

# A Guide to Municipal Accountability, Transparency and Confidentiality in Ontario

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# **A Guide to Municipal Accountability, Transparency and Confidentiality in Ontario**

## **Scope**

This Guide, while carefully prepared, is for information only and is not a substitute for legal, financial or other professional advice in connection with any particular matter. It deals with complicated matters in a summarized fashion, and key details may not be included. Municipalities are responsible for making local decisions, including compliance with any applicable statutes, regulations or local bylaws.

The content of the Guide is based on existing legislation, which is subject to change. Regulations and local bylaws, policies, and practices are also subject to change. Users considering a particular local action or decision should not rely on the Guide and should verify all legal (and other) information referred to in the Guide. Users are solely responsible for any use of application of the Guide.

# Introduction

The [Municipal Act, 2001](#)<sup>1</sup> and other legislation include provisions about openness and transparency in municipal decision making and service delivery.

The Act and other legislation, including the [Municipal Freedom of Information and Protection of Privacy Act](#)<sup>2</sup>, also set out rules for the public's access to information, and at the same time, rules to protect privacy and confidentiality. Local bylaws may also address transparency and confidentiality.

Municipalities will face pressures to balance these potentially conflicting principles.

To assist, the Guide and resources include information about:

- some of the requirements for municipalities to be open and transparent,
- confidentiality and privacy,
- accountability and integrity rules and options for municipalities.

The various pieces of legislation and regulations referenced here can be found on the [e-laws website](#)<sup>3</sup>.

The [Municipal Councillors Guide – 2014](#)<sup>4</sup> developed by the Ministry of Municipal Affairs and Housing, is an excellent source of information on role of council and councillors, governance and law-making in the municipal setting, the fiscal context, land use planning and affordable housing as well as accountability and transparency.

## What do Accountability, Transparency and Confidentiality Mean?

The public might see:

**Accountability** as a general principle that governments (including municipalities) are answerable to the public and responsible for their actions, decisions and policies.

**Transparency** as a general principle that governments will operate in an accessible and visible manner and that their activities and decision making are open and clear to the public.

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<sup>1</sup> [www.ontario.ca/cpk2](http://www.ontario.ca/cpk2)

<sup>2</sup> [www.ontario.ca/cpk3](http://www.ontario.ca/cpk3)

<sup>3</sup> [www.ontario.ca/laws](http://www.ontario.ca/laws)

<sup>4</sup> [www.ontario.ca/cpk4](http://www.ontario.ca/cpk4)

**Confidentiality** as a general principle that there are appropriate or necessary limits to public access to information that a government might have, such as limits to protect the personal privacy of individuals.

## Accountability, Transparency, Confidentiality and Policies

It is part of the role of a municipal council to ensure the accountability and transparency of municipal operations. A municipality must adopt and maintain policies to try to ensure accountability and transparency to the public.

A municipality must also adopt and maintain policies about other matters including:

- sale and other disposition of land;
- hiring of employees;
- procurement of goods and services;
- when and how to provide notice to the public; and
- delegation of powers and duties.

Some municipalities have decided to adopt policies about other things such as staff conduct and use of social media.

It is generally up to municipalities to determine the content and style of their policies.

Municipal procedures and policies should be clear and accessible, and the day-to-day operations of the municipality should be transparent.

It is also important to consider how confidentiality may appropriately fit in. For example, how policies might address requirements for protection of personal privacy.

As a cornerstone for sound decision-making, many municipalities have developed their own policy manuals. These may help ensure that their policies are implemented and applied in a consistent way, and help address the balance between transparency and confidentiality. A policy manual is a reference and information source for council, municipal administration and the public. Because of the variety of municipal policies and procedures it contains, it may cover many municipal functions and responsibilities, and can also be a valuable training and orientation tool for new councillors and staff.

See sections [224<sup>5</sup>](#) (council – role) and [270<sup>6</sup>](#) (policies) of the Act, and the legislation generally, for more information about these topics.

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<sup>5</sup> [www.ontario.ca/cpk5](http://www.ontario.ca/cpk5)

<sup>6</sup> [www.ontario.ca/cpk6](http://www.ontario.ca/cpk6)

# Accountability Officers and Offices

Municipalities have powerful tools available to help them to promote integrity and accountability in public office.

Municipalities may pass by-laws to establish:

- an **Integrity Commissioner** whose role is to perform, in an independent manner, the functions assigned by council with respect to the application of: (1) a code of conduct for members of council and local boards; and (2) the procedures, rules and policies governing the ethical behaviour of members of council and local boards. The Commissioner's functions may include conducting inquiries into requests from the public or local members about whether a local member has contravened the applicable code of conduct. If a member is found to have contravened the code of conduct, the municipality may impose a penalty of a reprimand or a suspension of pay for a period of up to 90 days.
- a **Municipal Ombudsman** whose function is to investigate, in an independent manner, decisions and recommendations made and acts done or not done in the course of the administration of a municipality, local boards or certain municipal corporations, as the municipality specifies.
- an **Auditor General** who may assist council in holding itself and municipal administrators accountable for the quality of stewardship over public funds and achieving value for money in municipal operations. The Auditor General must also perform their duties in an independent manner. The Auditor General's responsibilities do not include the responsibilities of the municipal auditor.
- a **public registration system for lobbyists** and to do other things in relation to a lobbyist registration system, such as establishing a code of conduct for lobbyists, appointing a lobbyist registrar and prohibiting former public office holders from lobbying for a designated time period.

Municipalities may want to consider a shared services arrangement with other municipalities for these types of accountability officers.

For more information, please see [Part V.1<sup>7</sup>](#) of the Act (sections 223.1 to 223.24), and the legislation generally.

## Codes of Conduct

With the growing importance of accountability and integrity, more municipalities have adopted codes of conduct for members of council and local boards. Some have also

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<sup>7</sup> [www.ontario.ca/caf5](http://www.ontario.ca/caf5)

adopted other procedures, rules, and policies governing the ethical behavior of those members.

Codes of conduct are optional, and it is generally up to municipalities to determine the content and style of their codes of conduct. Some common issues that codes address include use of municipal resources, gifts and benefits and conduct at council meetings.

For more information, please see sections 223.1 to 223.8 of the Act and the legislation generally.

Other statutes may require specific or general codes of conduct of relevance to municipal council as well. For example, section 7.1 of the [\*Building Code Act, 1992\*](#)<sup>8</sup> (BCA) requires municipalities to establish and enforce a code of conduct for the chief building official and inspectors.

## Open Meetings and Closed Meeting Investigations

Transparent decision-making processes may be seen as part of the foundation of good municipal governance. The Act includes provisions related to the conduct of meetings and the public's right to attend them.

A key transparency rule for municipalities is the requirement that most municipal and local board meetings be open to the public. There are only a limited number of exceptions, for consideration of matters such as, for example, litigation, or personal matters about an identifiable individual.

The term "meeting" is partly defined in the Act, which currently provides that a meeting means "any regular, special or other meeting of a council, of a local board or of a committee of either of them." This definition is not, however, the complete picture.

When a council or local board is thinking about getting together - and about whether an item is best discussed at an open or closed meeting at a public forum - where the proceedings are conducted and documented the same way council and local board meetings generally are (i.e. public notice is given, minutes are taken, etc.) - it may wish to keep in mind, among other things, the following important considerations:

- is the subject matter of the gathering something normally addressed at meetings of council or committee or a local board?
- are municipal resources being used?
- how many municipal council or staff members are present and what is their role?
- the importance of transparency in municipal decision making.

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<sup>8</sup> [www.ontario.ca/cpk8](http://www.ontario.ca/cpk8)

Anyone may request an investigation of whether a closed meeting complied with the Act or a municipal procedural bylaw.

Municipalities may appoint an independent investigator who may report with recommendations to council. If a municipality does not appoint an investigator, the Ontario Ombudsman may investigate. The Ontario Ombudsman will not be able to investigate a closed meeting complaint if a local meeting investigator is appointed.

Police services and school boards have different rules about their meetings, which are found in other legislation.

For more information about the legislation regarding local meetings and related matters, please see sections [238<sup>9</sup>](#), [239<sup>10</sup>](#), [239.1<sup>11</sup>](#) and [239.2<sup>12</sup>](#) of the Act, and the legislation generally.

## Conflict of Interest

Councillors and members of local boards have legal and ethical duties to consider in relation to conflict of interest. Some of these are found in the [Municipal Conflict of Interest Act](#),<sup>13</sup> but other related rules or codes may also apply (for example, a local code of conduct for councillors).

The [Municipal Conflict of Interest Act](#) sets out what may be regarded as a primary set of ethical rules for council and local board members. These rules apply, with some exceptions, to council and local board members if they have a pecuniary (financial) interest in a matter that is before a council (or a local board) at a meeting.

The legislation requires a member with this kind of pecuniary interest – again with certain exceptions – to, among other things:

- disclose the interest and its general nature before the matter is considered at the meeting;
- not take part in the discussion or voting on any question in respect of the matter;
- not attempt to influence the voting before, during, or after the meeting; and
- immediately leave the meeting, if the meeting is closed to the public.

Potential penalties for contravention of the Act include removal from office. The courts decide whether or not a contravention of the Act has taken place. See the [Municipal Conflict of Interest Act](#) for more information.

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<sup>9</sup> [www.ontario.ca/cpk9](http://www.ontario.ca/cpk9)

<sup>10</sup> [www.ontario.ca/cpla](http://www.ontario.ca/cpla)

<sup>11</sup> [www.ontario.ca/cplc](http://www.ontario.ca/cplc)

<sup>12</sup> [www.ontario.ca/cpld](http://www.ontario.ca/cpld)

<sup>13</sup> [www.ontario.ca/cagc](http://www.ontario.ca/cagc)

This legislation does not include ethical rules for municipal staff. Municipalities may have their own policies in place for staff.

## Freedom of Information and Protection of Privacy

[The Municipal Freedom of Information and Protection of Privacy Act](#)<sup>14</sup> (MFIPPA) applies generally to municipalities in Ontario as well as school boards, police services boards and many other local bodies.

MFIPPA addresses freedom of information. It provides the public with important rights - both the ability to request municipal records and to access a broad range of them. It also protects personal privacy and confidentiality. Some documents may not have to be disclosed, or may be partly disclosed.

The public can appeal to the [Information and Privacy Commissioner of Ontario](#) [www.ipc.on.ca] if dissatisfied with a municipality's decision related to a request for information.

MFIPPA sets out rules for collection, use, and disclosure of personal information. According to these rules, councillors (and staff), in most circumstances, would protect personal privacy and only collect, use, and disclose personal information in accordance with those rules. For example, depending on circumstances councillors and staff may or may not be authorized to obtain personal information in the course of their duties. Among other things, this might mean that at times staff may not be able to provide personal information to councillors.

Municipal freedom of information legislation also regulates confidential information of other kinds (i.e. in addition to personal information). Other statutes and laws (including local by-laws) also regulate personal and other kinds of confidential information.

Personal privacy and other confidentiality issues are an important practical and legal consideration for municipal councillors and staff. Councillors (and staff) may wish to become familiar with their responsibilities in this area, as well as with the relevant legislation and policies.

The *Municipal Freedom of Information and Protection of Privacy Act* was recently amended. Some of the changes, which are effective January 1, 2016, might be summarized as:

- requiring institutions subject to MFIPPA to ensure that reasonable measures to preserve records are developed, documented and put into place in accordance with recordkeeping rules and legislation.
- making it an offence to alter, conceal or destroy records with an intent to deny a Freedom of Information (FOI) access request, with a penalty of up to \$5000.

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<sup>14</sup> www.ontario.ca/cpk3

## Municipal Records and Retention Policies

There are specific rules about public access to some municipal records, and about general municipal responsibility to retain and preserve municipal records, in the Act as well as in other legislation.

Generally,

- any person may inspect municipal records under the control of the municipal clerk at all reasonable times, subject to the provisions/restrictions of the *Municipal Freedom of Information and Protection of Privacy Act*. Such records may include by-laws, minutes, reports considered by council meetings, records of council, as well as statements of council remuneration prepared by the treasurer;
- municipalities must retain and preserve their records in a secure and accessible manner, and may only destroy records in accordance with the legislation and bylaws;
- municipalities may, with the approval of the municipal auditor establish retention periods during which records must be maintained and preserved.

For more information, please refer to sections [253<sup>15</sup>](#) to [255<sup>16</sup>](#) of the Act. Other provisions in the Act and other legislation may also be of interest.

## Balancing Transparency and Confidentiality

Municipalities are encouraged to consider openness and transparency to be appropriate in most areas of operation, including administration and decision making. There will be times, however, in the course of business where material or information should, or even must, be kept confidential.

Examples of sensitive items that may need to be kept confidential are personal matters related to identifiable individuals, including staff, and items discussed in closed session.

Municipal officials may wish to carefully consider the issues before releasing or discussing publically any information that may be confidential. Again, they may wish to become familiar with their responsibilities in this area, as well as with the relevant legislation and policies.

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<sup>15</sup> [www.ontario.ca/cplg](http://www.ontario.ca/cplg)

<sup>16</sup> [www.ontario.ca/cpli](http://www.ontario.ca/cpli)

# Role of the Ontario Ombudsman

Primarily through amendments to the [Ombudsman Act<sup>17</sup>](#), the role of the Ontario Ombudsman expanded beginning January 1, 2016 to include all Ontario municipalities.

The Ontario Ombudsman's general role includes investigating complaints and making recommendations. As part of this, the Ontario Ombudsman may include any municipality, including Toronto, in a broad-ranging, systemic investigation on his or her own initiative. It will be up to the Ontario Ombudsman to determine whether to investigate a municipal matter brought to his or her office's attention.

The Ontario Ombudsman may investigate municipal complaints to municipal integrity officers (except the Toronto Ombudsman) only after local complaint resolution processes, if any, have been completed. The Ontario Ombudsman will not be able to investigate complaints within the jurisdiction of the Toronto Ombudsman. Municipalities other than Toronto may appoint their own ombudsman if they choose. The City of Toronto is the only municipality in Ontario required by law to have an ombudsman.

While the Ontario Ombudsman cannot compel municipalities to take action, the Ombudsman could make recommendations to council and the municipality as part of his or her report. It would be up to the municipality to decide how to proceed after an Ombudsman report.

For more information on the processes and procedures of the complaints process, please visit the Ontario Ombudsman [website<sup>18</sup>](#).

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<sup>17</sup> [www.ontario.ca/cplk](http://www.ontario.ca/cplk)

<sup>18</sup> [www.ombudsman.on.ca](http://www.ombudsman.on.ca)

# Resources

## Ministry of Municipal Affairs and Housing (MMAH)

The Ministry of Municipal Affairs and Housing has [Municipal Services Offices](#)<sup>19</sup> located in four regions in Ontario: MSO North (Sudbury and Thunder Bay), Western (London), Central (Toronto) and Eastern (Kingston). These regional offices act as the Ministry's liaison with the municipal sector in Ontario to communicate the ministry's priorities.

Programs delivered by the Municipal Service Offices include advisory services and education and training. For more information regarding the resources available to you through your local Municipal Services Office, please visit the [Ministry website](#)<sup>20</sup>.

## The Municipal Councillor's Guide – 2014

The [Municipal Councillor's Guide – 2014](#)<sup>21</sup> was produced by the Ministry of Municipal Affairs and Housing as a resource for municipal councillors, and covers topics that are important for councillors to know, including information on accountability and transparency. The guide also includes references to where more information about municipal governance may be accessed. The information in this guide can help councillors meet their responsibilities and the municipality's goals and objectives, satisfy provincial and federal requirements and provide continued high-quality service to the residents of their communities.

## Information Privacy Commissioner (IPC)

The [Information Privacy Commissioner](#)<sup>22</sup> site provides considerable resources addressing the protection of privacy and access to information for both public and professional use:

- The IPC has put together toolkits providing general resources to assist FOI and Privacy Coordinators in processing FOI requests and work through privacy complaints and issues:
  - [Access to Information Toolkit](#)<sup>23</sup>
  - [Privacy Toolkit](#)<sup>24</sup>

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<sup>19</sup> [www.ontario.ca/cpll](http://www.ontario.ca/cpll)

<sup>20</sup> [www.mah.gov.on.ca](http://www.mah.gov.on.ca)

<sup>21</sup> [www.ontario.ca/cpk4](http://www.ontario.ca/cpk4)

<sup>22</sup> [www.ipc.on.ca](http://www.ipc.on.ca)

<sup>23</sup> [www.ipc.on.ca/english/Access-to-Information/Toolkit/](http://www.ipc.on.ca/english/Access-to-Information/Toolkit/)

<sup>24</sup> [www.ipc.on.ca/english/Privacy/Toolkit/](http://www.ipc.on.ca/english/Privacy/Toolkit/)

- There is also a [subject index<sup>25</sup>](#) of issues addressed by the IPC in its orders and privacy investigation reports with links to existing case law, and a [key word search option<sup>26</sup>](#) is also available.
- The [Working with the Municipal Freedom of Information and Protection of Privacy Act, a Councillors Guide<sup>27</sup>](#) and [Transparency, Privacy, and the Internet: Municipal Balancing Acts<sup>28</sup>](#) guides can also be found on the IPC site under Resources/Educational Material.

References to exemptions can be found within the IPC Councillors guide as well as within the [legislation<sup>29</sup>](#).

## Municipal Associations

### **The Association of Municipalities of Ontario (AMO)**

[AMO<sup>30</sup>](#) provides training to municipal elected officials on a variety of topics, through both in-person and on-line sessions.

For more information, visit the [Events and Training<sup>31</sup>](#) section of AMO's website.

### **The Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO)**

[AMCTO<sup>32</sup>](#) has a wealth of information available to its members. A valid username and password are required to access this information, however some information is offered to non-members for a nominal fee.

AMCTO offers a [search<sup>33</sup>](#) capability on their website where examples of local policies and by-laws can be found for all aspects of municipal administration.

## **Meeting Investigation**

Information about council and local board meetings, including reports from meeting investigators can be found at the links provided.

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<sup>25</sup> [www.ipc.on.ca/english/Decisions-and-Resolutions/Subject-Index-Listing/](http://www.ipc.on.ca/english/Decisions-and-Resolutions/Subject-Index-Listing/)

<sup>26</sup> [www.ipc.on.ca/english/decisions-and-resolutions/](http://www.ipc.on.ca/english/decisions-and-resolutions/)

<sup>27</sup> [www.ipc.on.ca/english/decisions-and-resolutions/](http://www.ipc.on.ca/english/decisions-and-resolutions/)

<sup>28</sup> [www.ipc.on.ca/images/Resources/2015-municipal%20guide-public%20discl-access.pdf](http://www.ipc.on.ca/images/Resources/2015-municipal%20guide-public%20discl-access.pdf)

<sup>29</sup> [www.ontario.ca/cpk3](http://www.ontario.ca/cpk3)

<sup>30</sup> [www.amo.on.ca](http://www.amo.on.ca)

<sup>31</sup> [www.amo.on.ca/EventsTraining.aspx](http://www.amo.on.ca/EventsTraining.aspx)

<sup>32</sup> [www.amcto.com](http://www.amcto.com)

<sup>33</sup> [www.amcto.com/imis15/content/GoogleSearchPage.html](http://www.amcto.com/imis15/content/GoogleSearchPage.html)

- [Ontario Ombudsman](#)<sup>34</sup>
- [Sunshine Law Handbook](#)<sup>35</sup>
- [Ombudsman's Municipal Site](#)<sup>36</sup> – including reports and cases

Association of Municipalities of Ontario (AMO) – Local authority Services (LAS):

- [Local Authority Services Closed Meeting Investigator Service](#)<sup>37</sup>
- LAS Document "[What You Need to Know About Closed Meetings](#)"<sup>38</sup>

Amberley Gavel is a firm that conducts meeting investigations and publishes [Closed Meeting Reports](#)<sup>39</sup>

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<sup>34</sup> [www.ombudsman.on.ca](http://www.ombudsman.on.ca)

<sup>35</sup> [www.ombudsman.on.ca/Resources/Sunshine-Law-Handbook.aspx](http://www.ombudsman.on.ca/Resources/Sunshine-Law-Handbook.aspx)

<sup>36</sup> [www.ombudsman.on.ca/Investigations/Municipal-Meetings.aspx](http://www.ombudsman.on.ca/Investigations/Municipal-Meetings.aspx)

<sup>37</sup> [www.las.on.ca/Services/Closed-Meeting-Investigator.aspx](http://www.las.on.ca/Services/Closed-Meeting-Investigator.aspx)

<sup>38</sup> [www.las.on.ca/PDFs/Services/Closed-Meeting-Investigator/Resources/2013ClosedMeetingBooklet-FINAL.aspx](http://www.las.on.ca/PDFs/Services/Closed-Meeting-Investigator/Resources/2013ClosedMeetingBooklet-FINAL.aspx)

<sup>39</sup> [www.agavel.com/?page\\_id=28](http://www.agavel.com/?page_id=28)

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