



STAFF REPORT

THE CORPORATION OF THE TOWN OF COBOURG

Corporate, Finance, and Legislative Standing Committee

Report to: Mayor, Deputy Mayor, and Councillors
From: Keith Hearst, Grant and Policy Writer
Standing Committee Date: January 11, 2024
Report Number: LS-2024-004
Council Meeting Date: January 31, 2024
Subject: **2023 Freedom of Information Request Update**

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1. Recommendation:

THAT Council receive the 2023 Freedom of Information Request Update for information purposes.

2. Executive Summary:

The purpose of this report is to provide an update to Council regarding freedom of information requests submitted to the Town of Cobourg in 2023. The Town of Cobourg saw a significant increase in requests in 2023 with twenty-seven (27) requests submitted to date. In 2022, eleven (11) requests were submitted to the Town.

3. Background

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) imposes a legal obligation upon municipalities and other institutions that establish an information access regime that balances public access to information with the protection of privacy based on the following purposes:

- To provide public access to information under the control of the municipality based on the following principles:
 - information should be made available to the public,
 - exemptions from the right of access should be specific and limited, and
 - decisions on information disclosure should be reviewed independently of the municipality controlling the information.

- To protect individual personal information and allow individual access to personal information held by the municipality. MFIPPA sets out legally binding requirements for providing public access to information under municipal control including the freedom of information (FOI) process.

Under MFIPPA, responsibility for administering requests for access to a record is the head of the institution. Council delegated the powers and duties of the head to the Municipal Clerk. Processing FOI requests is an administrative function which the Municipal Clerk's Office performs independently. This requires specific knowledge of the legal requirements under MFIPPA and the institution's programs and records management practices. The Municipal Clerk determines whether a record is released through the FOI process. The Clerk's decision will depend upon the nature of the information requested and related statutes.

The responsibilities of the Municipal Clerk in exercising the powers and duties of the head with respect to request for access to information include the following:

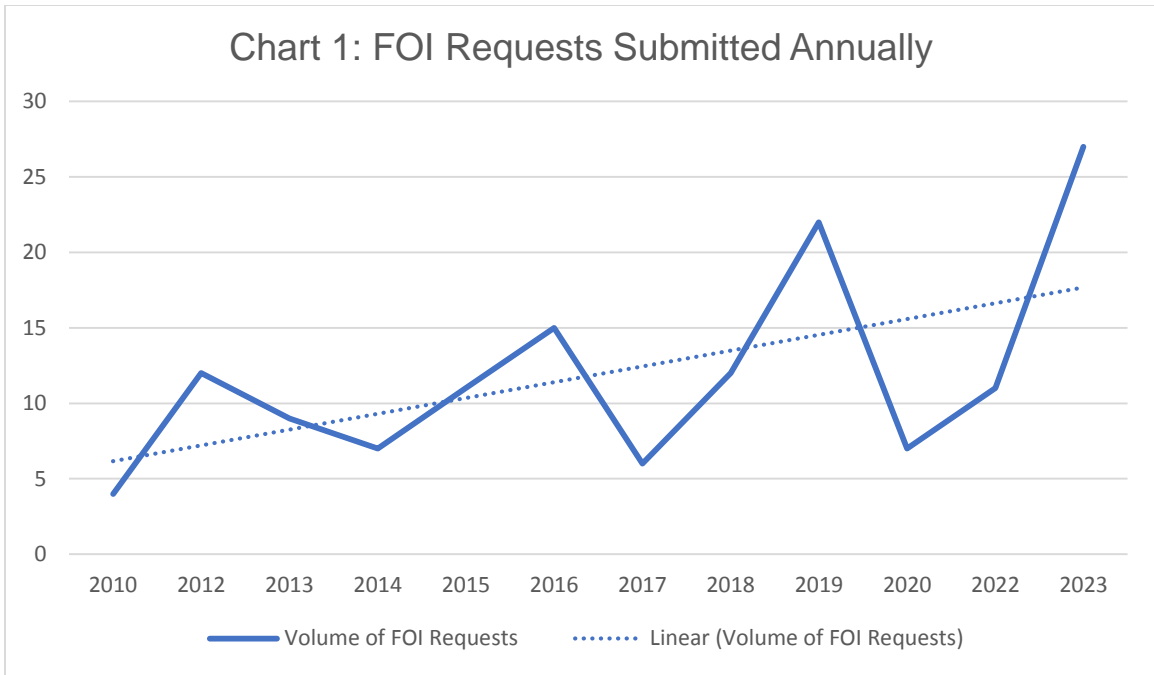
- adhering to time limits and notification requirements,
- considering representations from third parties,
- providing a response to access requests,
- determining the method of disclosure, and
- calculating and collecting fees.

The Town is required to report annually to the Information and Privacy Commissioner of Ontario (IPC) on FOI requests received throughout the year. The Municipal Clerk completes the annual report exercising the powers and duties of the head. Statistics provided to the IPC include the number and type of requests received, fees collected, exemptions used, and how long it took to complete each request. This report contains a summary of the statistical information that will be provided to the IPC.

4. Discussion:

The Town of Cobourg has seen an increase in the number of requests received year-over-year with 2023 being the year with the highest volume of requests the Town has ever received with twenty-seven (27). This represents a 245% increase over requests received last year (11). Looking back at the historical data relating to FOI requests there is a general trend towards a higher volume of requests as

the Town of Cobourg continues to grow. Below is a table showing the volume of request the Town has received annually going back to 2010:



This chart shows that although there is a significant variance in the volume of requests that the Town handles every year, there is a general upward trend in the volume of requests. For instances the average annual volume of requests through the 2010s was eleven (11). So far through the 2020s, the average volume of requests for the Town of Cobourg is fifteen (15) and as the Town continues to grow, we are likely to see this number continue to increase. Prior to 2019, the Town had never received over twenty (20) FOI requests in a year. Now Town staff have received over twenty (20) requests in both 2019 and 2023. There was a definite lull in requests from 2020-2022 due to the COVID-19 pandemic, otherwise we would have likely seen requests increase to twenty (20) or more in each of those years as well. Each FOI represents a significant time commitment for staff over and above their regular duties.

Table 1: FOI Requests 2023	
Number of Formal MFIPPA Requests Received	27
Number of Formal MFIPPA Requests Completed	23
Number of Formal MFIPPA Requests Completed Within Thirty (30) Days	17
Number of Formal MFIPPA Requests Completed Within Thirty-One (31) to Sixty (60) Days	5
Number of Formal MFIPPA Requests Completed Within Sixty-One (61) to Ninety (90) Days	1
% of Formal Requests Completed in Thirty (30) Days	74%

Table 1 shows the number of requests both received and completed in 2023. MFIPPA legislation stipulates that an institution must provide the requester with the information and a decision regarding their request within thirty (30) calendar days from the date a complete request is received. A complete request includes a completed FOI request form and a \$5 payment. On occasion, an institution may ask for an extension if the request is for an extensive number of records or if an outside third-party needs to be contacted.

Through 2023, the Town of Cobourg received 27 requests and completed 23. The Town was able to complete nearly three-quarters of these requests in the 30-day time limit with approximately one-quarter of requests requiring more time to complete. Pursuant to MFIPPA legislation, the head of the institution may extend the prescribed time limit for a period that is reasonable in the circumstances, if:

- a) The request is for a large number of records or necessitates a search through a large number of records and meeting the time limit would unreasonably interfere with the operations of the institution; or
- b) Consultations with a person outside the institution are necessary to comply with the request and cannot reasonably be completed within the time limit.

The head must give the requester written notice of the extension setting out the length of the extension, the reason for the extension; and that the individual may ask the IPC to review the extension.

Legislation Update and Modernization

Staff have provided Council attached to this report information and an issue paper prepared by AMCTO on the advocacy that Ontario municipalities, which includes the Town of Cobourg have been working on to request the government modernize the MFIPPA legislation. This advocacy has been completed through the Association of Municipal Clerk and Treasurers of Ontario (AMCTO), to support the idea that a comprehensive review of the Act is required, with the intention of modernizing MFIPPA and the FOI and privacy protection processes. It highlights and provides examples of some of the biggest issues faced by administrators, while recommending solutions to help ensure the next iteration of MFIPPA is resilient and adaptable to future technological and societal trends, challenges, and opportunities.

5. Financial Impact and Budget

MFIPPA allows institutions to charge certain fees as stipulated in the regulations with the legislation. The fees stipulated under MFIPPA can be charged in any formal request for general records, though the Town has taken the stance of waiving fees for individual requests that amount to less than \$15.

In 2023, the Town of Cobourg received \$130 in MFIPPA application fees which is \$5 to begin the FOI process. The application fees amount to fees collected for 26 requests rather than 27 because one request was transferred to the Town from a provincial institution. Additionally, the Town received \$678.75 in additional fees, which includes the covering of staff time to perform the searches of documents as well as copying, printing, and redacting documents. The maximum that can be charged for staff time to complete a request is \$7.50 for fifteen (15) minutes of billable work time. This amounts to \$30 an hour. In total, the Town received \$808.75 through MFIPPA Requests throughout 2023.

MFIPPA requests require a significant time commitment from staff across the organization to search for records and the Legislative Services Division in particular to handle requests, correspond with requester and staff, and review and redact records. It should be noted that much of the work required to complete a request also cannot be billed to a requester under MFIPPA and its regulations.

Thus, the \$808.75 is not an accurate representation of the time required to respond to the FOI requests received throughout the year. The size, scope, and volume of requests received in 2023 has put significant strain on the limited staff resources available to respond to requests as each request must be completed over and above individual staff duties. As the volume of requests continues to increase, the strain on these staff resources will continue to grow which would lead to a decrease in efficiency in responding to requests and increased risk of appeals, mediation, and arbitration through the IPC.

The Town of Cobourg is subject to MFIPPA and must comply with it when processing FOI requests. The Municipal Clerk exercising the powers and duties of the head for the purposes of MFIPPA fulfills this administrative function in accordance with applicable legislative requirements.

Legislative Services staff will continue to respond to requests and complete the Town's annual statistical report for the IPC, though additional resources may be required to ensure that the Town continues to fulfill all its legal obligations regarding FOI request processing.

6. Relationship to Council’s Strategic Plan Priorities 2023 to 2027 and beyond:

Thriving Community

Service Excellence

This report and our response to FOI requests affects service excellence within the Town of Cobourg. Increasing staff resources for completing FOI requests would help to streamline communications between Legislative Services, the requester, and staff, and would optimize both internal and external customer service. Ongoing tracking and annual report submissions to the IPC also helps the Town track key performance indicators such as response time to requests to ensure a high level of service excellence.

Sustainability

7. Public Engagement:

Not applicable.

8. Attachments:

Attachment 1 - AMCTO MFIPPA Letter to Minister

Attachment 2 - AMCTO Submission on MFIPPA Modernization

Report Approval Details

Document Title:	2023 Freedom of Information Request Update.docx
Attachments:	
Final Approval Date:	Jan 4, 2024

This report and all of its attachments were approved and signed as outlined below:

Brent Larmer, Municipal Clerk / Director of Legislative Services - Jan 4, 2024 - 8:40 AM

Tracey Vaughan, Chief Administrative Officer - Jan 4, 2024 - 9:14 AM