline to determine whether a proposed policy or project can be accomplished within certain given assumptions and constraints. If the study is classified as a feasibility study, the record will be fully disclosed, including cost estimate information.

Exception - Field Research Report

The exemption does not apply to a report setting out the findings and conclusions of field research on an issue or problem which is undertaken before the formulation of a policy proposal.

Exception - Proposal to Change or Establish a Program

This subsection requires disclosure of a final plan or proposal to change or establish a program, including a budgetary estimate, or, whether or not the plan or proposal is subject to approval. This section refers to a final plan or proposal to alter or establish a program which provides a service to the public and which is developed or implemented to carry out the Board's responsibilities.

Exception - Interdepartmental Task Force Report

Unless another exemption applies, this subsection requires disclosure of a report of an interdepartmental task force or similar body, or of a committee within the Board that has been established for the purpose of preparing a report.

Exception - Report of a Body Attached to the Board

The type of body referred to in this subsection is one that consists primarily of representatives from outside the Board, and that undertakes inquiries and makes reports or recommendations to the Board. The phrase "attached to the Board" indicates that the body has been appointed or invited to meet and deliberate by someone in the Board with appropriate authority.

Exception - Reasons for a Final Decision

Unless another exemption applies, this exception requires disclosure of the reasons for a final decision, order, or ruling of an officer of the Board made during or at the conclusion of the exercise of a discretionary power under an enactment or scheme administered by the Board. This exception covers a wide range of decisions made within the Board. It applies regardless of appeal rights and whether the reasons are recorded in internal memoranda, external correspondence, or given by the deciding officer, or subsequently incorporated in a decision, order, or ruling. Names and other features identifying individuals mentioned in the record may be subject to the personal information exemption.

Exception - Record More Than 20 Years Old

Unless another exemption applies, the Board must release a record that is more than 20 years old. This subsection does not place an obligation on the Board to retain a record for 20 years. Retention schedules will be followed in determining the disposition of records.

Exception - Basis for Decision or Policy

The Board shall not refuse to disclose a record where an officer of the Board has publicly cited the record as the basis for making a decision or formulating a policy.

Law Enforcement

Law enforcement is defined in the Act. The phrase includes policing activities, prosecutions, AND investigations, or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed. Law enforcement does not include internal employment-related investigations UNLESS there is an alleged violation of the law. The Board may refuse to disclose a record pertaining to law enforcement where the disclosure could be “reasonably expected” to interfere with a law enforcement matter. “Reasonably expected” requires that the harm that may occur from disclosure be based on reason not on flights of fancy or imagination.

Law Enforcement Investigation

The Board may refuse to disclose a record where the disclosure could reasonably be expected to interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. An “investigation” is the methodical determination of facts and gathering of evidence. In some cases, the evidence gathered in an investigation will be insufficient to support the commencement of a proceeding in a court or tribunal. A record of the investigation could still be exempt, however, since it is undertaken with a view to a law enforcement proceeding. To “interfere” with an investigation does not mean that disclosure would altogether prevent a law enforcement investigation from taking place, but rather that disclosure would frustrate or impede the carrying out of an investigation.

Reveal Investigative Techniques

The Act applies where disclosure could reasonably be expected to reveal investigative techniques and procedures in use or likely to be used in law enforcement. The IPC has found that successful application of this exemption requires the Board to demonstrate that disclosure of the technique or procedure to the public would hinder or compromise its

effective utilization. If the technique or procedure is generally known, or such that a lay person would expect, reliance on this exemption would not be successful.

Reveal a Confidential Source

Disclosure may be refused where it would reveal the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

Safety of a Law Enforcement Officer

Disclosure may be refused where it would endanger the safety of a law enforcement officer or any other person. The Act also applies where disclosure of a record could reasonably be expected to seriously threaten an individual's health or safety.

Fair Trial or Impartial Adjudication

This exemption prevents premature disclosure of information that could deprive a person of a fair trial or impartial adjudication. Once the proceeding has been completely disposed of (including appeals), the exemption no longer applies. In order to demonstrate unfairness under this subsection, the Board must produce more evidence than the mere commencement of a legal action. The Board must present specific arguments as to how or why disclosure of specific parts of the record could reasonably be expected to deprive a person of a fair trial. The Act does not contain a reference to law enforcement and, accordingly, the exemption applies to proceedings that do not fall within the definition of law enforcement such as tribunals established by law to adjudicate individual or collective rights. To rely on this exemption, however, there must be evidence that the disclosure of the records would result in unfairness.

Intelligence Information

This subsection exempts from disclosure records where the disclosure could reasonably be expected to interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons. "Intelligence information" is gathered because it may be useful for future investigations. It may also be used for activities aimed at preventing the commission of an offence and for the purpose of ensuring the security of individuals or organizations including boards covered by the Act. Intelligence information may be derived from previous investigations which may or may not have resulted in the commencement of proceedings against a person or organization. It may also be gathered through observing the conduct of associates of known criminals and through other activities.

Endanger the Security

Disclosure may be refused where it could reasonably be expected to endanger the security of a building or the security of a vehicle carrying items (e.g., things or articles), or of a system or procedure established for the protection of items for which protection is reasonably required. The exemption is qualified by the requirements that the protection be reasonably required.

Unlawful Act

Records are exempt where the disclosure could reasonably be expected to facilitate the planning or committing of an unlawful act or hamper the control of a crime. "Unlawful act" means a contravention of a statute or regulation or of a municipal by-law.

Other Law Enforcement Exemptions

The Act deals with the confidentiality that necessarily surrounds law enforcement investigations in order that agencies charged with external regulatory activities can carry out their duties. The Act specifies certain records that the Board may refuse to disclose in response to a request. These records are described immediately below.

Law Enforcement Report

This subsection exempts from disclosure a report prepared in the course of law enforcement inspections or investigations by an agency responsible for enforcing and regulating compliance with a law. A "report" must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, reports would not include mere observations or recordings of fact. "Agency" includes organizations acting on behalf of or as agents for law enforcement agencies.

Act of Parliament

This subsection exempts a law enforcement record where disclosure would be an offence under an Act of Parliament.

Civil Liability

The Act exempts a law enforcement record where disclosure could reasonably be expected to expose the author of the record, or any person who had been quoted or paraphrased in the record, to civil liability. The purpose of this exemption is to provide protection for law enforcement officials and witnesses/informants who might be sued for defamation as a result of disclosure of records made while carrying out their duties.

Refusal to Confirm or Deny the Existence of a Record

The Act provides that the Board may refuse to confirm or deny the existence of a record to which subsections of the Act apply. Situations may arise in which merely disclosing the existence of an investigation or intelligence file will communicate information to the requester which may impede ongoing investigation or intelligence-gathering.

Exception - Routine Inspection

The Act requires the Board to 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.

Exception - Degree of Success in a Law Enforcement Program

The Act provides that the exemptions do not apply to a record regarding the degree of success achieved in a law enforcement program, unless the disclosure of such a record would prejudice, interfere with, or adversely affect any of the matters referred to in the Act.

Relations with other Governments

The public interest provision applies to this exemption.

Prejudice the Conduct

This section provides a discretionary exemption where disclosure of a record could reasonably be expected to prejudice the conduct of intergovernmental relations or reveal information received in confidence from another government. However, since Board approval is required for disclosure, it is better to conceive of it as a mandatory exemption. The term intergovernmental extends to the relationship between the Board and any governments. For example, a relationship between the Board and the government of Ontario is considered intergovernmental. This section also applies to records received in confidence from agencies or boards of these governments.

Reveal Information Received in Confidence

For this exemption to apply the record(s) must:

- (i) reveal information received from another government or its agencies;
- (ii) have been received by the Board; and
- (iii) have been received in confidence.

Third Party Information

The Board often acquires information about the activities of other organizations. Some of this information may constitute a valuable asset to the organization, the disclosure of which would impair its ability to compete effectively. The Act provides a mandatory exemption from disclosure for certain third party information where disclosure could reasonably be expected to cause certain harms. This exemption is not limited to commercial third parties, but may also apply to any supplier of information which meets the tests specified below, including another board. The compelling public interest provision in the Act applies to this exemption. The Act provides that before access is granted to a record that might contain information referred to in this section of the Act affecting the interests of a third party, that party must be notified and given the opportunity to make representations before a final access decision is made. If a third party claims in its representations that the record is exempt, the burden of establishing that the record falls within this section rests with that third party.

Before this exemption can be applied, all of the following must be met:

- (a) the information must fit within one of the specified categories of third party information;
- (b) the information must have been “supplied” by the third party “in confidence”, implicitly or explicitly; and
- (c) the disclosure of the information could reasonably be expected to cause certain harms specified in this section.

1. Categories of Third Party Information

- (a) Trade secret: means information including, but not limited to, a formula, pattern, compilation, program, method, technique, or process or information contained or embodied in a product, device, or mechanism which:
 - (i) is or may be used in a trade or business,
 - (ii) is not generally known in that trade or business,
 - (iii) has economic value from not being generally known, and
 - (iv) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- (b) Scientific information: means information belonging to an organized field of knowledge. It must also relate to observing and testing specific hypotheses or conclusions and be undertaken by an expert in the field. Finally, scientific information must be given a meaning separate from “technical” information in this provision.

- (c) Technical information: will usually involve information prepared by a professional in the field and describe the construction, operation, or maintenance of a structure, process, equipment or thing. "Technical" information is distinct from "scientific" information.
- (d) Commercial information: means information that relates solely to the buying, selling, or exchange of merchandise or services. The term "commercial" information can apply to both profit-making and non-profit organizations, and has equal application to both large and small enterprises. "Commercial" information is distinct from "financial" information.
- (e) Financial information: refers to specific data and is information that relates to finance or money matters. For example, the IPC has found that the price paid for land, tax information, conversion rates, default consequences, and interest incentives regarding loans qualifies as financial information.
- (f) Labour relations: means information concerning the collective relationship between an employer and its employees. This includes information compiled in the course of negotiating pay equity plans which, when implemented, would affect the collective relationship between the employer and its employees.

2. **Supplied in Confidence**

The second test for this exemption is that the information must have been supplied in confidence to the Board by a third party.

3. **Harm**

It must be demonstrated that disclosure of the record could reasonably be expected to yield one of the three results discussed below:

- (a) Competitive Position or Negotiations
 - Where the disclosure could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. It requires some measure of the injury. The particular circumstances must be evaluated in each case. The Board or third party must present evidence that is detailed and convincing and must

describe a set of facts and circumstances that would lead to a reasonable expectation that harm would occur if the information were released.

(b) Impede Supply of Similar Information

- Where disclosure could reasonably be expected to result in similar information no longer being supplied to the Board and where it is in the public interest that similar information continue to be supplied. The consideration here is whether a third party requires assurance of confidentiality prior to voluntarily supplying information. A further consideration is that it is in the public interest that the Board continue to receive the information. At issue is the public interest, not necessarily the Board's interest.

(c) Undue Loss or Gain

- When the disclosure could reasonably be expected to result in undue loss or gain to any person, group, committee, or financial Board or agency. "Undue" means more than necessary, improper, or unwarranted. The loss or gain need not be attributable to the third party submitting the information, but to "any person, group, committee or financial institution or agency".

(d) Labour Relations Information

- Where disclosure could reasonably be expected to reveal a report or information supplied to a conciliation officer, mediator, labour relations officer, or other person appointed to resolve labour relations dispute.

Exception - Consent

If the person to whom the information relates consents then the Board has the discretion to disclose the record(s). The person to whom the information relates could be the third party who submitted it, or any other person who is a subject of the information.

Economic and Other Interests

The Act provides a discretionary exemption for certain proprietary information of the Board and the premature disclosure of certain plans or negotiating strategies. The compelling public interest provision in the Act applies to this exemption. Where the Board exercises discretion to withhold the record, the decision-maker must consider whether the public interest in disclosure outweighs the need for confidentiality. Evidence to

support the application of this exemption needs to be clear and convincing; it must be more than speculative harm.

Commercial Information

The Act allows the Board to refuse access to trade secrets, or financial, commercial, scientific, or technical information belonging to the Board that has monetary value or potential monetary value. This exemption may not apply where the information in the record is in the public domain through a bona fide publication or court record.

Employee Research

The Act exempts information obtained through research by an employee of the Board where the disclosure could reasonably be expected to deprive the employee of priority of publication. The employee must be able to establish his or her intention to publish the information.

Economic Interests

This subsection exempts information where the disclosure could reasonably be expected to prejudice the economic interests or competitive position of the Board. In applying this exemption, the Board must present evidence that is detailed and convincing and must describe a set of facts and circumstances that would lead to a reasonable expectation that harm would occur if the information were released. Generalized assertions of fact without sufficient evidence do not meet the test.

Financial Interests

This subsection exempts information where the disclosure could reasonably be expected to be injurious to the Board's financial interests. Financial interests refer to the Board's financial position, its ability to generate revenues, and its ability to protect its own interests in financial transactions with third parties, including other organizations.

The Board's belief that it may be sued if records are disclosed is not sufficient to invoke this exemption.

Negotiating Strategy

The Board may refuse to disclose positions, plans, procedures, criteria, or instructions to be applied to any negotiations carried on, or to be carried on, by or on behalf of the Board. It extends to options, fall-back positions and tactics developed as part of the negotiating process. It also applies to on-going or future negotiations.

Personnel or Administration Plans

The Board may refuse to disclose a record that contains plans relating to managing personnel or the administration of the Board that have not yet been put into operation or been made public.

Policy Decisions/Unfair Advantage

The Act exempts information such as proposed plans, policies, or projects where disclosure could reasonably be expected to result in:

- (a) premature disclosure of a pending policy decision, or
- (b) undue financial benefit or loss to a person.

Examination or Test Questions

The Board may refuse to disclose questions that are to be used in an examination or test for an educational purpose. Once the question is no longer to be used in an exam or test, the exemption does not apply.

Closed Meetings

The Board may refuse to disclose a record that reveals the proceedings or substance of the decisions made by the governing body or a committee of the governing body of an educational institution if the law authorizes holding the meeting in private and the meeting is about:

- (a) a draft by-law, resolution, or legislation; or
- (b) a litigation or possible litigation.

Exception to Closed Meetings

The Board must not refuse to disclose a record if:

- (a) the information is not confidential
- (b) the subject matter of the deliberation has been considered in a meeting open to the public; or
- (c) the record is more than 20 years old.

Exception - Consumer Good or Environmental Testing Despite

The Board may not refuse to disclose a record that contains the results of certain product or environmental testing. The testing can be carried out either by or for the Board. The two circumstances when the Board is not required to disclose are when:

- (a) the testing was done as a service to a person, a group of persons, or an organization other than the Board for a fee (e.g., a commercial product test); or

- (b) the testing was preliminary or experimental for the purpose of developing methods of testing.

Solicitor-Client Privilege

This discretionary exemption covers records subject to the common-law solicitor-client privilege or those records prepared by or for Crown counsel or counsel employed or retained by the Board, for use in giving legal advice or in contemplation of or for use in litigation. Under MFIPPA, "Crown counsel" includes any person acting in the capacity of legal advisor to the Board. "Legal advice" includes a legal opinion about a legal issue and a recommended course of action based on legal considerations. It does not include information which was provided about a matter having legal implications where no legal opinion was expressed or where no course of action based on legal considerations was recommended. The fact that a lawyer reviewed a record does not of itself mean that the record falls within the exemption.

The opinion of the Board's legal counsel should always be sought before this exemption is used.

Application to Legal Advice

Common law privilege applies to:

- (a) all communications, verbal or written, of a confidential character, between a client, or his or her agent, and a legal advisor directly related to seeking, formulating, or giving of legal advice or legal assistance (including the legal advisor's working papers directly related thereto); and
- (b) papers and materials created or obtained especially for a lawyer's brief for litigation, whether existing or contemplated.

For solicitor-client privilege to apply, four criteria must be met:

- (i) There must be a written or oral communication;
- (ii) The communication must be of a confidential nature;
- (iii) The communication must be between the Board and a legal advisor; and
- (iv) The communication must be directly related to seeking, formulating, or giving legal advice.

Application to Litigation Records

The Act provides an exemption for all materials prepared for the purpose of obtaining legal advice, whether in contemplation or litigation or not, as well as for all documents prepared in contemplation of or for use in litigation. This means that any communication, even of a non-confidential nature, between a lawyer and client or between a lawyer and third parties which is conducted for the purpose of litigation is privileged. For a document to be “prepared... in contemplation of litigation”, two criteria must be met:

- (i) Contemplated litigation must be the dominant purpose for preparing the record, and
- (ii) There must be a reasonable prospect of such litigation at the time the document was prepared; the litigation must be more than just a vague or theoretical possibility.

Counsel Retained by Educational Institution

This exemption allows the Board to refuse to disclose a record, if it was prepared by counsel retained by the Board, for use in giving legal advice or in contemplation of litigation.

Exception - Waiver

Only the client is entitled to waive the solicitor-client privilege and thereby authorizing disclosure of the record. For such a waiver to be effective there must be specific evidence of the client’s waiver of the privilege. The client’s waiver will not be implied from the fact that individuals or the Board, other than the solicitor or client, have possession of the record.

Danger to Safety or Health

The Act provides a discretionary exemption relating to records, the disclosure of which could reasonably be expected to seriously threaten the safety or health of any individual. The wording “reasonable expectation of harm” requires the Board to establish a clear and direct linkage between disclosure of information and the harm alleged. The public interest override in the Act applies to this exemption.

Personal Privacy

The Act provides a mandatory exemption relating to the disclosure of personal information to an individual other than the individual to whom the information relates, except in the circumstances specified in this section.

Consent

Personal information may be disclosed to someone other than the individual to whom the information relates with the prior request or consent of the individual. The record must be one to which the individual is entitled to have access. The request or consent should be in writing and be received before the personal information is disclosed. It is good practice to confirm the identity of the person giving consent.

Compelling Circumstances

Personal information may be disclosed to someone other than the individual to whom the information relates in compelling circumstances affecting the health or safety of an individual, not necessarily the individual to whom the information relates. Circumstances are “compelling” when either there is no other way to obtain personal information affecting health or safety, or there is an emergency situation where the delay in obtaining the information would be injurious to someone’s health or safety. The determination of when compelling circumstances exist is left to the discretion of the Board. For example, if a student were injured at a school event and the hospital needed to know if the student were allergic to penicillin and the student’s parents could not be contacted, then the Board may have compelling circumstances to disclose information in its custody or control. Where personal information is released under this subsection, upon disclosure, notification must be mailed to the last known address of the individual to whom the information relates. If the Board does not have the address, it should attempt to find out the address of the individual from the person who made the request.

Public Records

Personal information may be disclosed to someone other than the individual to whom the information relates if the personal information is collected and maintained specifically for the purpose of creating a record available to the general public. A public record refers to a collection of personal information to which all members of the public have equal access. In order to satisfy this exception, it must be shown that the personal information was collected and maintained “specifically” for the purpose of making it available to the general public.

Disclosure Expressly Authorized by Statute

Personal information may be disclosed to a person other than the individual to whom it relates where a statute of Ontario or Canada expressly authorizes the disclosure. The authority to disclose must be stated in the statute and not simply be an administrative policy of the Board.

Research Agreements

When certain conditions are met, personal information may be disclosed to someone other than the individual to whom the information relates if the disclosure is for a research purpose. This provision covers disclosures in response to access requests from researchers receiving grants, consultants conducting contractual research, and independent researchers. Access to personal information by researchers who are employees of the Board is covered in the Act.

The following conditions must be met:

- (a) The disclosure must be consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected, or obtained. If the information was provided with a reasonable expectation of confidentiality, access should not be granted without the consent of the individual;
- (b) The research purpose for which the disclosure is to be made cannot be reasonably achieved unless the information is provided in a form which allows individuals to be identified. The Board must be satisfied that the objective necessitates individual identification;
- (c) The researcher must comply with conditions relating to security and confidentiality prescribed by regulation.

Unjustified Invasion of Personal Privacy

Personal information may be disclosed to someone other than the individual to whom the information relates where the disclosure does not constitute an unjustified invasion of personal privacy, unless the information falls into one of the prescribed categories in the Act. The application of these provisions is a balance between the right to information privacy, the public interest, and certain individual rights.

Invasion of Privacy Factors to be Considered

If none of the presumptions in the Act apply, the decision-maker must consider the following factors:

Public Scrutiny

One factor in determining whether disclosure of personal information constitutes an unjustified invasion of privacy is whether disclosure is desirable for subjecting the activities of institutions to public scrutiny. In such cases, access to information and internal scrutiny of the internal workings of government will prevail over the protection of individual privacy. When invoking this provision, the Board should consider the broader interests of public accountability. There must be a public demand for scrutiny of the Board, not one person's personal view or opinion.

Public Health and Safety

In determining whether disclosure constitutes an unjustified invasion of personal privacy, the Board must consider whether access to the personal information may promote public health and safety.

Informed Choice

In determining whether disclosure of the personal information constitutes an unjustified invasion of personal privacy, the Board must consider whether the disclosure will promote informed choice in the purchase of goods and services.

Fair Determination of Rights

In determining whether the disclosure constitutes an unjustified invasion of personal privacy, the Board must consider whether the personal information is relevant to a fair determination of rights affecting the requester. There may be instances where the requester requires access to personal information about his or her own rights.

In order for this section to be relevant, the following factors must be established if:

- (i) the right in question is a legal right, which is based in common law or statute;
- (ii) the right is related to a proceeding which is either existing or contemplated;
- (iii) the personal information to which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (iv) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

Unfair Exposure to Harm

The decision-maker must consider whether the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

Highly Sensitive Information

The decision-maker must consider whether the personal information is highly sensitive to the individual to whom it relates. In order for information to be "highly sensitive", the Board must establish that release of the information would cause excessive personal distress to persons other than the requester. This includes the violation of personal security. The fact that an individual may be embarrassed by a disclosure of personal information is not sufficient to make this factor a relevant consideration.

Information Inaccurate or Unreliable

In this circumstance, the decision-maker must consider whether the personal information is unlikely to be accurate or reliable. This factor weighs against disclosure of personal information. Where there is sufficient reason to question the accuracy or reliability of the records, it may be an unjustified invasion of personal privacy to release it.

Information Supplied in Confidence

The Board must consider whether the personal information has been supplied to the Board in confidence by the person to whom it relates.

Damage to Reputation

The decision-maker must consider whether disclosure of the personal information may unfairly damage the reputation of any person referred to in the record. Damage to a reputation may not always be considered unfair.

Presumed Invasion of Privacy

Information falling into the following categories must never be disclosed. The main characteristics of these types or classes of personal information are that they concern intimate, sensitive details of personal life or they give rise to a strong expectation that privacy will be protected. Where one of the presumptions in this subsection applies to the personal information found in a record, the only way the presumption against disclosure can be overcome is if the personal information falls under the exception in the MFIPPA.

Health Record

Disclosure of information that relates to a medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation is presumed to constitute an unjustified invasion of personal privacy.

Violation of Law

Disclosure of personal information compiled as part of an investigation into a possible violation of law is presumed to constitute an unjustified invasion of personal privacy. The phrase "violation of law" includes offences under federal or provincial statutes and regulations and municipal by-laws. The presumption applies to investigations into possible violations of law; as a result, there is no need for criminal charges to be laid or for proceedings to have been commenced for the presumption to apply. This exemption does not apply where disclosure is

necessary to prosecute the violation or to continue the investigation. Disclosure of personal information qualifying for this exemption may take place in the absence of an access request under the conditions found in the Act.

Eligibility for Social Programs

Disclosure of information that relates to eligibility for social service or welfare benefits is presumed to constitute an unjustified invasion of personal privacy.

Employment or Educational History

Disclosure of information that relates to an individual's employment or educational history is presumed to constitute an unjustified invasion of personal privacy. This presumption does not apply to employee expense claims.

Tax Return

Disclosure of personal information obtained on a tax return or gathered for the purpose of collecting a tax is presumed to constitute an unjustified invasion of personal privacy.

Financial History

Disclosure of most types of personal information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history, or creditworthiness is presumed to constitute an unjustified invasion of personal privacy.

Personal Recommendations and Evaluations

Disclosure of personal information consisting of personal recommendations or evaluations, character references, or personnel evaluations is presumed to constitute an unjustified invasion of personal privacy.

Race, Ethnic Origin, Religion, or Sexual Orientation

Disclosure of personal information which reveals an individual's racial or ethnic origin, sexual orientation, religious or political beliefs is presumed to constitute an unjustified invasion of personal privacy.

Exceptions

Disclosure of the types of personal information mentioned in the Act does not constitute an unjustified invasion of personal privacy. Therefore, a record that fits within those subsections must be disclosed.

Salary Range and Benefits of Employees

Disclosure of the classification, salary range and benefits, or employment responsibilities of an officer or employee of the Board, or a member of the Minister's staff, is not an unjustified invasion of personal privacy. Note that the provision refers to "salary range", not specific salary.

Personal Service Contracts

Disclosure of the financial or other details of a contract for personal services between an individual and the Board is not an unjustified invasion of privacy. A contract in which an individual, not a company, is hired to perform professional services in respect of a particular problem or project would be included.

Discretionary Benefits

Disclosure of details of a discretionary financial benefit conferred on an individual by the Board or a Board is not an unjustified invasion of privacy under certain circumstances. Where an individual represents one per cent or more of all persons and organizations who have received this type of economic advantage, and if the value of the benefit to an individual is one per cent or more of the total value of similar benefits to other persons and organizations, disclosure of details of the benefit is not an invasion of the individual's privacy.

Refusal to Confirm or Deny

Where the Board refuses to give access to a record on the grounds of an unjustified invasion of privacy, the Board may also refuse to confirm or deny the existence of the record.

Published Information

This discretionary exemption allows the Board to refuse disclosure of a record where:

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) there are reasonable grounds to believe that the record or information will be published by the Board within 90 days of the request, or within a further period of time needed for printing the material or for translating it before printing.

This exemption is not limited to information published only by the Board. The Board has a duty to inform a requester where the record or information in question is available. Where the Board invokes this exemption, it must consider the convenience of the requester compared to the convenience of the Board.

Compelling Public Interest

The exemptions in the Act do not apply where there is a compelling public interest in disclosure that outweighs the purpose of the applicable exemption.

Limits on Access to One's Own Personal Information

When an individual is seeking access to record(s) that contain his or her own personal information, the Board may still refuse to disclose personal information to the person to whom it pertains if one of the following conditions is met. Keep in mind that the principle of severability applies to personal information as well, and if it is possible to sever the information that meets one of the enumerated conditions then it should be severed and the remainder of the record should be disclosed.

General Exemption

An individual's right of access to his or her own personal information is subject to all the exemptions applying to general records found in the MFIPPA, except for the personal information exemption.

Unjustified Invasion of Another's Personal Privacy

An individual may be refused access to his or her own personal information if disclosure would constitute an unjustified invasion of another individual's personal privacy. There may be personal information about more than one individual in the same record and severing may not be feasible because the information is so intertwined. This is a discretionary exemption and even if disclosure of personal information would be an unjustified invasion of another person's privacy, discretion can be exercised in favour of disclosure. The Act requires the Board to notify the individual whose personal privacy may be invaded as a result of disclosure of the records.

Revealing a Confidential Source

An individual may be refused access to his or her own personal information when:

- (a) the information was either implicitly or explicitly supplied in confidence; AND
- (b) the information is evaluative or opinion material for:
 - assessing the teaching or research materials of a Board employee or person associated with the Board;
 - determining eligibility, suitability, or qualifications for admission to an academic program of an educational institution; or

- determining suitability for an honour or award to recognize outstanding achievement or distinguished service.

The exemption only applies to information that would reveal the identity of the source.

Medical Information

The Board may refuse to disclose to an individual his or her own personal information where the disclosure could reasonably be expected to prejudice the individual's mental or physical health. It is intended that this provision only be applied in circumstances when disclosure could cause injury or prove detrimental to the individual's mental or physical health.

Research or Statistical Record

An individual may be refused access to his or her own personal information if the information was collected and used exclusively for a research or statistical purpose not directly affecting the individual. If the information is used or disclosed for any other purpose, this exemption cannot be relied on to withhold it from the person to whom it pertains.

Protection of Information Privacy

Introduction

The protection of information privacy is one of the key principles of the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). The MFIPPA reflects internationally accepted principles of fair information practices, and are based on two key principles:

- (a) that an individual has the right to control his or her own personal information; and
- (b) that the privacy rules governing the collection, use, disclosure, retention, and disposal of personal information are necessary.

These privacy rules apply to all personal information in the custody or control of the Board, with the exception of public records and certain employment-related and labour relations records.

Public Records

The requirements do not apply to personal information maintained for the purpose of creating a record that is available to the general public. Public records of personal information are records to which all members of the public have equal access rights. Personal information, to which some members of the public have access, while others do not, is not a public record.

Labour Relations, Employment-Related Records, and Research

The MFIPPA does not apply to most employment-related and labour relations information in which the Board has an interest. Nonetheless, certain records, such as employee expense accounts and agreements arising out of negotiations about employment-related matters between the Board and an employee(s), continue to be covered by the MFIPPA. The Act does not apply to a record of an employee or researcher associated with the Board regarding proposed or conducted research. However, the Board must disclose the subject matter and the amount of funding of the proposed or conducted research. "Subject matter" means the title of the proposed or conducted research.

Collection of Personal Information

Definition of Personal Information

The provisions dealing with the collection of personal information apply to both recorded and non-recorded personal information - that is, to personal information which is collected verbally. All other provisions in the Act, dealing with use, disclosure, retention, disposal, and access to personal information apply only to recorded personal information about an individual.

Authority to Collect

Personal information is collected when the Board actively acquires the information or invites an individual or others to send personal information to the Board. An individual may submit personal information on his or her own initiative without the information being requested by the Board. Receipt of this information is not considered a collection unless the Board keeps or uses the information. One of three conditions must exist in order for personal information to be collected:

- (i) The collection of personal information is expressly authorized by a statute. The authority to collect must be in a statute rather than in a regulation; or
- (ii) The information collected is used for the purposes of law enforcement; or
- (iii) The collection is necessary for the proper administration of a lawfully authorized activity.

Manner of Collection

The Act requires that personal information be collected directly from the individual to whom it relates, unless certain circumstances described in the Act permit an indirect collection - that is, from a source other than the individual to whom the information relates.

Individual Authorization

An individual may authorize an indirect collection of his or her own personal information. Such authorization should generally include:

- (a) the identification of the personal information to be collected;
- (b) the source from which the personal information may be collected;
- and
- (c) the name of the institution that is to collect the personal information.

Collection by Disclosure

Personal information may be collected by the Board from another institution where the disclosing institution has authority to disclose under the MFIPPA.

Authority of the Commissioner

The Commissioner may authorize a collection from a source other than the individual. The Commissioner's authorization may be sought because the indirect collection is not specifically allowed under the Act or where the Board believes it is not possible or practical to collect the personal information directly or to obtain authorization directly from the individual concerned.

Honour or Award

The Act authorizes the Board to collect personal information indirectly for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service.

Courts and Tribunals

The Act authorizes the Board to collect personal information indirectly for the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal. In some cases, after personal information has been collected, no proceeding takes place because, for example, there is insufficient evidence. Even though the tribunal may never hear the matter, this subsection applies as long as the purpose of the collection is to determine whether a proceeding can be commenced before a court or tribunal.

Law Enforcement

Personal information which is collected for the purpose of law enforcement may be collected from a source other than the individual about whom the information relates.

Statutory Authority

A statute, regulation, or by-law may authorize a collection of personal information from a source other than the individual.

Notification Requirements

When personal information is collected on behalf of the Board, either directly from the person about whom the information relates or indirectly from another source, the Board must inform the individual that the collection has occurred. The notice to the individual must state:

- (a) the legal authority for the collection;
- (b) the principal purpose(s) for which the personal information will be used;
- (c) the title, business address, and telephone number of an official of the Board who can answer the individual's questions about the collection.

Other Exceptions to Notice

Notice of collection of personal information is not required if:

- (i) the type of information being collected would be exempt from access under the law enforcement section of the Act;
- (ii) the Minister (Chair of the Management Board of Cabinet) waives the notice. Each request for a waiver is considered on its own merits. Waivers will normally be requested for a class or group of individuals rather than one individual; or
- (iii) the regulations provide that the notice is not required.

Retention of Records

The regulations prescribe a minimum one year retention period for personal information following the last date of use of the information. This is a minimum period, and other operational or legal considerations may require a longer retention period. The purpose of the minimum retention period is to ensure that the individual to whom the information relates has a reasonable opportunity to obtain access to the personal information. When information is updated, the outdated information must be retained in some form so that it is available for the prescribed retention period of one year. The back-up documentation does not necessarily need to be stored in the same location as the current information.

Accuracy of Records

The Act requires that reasonable steps be taken to ensure that personal information is not used unless it is accurate and up to date. Reasonable steps include checking for accuracy, including errors or omissions, at the time the personal information is collected. Any verification of information should be documented.

Exception - Law Enforcement

These subsections do not apply to information collected for law enforcement purposes.

Disposal of Records

The MFIPPA governs the disposal of personal information. It establishes certain requirements that must be followed by the Board when disposing of personal information. These requirements can be summarized as follows:

1. Transfer to the Archives of Ontario or destruction:
 - (a) The Board may dispose of personal information only by:
 - (i) transferring it to the Archives of Ontario, or
 - (ii) destroying it in such a manner that the information cannot be reconstructed or retrieved.
 - (b) This does not apply to an internal transfer of personal information to the Board's Archives. In these cases, the Board retains custody and control over the personal information and the transfer is not a disposal.
 - (c) Where the personal information does not have archival value, or where the personal information is in the custody or control of the Board which does not transfer records to the Archives of Ontario, the personal information is disposed of by destruction.
 - (d) Personal information that is disposed of by destruction should be destroyed in such a way that it cannot be reconstructed or retrieved. Paper and other hard copy records, such as microfiche for instance, should be burned, pulped, or shredded rather than discarded or disposed of as garbage.
 - (e) Personal information on magnetic media such as tape or disk should be disposed of by magnetic erasure or by destruction of the medium, when the medium is released from the processing environment. Where the medium is retained and re-used within a secure processing environment, however, personal information may be disposed of by writing-over during re-use.
2. Authorization of Board:
 - (a) Where personal information is in the custody or under the control of the Board, no person shall destroy it without the authorization. The authorization may apply to specific data or to general classes or categories of records, and must be consistent with any retention or other management requirement which may apply to the record of personal information through legislation or policy.

- (b) Destruction in accordance with an approved retention and disposal schedule is considered to be disposal with the authorization of the Board.
- 3. Protecting security and confidentiality:
 - (a) The Board shall ensure that all reasonable steps are taken to protect the security and confidentiality of personal information that is to be disposed of, including protecting its security and confidentiality during its storage, transportation, handling, and destruction or transfer to the Archives of Ontario. In determining whether all reasonable steps are taken, the Board shall consider the nature of the personal information to be disposed of.
 - (b) The nature of these measures should be consistent with the sensitivity of the personal information involved. In all cases, however, the minimum requirement is that the confidentiality of the personal information be maintained during disposal.
- 4. Record of disposal:
 - (a) The Board shall maintain a disposal record setting out what personal information has been destroyed or transferred to the Archives of Ontario and the date of that destruction or transfer. This disposal record must not contain personal information.
 - (b) The record of disposal would describe the “class” of record involved rather than containing information about an identifiable individual, and would include the date or date range of the records, and the disposal date. The authority for the disposal and the means of the disposal may also be included.
 - (c) Where the disposal is undertaken by an outside supplier, the Board may require the supplier to provide a “certification of destruction” signed by an officer of the company. This certificate would then be linked to the disposal record maintained by the Board.

Use of Personal Information

The Act establishes general rules governing the use of personal information in the custody or under the control of the Board. It recognizes that an individual’s right to privacy includes the right to know how his or her personal information is being used. Personal information may be used within the Board where any one of the following circumstances exists.

Purpose for Which Information Collected

The Board may use personal information for the purpose for which the information was originally obtained or compiled, or for a consistent purpose. Usually, the Board may use personal information under its custody or control for the purposes indicated in the collection notice and in the personal information bank descriptions it provides in its directory of records. The Board may also use personal information for a purpose which is consistent with the purpose(s) listed in the collection notice.

Individual Consent

Where the proposed use is not consistent with the original purpose of the collection, the Board may use personal information only where the individual to whom the information relates has consented to the use proposed by the Board. This consent should be in writing and indicate:

- (i) the particular personal information to be used;
- (ii) the use for which consent is given;
- (iii) the date of the consent; and
- (iv) the name of the institution to which consent is given.

Consent of the individual is required where none of the other circumstances described below exists.

For the Purpose Disclosed

The Board may have personal information disclosed to it by another institution under the Act. The receiving institution may use this personal information only for the purpose for which it was disclosed by the first institution.

For Fund-raising

The Board may use personal information in alumni records for the purposes of fund-raising if the personal information is reasonably necessary for the fund-raising activities.

Notice on Using Personal Information for Fund-raising

The Board must give notice to the individuals whose information will be used in fund-raising activities. The notice requirements are:

- (a) Notice must be given the first time the individual is contacted to solicit funds that they have the right to request that their information no longer be used for fund-raising;
- (b) Periodically, and in the course of fund-raising, notice must be given that it is the individual's right to request that his or her information no longer be used;

- (c) Periodically, and in a manner that is likely to come to the attention of individuals who may be solicited, the Board must publish a notice of the individual's right to request that his or her information no longer be used.

Discontinuing Use of Personal Information for Fund-raising

The Board must discontinue using personal information for fund-raising when requested to do so by the individual.

Disclosure of Personal Information

These rules govern the Board's disclosure of personal information during the conduct of its day-to-day activities. The Board may disclose personal information in the absence of a formal access request if the disclosure is permitted.

Consistent Purpose

Personal information may be disclosed for the purpose(s) for which it was originally collected, or for a consistent purpose. A purpose is a consistent purpose only if the individual from whom the information was directly collected might reasonably have expected such a disclosure of the information.

Consent to Disclosure

Personal information may be disclosed where the individual has consented to the disclosure. Where consent to disclose personal information has been given by an individual, the specific information for which consent has been given must be identified. Where this consent is not obtained in writing, it should be documented and should indicate:

- (i) the particular personal information to be disclosed;
- (ii) to whom the information may be disclosed and for what purpose it is to be used; and
- (iii) the date of the consent, and the Board to which consent is given.

Where an individual purports to act as an agent, the Board has an obligation under the Act to verify the identity of an individual seeking access to his or her personal information and whether or not the agent is properly authorized to obtain such information. If proper authorization cannot be obtained, the Board may either notify the individual whose personal information is at issue and provide him or her with an opportunity to provide representations prior to any decision regarding disclosure of the records or may deal with the validity of the authorizations as a preliminary matter.

Disclosure in Accordance with the Freedom of Information or Protection of Privacy Provisions

The Act permits the Board to disclose personal information in circumstances where such disclosure would have been permitted personal privacy exemption, even though the Board has not received an access request. The Act permits the Board to disclose information even though an access request has not been received.

In Performance of Duties

Personal information may be disclosed to an employee of the Board who needs the record in the performance of his or her duties, and where disclosure is necessary and proper in the discharge of the Board's functions. Before an employee of the Board is granted access to personal information under this provision, both of the following conditions must be satisfied:

- (i) The employee or officer must need the personal information for the performance of his or her duties; and
- (ii) Disclosure of the personal information must be necessary and proper in discharging the Board's functions.

Act of Legislature or Parliament

The Act permits disclosure of personal information for the purpose of complying with an act of the Legislature or of Parliament, or an agreement or arrangement there under, or a treaty. The agreement or arrangement must result from or be sanctioned by a federal or Ontario statute. Disclosure of personal information for the purposes of complying with a regulation or a by-law would be included.

Disclosure to Law Enforcement Agency

The Board may disclose personal information to a law enforcement agency in Canada or to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty, or under legislative authority.

Aid in Law Enforcement

The Board may disclose personal information to another institution covered by the MFIPPA or to a law enforcement agency in Canada to aid an investigation leading or likely to lead to a law enforcement proceeding. For this section to apply, the disclosure must be in aid of the investigation undertaken.

Compelling Circumstances

The Board may disclose personal information in compelling circumstances affecting the health or safety of an individual. In compelling circumstances, there may be no other way to obtain the personal information, or there may be an emergency where the delay in obtaining the information would be injurious to someone's health or safety. Before personal information is released under this subsection, both of the following conditions must be satisfied:

- (i) The circumstances in which the release of personal information is contemplated must be compelling; and
- (ii) The compelling circumstances must affect the health or safety of an individual.

Where personal information is disclosed under this subsection, notification of the disclosure must be mailed to the last known address of the individual to whom the information relates. This means the most recent address known to the Board which disclosed the personal information. If no address is known, the Board should attempt to obtain it from the person who made the request for the information.

Compassionate Circumstances

The Board may disclose personal information in compassionate circumstances to facilitate contact with the next-of-kin, or a friend of an individual who is injured, ill, or deceased. Only the personal information necessary to facilitate contact should be disclosed.

To a Member of the Legislature

Disclosure is permitted to a Member of the Legislative Assembly (MLA) who has been authorized by a constituent to whom the information relates to make an enquiry on his or her behalf. Where the constituent is incapacitated, the member may be authorized by the next of kin or legal representative of the constituent. Whether the member is making a written or oral inquiry, the member must indicate that he or she is acting with the constituent's authority. This disclosure will be recorded in or linked to the individual's record. Where the personal information is particularly sensitive (e.g., medical records), the Board may have additional consent requirements specific to the situation, such as written authorization.

To a Member of the Bargaining Agent

Disclosure is permitted to a member of the bargaining agent who has been authorized by an employee to whom the information relates to make an inquiry on the employee's behalf. Where the employee is incapacitated, the bargaining agent may be authorized by the next of kin or legal representative of the employee. Reasonable steps should be taken to ensure the authority exists.

Disclosure to Responsible Minister

Personal information may be disclosed to the Chair of Management Board of Cabinet as minister responsible for the Act.

Disclosure to Information and Privacy Commissioner

Personal information may be disclosed to the IPC. This subsection is intended to facilitate the IPC's access to records in order to carry out its decision-making and investigation responsibilities. The Commissioner has the authority to examine any record in the custody or control of the Board during the course of an inquiry regarding an appeal of an access decision made by the Board.

Government of Canada or Government of Ontario

Disclosure of personal information is permitted to the Government of Canada or to the Government of Ontario in order to facilitate the auditing of shared-cost programs.

Fund-raising

The Board may disclose information in alumni records for the purposes of fund-raising if:

- (a) the Board and the person to whom the information is disclosed have entered into a written agreement that satisfies the requirements set out in the Act and
- (b) the information is reasonably necessary for fund-raising activities.

Notice on Disclosing for Fundraising

The Board must give notice that it has disclosed personal information for the purposes of fundraising. The notice requirements are:

- (a) Notice is given when the individual is first contacted for the purpose of soliciting funds or his or her right to have his or her personal information cease to be disclosed;
- (b) Periodically, and in the course of fund-raising, notice is given of the right to request that his or her personal information cease to be disclosed; and

- (c) Periodically, and in a manner likely to come to the attention of individuals solicited, the Board must publish a notice of the individual's right to request that his or her personal information cease to be disclosed.

Fund-raising Agreement

In order to disclose personal information of individuals for fund-raising purposes, the Board must:

- (a) require that the notices in the Act are met;
- (b) require that the personal information disclosed under the Act be disclosed to the individual to whom the information relates on request; and
- (c) require that the person to whom information is disclosed shall cease to use personal information of any individual who requests it no longer be used.

Consistent Purpose

When personal information is collected directly from the individual to whom it relates, the purpose of its use/disclosure is a consistent purpose only if the individual might reasonably have expected such a use/disclosure. A consistent purpose must be compatible with the purpose stated to the individual at the time the information was collected. The individual could, therefore, reasonably expect this use/disclosure of his or her personal information. Where personal information is collected other than directly from the individual, the question of whether use/disclosure is for a consistent purpose is not determined by considering the individual's reasonable expectations. It is determined by considering whether the Board's proposed use/disclosure of information is reasonably compatible with the purpose for which it was collected.

New Use/Disclosure of Personal Information

The personal information banks maintained by the Board include a statement of the regular uses of the personal information and the regular users to whom the information is disclosed. There may be instances where the Board uses or discloses personal information for a purpose allowed by the Act, but where that use/purpose has not been listed in the personal information bank descriptions.

Where such a new use or disclosure has occurred, the Board is required to:

- (a) make a record of that new use or disclosure; and

- (b) attach or link the record of use/disclosure to the personal information, so that when the personal information is accessed, the record of use/disclosure is accessed as well.

In other words, the record of the new use/disclosure of the personal information becomes part of the personal information itself. If the new use/disclosure becomes a regular occurrence, the Board should update its personal information bank description to include the new regular use/disclosure. The requirement to create and attach a record of use/disclosure only applies to personal information which is part of a personal information bank. It does not apply to personal information contained within a general record.

Right to Appeal

MFIPPA provides the right to appeal decisions made by the Board to the Information and Privacy Commissioner (IPC). As a result it is important that staff responsible for the MFIPPA are diligent in documenting the search process, as well as the reasons for disclosure recommendations. The staff person responsible for the MFIPPA may be asked to swear an affidavit that the record(s) do not exist or that the search was adequate.

What can be Appealed?

Nearly any decision made by the Board can be appealed, including:

- (a) a decision to extend the time limit for responding to a request;
- (b) refusal to grant access to a record on the ground that the record does not exist;
- (c) refusal to grant access to a record on the ground that the record is excluded from the Act;
- (d) refusal to grant access to a record on the ground that the record is exempt;
- (e) granting access to only part of the record;
- (f) granting a request for access to a record or part that may contain third party commercial information or that contains personal information where the disclosure may be an unjustified invasion of personal privacy;
- (g) refusal to confirm or deny the existence of a record that deals with law enforcement or would, if disclosed, be an unjustified invasion of personal privacy;
- (h) a deemed refusal to grant access to records;
- (i) a refusal to make a correction to personal information requested;
- (j) the amount of a fee charged;
- (k) a refusal to waive a fee charged;
- (l) a refusal to allow a requester to examine the original record.

2.0 TERMS AND DEFINITIONS

2.1 RECORD

A record is any record of information however recorded, whether in print form, on film, by electronic means or otherwise, and includes:

- 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
- any record that is capable of being produced from a machine-readable record under the control of the Board by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution.

2.2 PERSONAL INFORMATION

Personal Information means recorded information about an identifiable individual including:

- (a) the individual's race, national or ethnic origin, colour, religion, age, sex, sexual orientation, or marital or family status;
- (b) the individual's education, or medical, psychiatric, psychological, criminal, or employment history, or information relating to financial transactions in which the individual has been involved;
- (c) any identifying number, symbol, or other particular assigned to the individual;
- (d) the address, telephone number, fingerprints, or blood type of the individual;
- (e) the personal opinions or views of the individual except where they relate to another individual;
- (f) correspondence sent to the Board by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence;
- (g) the views or opinions of another individual about the individual; and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

Personal Information does not include information about an individual who has been dead more than 30 years.

2.3 PERSONAL INFORMATION BANK

A personal information bank is a collection of personal information that is organized and capable of being retrieved by an individual's name, an identifying number, symbol, or other particular assigned to an individual.

2.4 PERSONAL HEALTH INFORMATION UNDER PHIPA

Personal health information under PHIPA is information about an individual in oral or recorded form, if the information relates to the physical or mental health of the individual. For example, personal health information includes family health history, information about visits to your doctor, and your Ontario Health Card number. Health information custodians collect personal health information during the course of providing health care services to an individual.

2.5 ACCESS AND PRIVACY CO-ORDINATOR

The Manager of Communications and Freedom of Information/Protection of Privacy has been designated as the MFIPPA Co-ordinator for the Board. The MFIPPA Co-ordinator has been delegated the responsibilities and powers of performing the duties as the "head" within the meaning of the Act. The MFIPPA Co-ordinator deals with FOI requests made to the Board and ensures that each request follows the appropriate processes, meets all deadlines and notification processes as outlined in the Act. For the purposes of fulfilling the duties assigned under the Municipal Freedom of Information and Protection of Privacy Act, the MFIPPA Co-ordinator has been delegated the authority to issue decisions in response to written requests made under the Act.

2.6 FORMAT

A format is a pre-established layout for data (paper, electronic, video, CD, DVD, etc.).

3.0 REFERENCES/RELATED DOCUMENTS

Peterborough Victoria Northumberland and Clarington Catholic District School
Board Records Management Manual
Municipal Freedom of Information and Protection of Privacy Act
Consent to Disclose Personal Health Information Pursuant to the Personal
Health Information Protection Act, 2004 (PHIPA)
Access/Correction Complaint Flow Chart
Access and Correction Complaints - Personal Health Information Protection Act

The Personal Health Information Protection Act and Your Privacy
Your Health Information: Your Rights - Your Guide to the Personal Health
Information Protection Act, 2004;
Fact Sheet 2: Your health information: Your access and correction rights
Appeals
Checklist for Processing a Municipal Freedom of Information Formal Request
(Appendix A)

4.0 RELATED ADMINISTRATIVE PROCEDURES

AP-FOI-305, Records and Information Management
AP-FOI-307, Ontario Student Record (OSR) - Protection of and Access to
Personal Information of an OSR

5.0 RELATED FORMS

Access/Correction Complaint Form
Authorization to Act as an Agent for Appeal
Municipal Freedom of Information and Protection of Privacy Act - Access
Request

6.0 ADMINISTRATIVE PROCEDURE REVIEW DATE

June 2016

7.0 APPROVED BY BOARD

June 28, 2011

8.0 EFFECTIVE DATE

June 28, 2011

9.0 REVIEW BY

Communication Services

10.0 LAST REVISION DATE