



June 11, 2014

Honourable Greg Weadick
Minister of Municipal Affairs
404 Legislature Building
10800 – 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Minister Weadick:

I am pleased to submit my comments and recommendations regarding the *Municipal Government Act* (MGA) and its interaction with access to information and protection of privacy, in response to the MGA Review currently being conducted by the Government of Alberta.

There are a few provisions of the MGA that intersect with the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) or otherwise have an impact on public access to information held by Alberta municipalities. My comments below identify how I believe these provisions could be improved to ensure that the legislation is written in clear, understandable terms and can be readily applied, and allows for an accessible review process.

***In camera* meetings**

Section 197(2) of the MGA states that councils and their committees may close all or part of their meetings to the public if the matter to be discussed is “within one of the exceptions to disclosure in Division 2 of Part 1 of the” FOIP Act (i.e. sections 16 to 29). This is a cumbersome and somewhat flawed method for describing the circumstances in which *in camera* discussions may be held:

- First, it requires cross-reference not only to sections 16 to 29 of the FOIP Act, but further, to a provision of the FOIP Regulation (which is referenced in section 23(1) of the FOIP Act).
- Second, it is circular: one of the circumstances under section 23(1)(b) for holding a closed meeting is if it is permitted by an Act; section 197(2) is a provision of an Act that permits a closed hearing, but it does this by referring to the provisions of the FOIP Act which permit refusals to disclose – which includes section 23(1); in other words, each of these provisions cites the other as authority for closed discussions.

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- Third, the FOIP Regulation provision that is referenced (section 18(1)) is intended to apply to those local public bodies that do not have provisions in their own governing legislation for the holding of *in camera* meetings. Since the MGA addresses the holding of *in camera* meetings, there is no need for a reference to section 18 of the FOIP Regulation. Moreover, the overlap between the subject-matters listed in section 18 and in sections 16-29 of the FOIP Act results in duplication and confusion.
- Finally, not all of the provisions under Division 2 of Part 1 of the FOIP Act are likely to be subjects of discussion of municipal council meetings; for example, section 22 of the FOIP Act is an exception to disclosure for Cabinet and Treasury Board confidences, an unlikely topic for a municipal council meeting.

For clarity and certainty, I recommend that subject matters relevant to municipal councils for proceeding *in camera* be developed and explicitly stated in the MGA.

Since records viewed during *in camera* meetings can be withheld in an access request made under the FOIP Act, the number of matters for which *in camera* meetings can be held should be limited. This is consistent with the principle of open government and enhances accountability. As an example, section 18 of the FOIP Regulation has only six stated subject matters for allowing meetings in the absence of the public.

Paramountcy over the FOIP Act

A primary purpose of the FOIP Act is to give persons seeking access to records in the custody and control of public bodies the ability to challenge public bodies' decisions in this regard – they may ask my office to review such decisions. The right to an independent review of such decisions is fundamental to openness, accountability and transparency of public bodies. Paramountcy provisions, such as that in section 301.1 of the MGA, impair this right.

Sections 299 to 301 of the MGA govern access to property assessment information, and section 301.1 provides that these provisions prevail over the FOIP Act. The result is that there is no mechanism, short of the courts, for reviewing public body decisions whether to provide access to such information.

I recognize the information-access provisions in the MGA may be grounded in policies and considerations specific to the release of information with respect to assessments. However, I am given to understand that the MGA provisions were enacted to ensure access to assessment information could be given not only to the owners of the assessed property, but also to other requestors. I believe these provisions can operate comfortably side-by-side with the FOIP Act, without a paramountcy provision. The FOIP Act as presently written would not interfere with the operation of these provisions, but it would provide a parallel system of access, also protective of the confidentiality interests of individuals, businesses and public bodies, that has associated with it the opportunity for requestors to ask for a review in which both the position of a public body and the submissions and needs of a requestor can be taken into account.

To illustrate how the existing position can be problematic, access requests were made in 2001 to the City of Calgary for manuals and other administrative directives on how property assessments are done. The principles of openness, transparency and accountability support access to manuals that describe a public body's routinized policy and decision-making processes, and these principles are reflected in section 89 of the FOIP Act, which permits access to manuals (with limited exceptions). Section 301 of the MGA provides that any information in relation to assessments may be disclosed on the condition that the "necessary confidentiality will not be breached."

The City of Calgary decided to withhold the requested manuals, presumably on the basis that necessary confidentiality would be breached by disclosure. This decision was brought to the Commissioner for review, but the Commissioner was precluded by the paramountcy provision from weighing the competing policy considerations in favour of access, or from applying section 89. The only other recourse for the requestor was to the courts, which that person chose not to access. The consequence is that manuals and related information about how assessments are done remain undisclosed, a practice that now possibly extends to other municipalities, and may be regarded as contrary to principles of openness.

I recommend that the paramountcy provision in the MGA (section 301.1) be repealed.

Privacy of assessed persons on the assessment roll

One of the questions in the MGA Consultation Workbook is, "What privacy provisions should the MGA include to protect the name and mailing address of assessed persons on the assessment roll?"

In balancing openness and transparency about the property assessment process with the protection of personal information, the following factors should be considered:

- While property address information in the context of assessments is information about the property and not about an individual, outside of the assessment realm, addresses often have a personal component as places of residence. While the name and mailing address of an assessed individual is necessary for a municipality to notify the individual of their property's assessment, it is not necessary to disclose the information to others who are accessing assessment information in order to ensure their own property assessment is fair. Property address information is sufficient.
- Managing information, including personal information, by electronic means can create certain administrative efficiencies, but also introduces additional privacy and security concerns, particularly with respect to unauthorized access, use and disclosure. For example, technology allows information to be more easily misdirected to the wrong person or downloaded to laptops or memory sticks that are lost. Electronic databases are targets for hackers. Personal information that is publicly available on the Internet is without protection, can be used for purposes other than the intended purpose, and lives on forever. Therefore, the practice of not including a property owner's name in the assessment information that is posted on municipal websites is appropriate and should be maintained.

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Disclosure of salaries and benefits

I support the proactive disclosure of the salaries and benefits of councillors, the chief administrative officer and designated officers as required under section 217(3) of the MGA and sections 1-3 of the Supplementary Accounting Principles and Standards Regulation. Although the information is made available in a municipality's annual financial statements, I suggest that the information be made more readily accessible and in machine-readable format, in further support of the concept of open government.

I would be pleased to answer any questions you have on these issues and I would welcome the opportunity to review any draft legislation that may result. In the interest of openness, I will be posting this submission on my website.

Thank you for encouraging and allowing input on positive ways to amend the MGA.

Yours truly,

[original signed by Jill Clayton]

Jill Clayton
Information and Privacy Commissioner

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