



THE CORPORATION OF THE TOWNSHIP OF TAY  
APPROVED COUNCIL POLICIES MANUAL

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**SUBJECT: Administration  
Freedom of Information  
& Protection of Privacy**

**EFFECTIVE DATE:  
September 10, 2008**

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**REVISION DATE:  
January 9, 2013**

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**PURPOSE/DEFINITION:**

To ensure that the Township of Tay complies with the intent and requirements of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* and other privacy legislation by implementing practices that will facilitate open access to public records, while protecting the privacy of personal information which is within the custody of the municipality.

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**APPLICATION:**

This policy applies to Members of Council and all Township employees, Committees, Affiliates, Agents and Contractors.

**POLICY GUIDELINES:**

**1.0 OBJECTIVES**

1. To ensure that the manner in which information is collected, used, retained, disclosed and destroyed by the Municipality is consistent with the requirements of legislation and the Township's Records Management Policy and Records Retention By-Law.
2. To ensure that exemptions applied pursuant to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* are limited and specific.
3. To establish an accountability framework defining the roles and responsibilities of members of Council, senior officials and staff.
4. To ensure that processes are in place to protect the integrity and privacy of personal information within the custody and control of the Municipality.



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### 2.0 **DEFINITIONS:**

**“Disposal”** refers to the process of eliminating or deleting data, documents and records so that the recorded information no longer exists.

**“Personal Information”** means any recorded information that can be linked directly or indirectly to an identifiable individual, including Township employees, the public, or clients of Township programs. The term includes, but is not restricted to, a person’s home address or home telephone number, ethnic origin, race, religion, age, sex, sexual orientation, criminal, medical, psychological, psychiatric, identifying numbers, i.e. SIN, financial, education or employment information, personal correspondence, the individual’s name where it appears with or reveals other personal information; and opinions of, or about an individual or about or from the person. Notes by Township staff about a client are the client’s personal information. A record may also be personal information if the information contained in it may be used to deduce the identity of a person.

Records related to a business, proprietorship or trade union are not personal information. Information about individuals acting in their business or professional capacity is NOT personal information, your name, position and records about routine work matters do not usually constitute personal information. Certain staff information (e.g. job description, salary range or benefits) does not qualify for protection as personal information.

However, personal information can be public if collected and maintained specifically for the purpose of creating a record available to the general public, i.e. assessment rolls.



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**“Record”** means all recorded information held by the Township, regardless of physical form – paper files, microfilm, audio-visual materials, maps, electronically stored data, notes, address books, diaries, etc. The Township is not required to provide information that has not been recorded (e.g. information discussed, but not recorded). The Township is not required to restore records that have been properly destroyed under the authority of its retention by-law. Draft copies of reports, handwritten notes or annotations made by staff are considered as records.

**“Routine Access (Disclosure)”** refers to the process of providing requesters with a copy of records or providing a means in which the requester may examine or view records outside of the *Municipal Freedom of Information and Protection of Privacy Act* process.

### 3.0 **ACCOUNTABILITY:**

In order to ensure that there is a collaborative approach to collecting, using, accessing, disclosing and destroying records and information, accountability guidelines have been established.

**The “Head”** shall be accountable and responsible for:

- ensuring overall compliance with all applicable privacy legislation.

**Township Clerk** shall be responsible for:

- overseeing administration of the Township’s MFIPPA Program (as delegated by the “Head”) and ensuring there is corporate compliance with all privacy legislation.



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**CAO/Directors** shall be responsible for:

- ensuring that all departments/divisions within their area of responsibility are maintaining compliance with the Township's Privacy Policy objectives as well as all privacy legislation.
- overseeing the routine disclosure of information and records associated with their area of responsibility. This would include informal requests from the public and requests from individuals wishing access to their own personal information;
- ensuring that proper notice is given to the public prior to the collection of any personal information;
- ensuring the accuracy of personal information collected and retained;
- ensuring that all personal information is managed and protected in accordance with this policy and all applicable privacy legislation;

**Staff** shall be responsible for:

- ensuring that all personal information collected (s) is accurate and complete;
- protecting personal information to which they have access or custody of;
- assisting the public with requests for access to information and the routine disclosure of records and information;
- adhering to the disposal requirements contained in this and other records management policies of the Township.

#### **4.0 PERSONAL INFORMATION:**

To protect individual privacy, the Act places restrictions on the collection, use, disclosure, retention and disposal of the personal information. Sharing of personal information both within and outside the Township organization is limited by the Act. The privacy protection standards are in effect constantly. Township staff are individually responsible for meeting the privacy requirements. The Clerk will provide assistance to Township staff to insure compliance.



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#### **4.1 Collection Of Personal Information**

Staff may collect personal information only with legal authority. Legal authority is present under the following situations:

- legislation or regulations require the collection of personal information. Examples include: applications for employment, planning permissions, health & safety, parks & recreation programs, a private sewage system, and documentation of workplace injuries;
- the personal information is necessary for law enforcement. Examples include: by-law enforcement, fraud investigations, licensing, and complaint investigations;
- staff must have the personal information to operate legally mandated Township functions, or Township by-laws allow the collections. There are many situations where this occurs, including: Payroll and benefit administration and performance appraisal of employees, and workplace investigations.

In addition, personal information collected by Township staff shall be done in accordance with the provisions of MFIPPA and other privacy legislation. The collection of information shall be limited to only that information which is required in order to administer the programs and services of the Township.

Wherever possible, personal information is to be collected directly from the individual to whom the information relates. If using an indirect or alternative manner of collection, staff must adhere to the guidelines stipulated in Section 29(1) of MFIPPA.

Section 29(1) states:

*'29. (1) An institution shall collect personal information only directly from the individual to whom the information relates unless,*



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- (a) the individual authorizes another manner of collection;*
- (b) the personal information may be disclosed to the institution concerned under section 32 or under section 42 of the Freedom of Information and Protection of Privacy Act;*
- (c) the Commissioner has authorized the manner of collection under clause 46 (c);*
- (d) the information is in a report from a reporting agency in accordance with the Consumer Reporting Act;*
- (e) the information is collected for the purpose of determining suitability for an honour or award to recognize outstanding achievement or distinguished service;*
- (f) the information is collected for the purpose of the conduct of a proceeding or a possible proceeding before a court or judicial or quasi-judicial tribunal;*
- (g) the information is collected for the purpose of law enforcement; or*
- (h) another manner of collection is authorized by or under a statute. R.S.O. 1990, c. M.56, s. 29 (1).'*

#### **4.2 Notice Of Collection**

On the initial collection of personal information from a Township employee/client, or when information is collected for a new, unrelated purpose, the individual to whom it relates must be notified of:

- the legal authority for collecting the information (statute, regulation, or by-law);
- the principal purpose(s) of the collection; and
- the title, business address and telephone number of an employee who can answer questions about the collection.



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This information is referred to as the Notice of Collection.

### **5.0 USE OF PERSONAL INFORMATION**

Personal information collected by the Township will be used for the purpose or activity for which it was originally collected or for a 'consistent purpose'. A 'consistent purpose' means that the individual to whom the information relates might reasonably have expected the use/disclosure.

The use of personal information for any other purpose shall only be permitted with the consent of the individual to whom the information relates, or in accordance with the provisions of Section 31 of MFIPPA.

In cases where personal information is used or disclosed for a non-routine purpose (e.g. information disclosed to a by-law officer for an investigation). In these cases, the irregular use or disclosure must be documented in the affected person's file or records.

Staff and/or individual members of Council do not have an automatic right to use or to access personal information by virtue of their employment/office. Use and disclosure of personal information must be directly related to their job duties/office.

#### **5.1 Council Communications/Delegations**

The following process shall be applied when dealing with Council Communications/Delegations:

- Communications/delegations directed to the Township for the purposes of Council or Committee consideration shall include the name and/or address of the sender/delegate, if the name and/or address pertains to the matter before Council or Committee, and shall be considered public record;



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- The name of the sender, their signature, and the property address of the sender (if relevant) shall form part of the public record;
- Any additional personal information on communications (i.e. personal telephone numbers, personal e-mail addresses, etc.) shall be severed, prior to disclosure, unless the information belongs to a business entity or an individual acting in a business capacity;
- Such communications and information shall form part of Committee/Council agendas and be used to assist Council and Committee members with properly addressing and responding to individuals' requests or inquiries;
- Any communications presented to Council in public session shall be made available for public viewing by way of print and/or electronic means;
- Discretion pertaining to the disclosure of personal information may be exercised by the Township Clerk where the personal information relates to highly sensitive or confidential matters and/or relates to one of the designated criteria for a "closed" session;
- Where an individual has specifically expressed that the communication be treated as "confidential", the Clerk's Department shall contact the individual to request consent to disclose the communications in order to allow Council to deal with the matter.

## **5.2 Parks & Recreation Programs**

The following shall be applied when dealing with Parks & Recreation Programs:

- personal and health information, collected for the purposes of parks and recreation programs, may be used by municipal staff and designated volunteers who are responsible for the organization and health & safety of the participants;
- any photographs or images of program staff and participants shall be authorized **in advance** by designated municipal staff.





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### **6.0 DISCLOSURE AND PROTECTION OF PERSONAL INFORMATION:**

#### **6.1 Protecting Personal Information**

Protecting the privacy of individuals and any personal information which has been collected and used by the Municipality is a requirement of privacy legislation and a primary focus of the Township of Tay.

To ensure that every precaution is taken to protect the privacy of personal information, the following processes shall be adhered to:

- o Access to personal information shall be restricted to 'only' those employees requiring access in order to carry out their duties.
- o No personal information shall be disclosed to members of the public, Council or other staff without the consent of the individual to whom the information relates (except where permitted by legislation or within this policy).
- o Personal information shall not be discussed in public areas where it may be overheard by others who are not otherwise authorized to have such information.
- o Personal information should not be left exposed or visible on desks or computer screens. Staff should minimize computer screens and put records containing [third party] personal information away when not in use.
- o Records/files containing personal information should not be removed from Township worksites. If it is necessary to have records leave the worksite, the records should be copied first. Originals should remain on-site at all times.
- o Records/files leaving the worksite that contain personal information should be signed out. Sign-out cards/forms should include employee's name, description of records, file number and file name, date of removal and date of return and be kept within the department/location where the records were removed from.



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- o Sensitive personal or confidential information should, wherever possible, be sent by regular mail or courier. If transmitting such information by e-mail or fax, e-mail addresses and fax numbers must be verified to ensure that they are accurate prior to sending the information.
- o Confidentiality and privacy statements shall be included on all e-mail and fax transmissions.
- o Cabinets or storage locations containing personal or confidential information should be locked or secured at the end of each day and when not in use.

### **6.2 Access to one's own personal information**

MFIPPA further provides that individuals have the right to access and correct their own personal information if they believe there is an error or omission.

Once access has been granted to their personal information, an individual has the right to:

- o request a correction of their personal information.
- o require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- o require that notification be sent to any person or body to whom the personal information has been disclosed (within the year before) advising them of the correction or statement of disagreement.

Access to one's own personal information shall be at the discretion of the Head (or delegate). Certain exemptions affecting access may be applied pursuant to Section 38 of MFIPPA.



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### **6.3 Disclosure of Information**

Although a primary focus of MFIPPA is to facilitate access to government information, there are limitations to that access. These limitations are in place to protect personal information, as well as sensitive information, in the custody and control of government.

Under MFIPPA, there are two types of exemptions that must be considered when assessing whether information is to be disclosed:

- (1) Mandatory exemptions** – requiring the institution to refuse disclosure of the record. Such records include:
  - information pertaining to intergovernmental relations; if the information was received in confidence;
  - third party information that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, if supplied in confidence, and where disclosure could prejudice the interests of a third party;
  - personal information about individuals other than the requester.
  
- (2) Discretionary exemptions** – requiring an institution to apply discretion and good judgment when determining whether or not to disclose the record. Such records include:
  - draft by-laws, records of closed meetings where such are authorized by statute;
  - advice or recommendations within the organization;
  - law enforcement records;
  - information which could prejudice the financial or other specified interests of the organization;
  - solicitor-client privileged information;



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- information which could endanger the health or safety of an individual;
- information already available to the public or soon to be published.

Although the above noted exemptions provide direction as to what must or may be considered when assessing whether or not to disclose, there are times when the above exemptions do not apply.

Certain exemptions (above) do not apply:

- (a) if a compelling **public** interest outweighs the purpose of the exemption; or
- (b) if there is a **grave** environmental, health or safety hazard, regardless of whether or not a formal request for information has been made.

### **6.4 Disclosure of Personal Information**

Under MFIPPA, there are limited circumstances where disclosure of personal information is permitted:

- 1) With the consent of the individual to which the information pertains;
- 2) Where disclosure to another employee is required in order for he/she to carry out the duties of their position (where the disclosure is necessary and proper in the discharge of the employee's functions);
- 3) For the purpose for which the information was obtained or compiled or for a 'consistent purpose';
- 4) For the purposes of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such Act or a treaty;
- 5) To an institution or a law enforcement agency in Canada to aid in an investigation;



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- 6) In compelling circumstances affecting the health and safety of an individual;
- 7) In compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;
- 8) To the Minister;
- 9) To the Information and Privacy Commissioner;
- 10) To the Government of Canada or the Government of Ontario in order to facilitate the auditing of shared cost programs (R.S.O. 1990, c.M.56, s. 32).

Members of the public seeking access to records which contain another individual's personal information must complete and submit a formal Access Request in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*.

### **6.5 Routine Disclosure**

There are a number of records and types of information which are available via Routine Disclosure, meaning that a formal access request is not necessarily required in order to obtain or view the information.

Access to Township information and records will, wherever possible, be made available to the public via the Township website, orally, or through public inspection at the Township's Municipal Offices.

The following are examples of such records where routine disclosure may be permitted:

- Information related to Township-owned Surplus Lands
- Corporate Policies
- Demographic and statistical information
- By-Laws
- Agendas
- Minutes



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- Reports
- Resolutions
- General community information (i.e. licensing, permits, waste disposal information, etc.)
- Annual (approved) budgets
- Audited Financial Statements
- Summary of total tender results (not the pricing details)
- Tax Certificates
- Committee of Adjustment Notices and Decisions
- Planning related documents and development records (as per the *Planning Act*)
- Subdivision/Site Plan Agreement Information
- Construction information
- Building Services reports or compiled statistics
- Recreational programming and facility rental information
- Information pertaining to leisure events and activities

Requests that meet the requirements of this section may be released by all municipal personnel; however, prior to the disclosure of any records, staff should consult with their manager/supervisor and where uncertain about disclosure, contact the Clerk.

In addition, any request for building, planning or engineered drawings should be reviewed by the manager/supervisor, in consultation with the Clerk, prior to disclosure due to copyright protection laws.

### **7. Privacy Breach**

7.1 Township personnel found to have contravened the confidentiality, access and privacy regulations set out in the Freedom of Information & Protection of Privacy Policy or any other related Township policy shall be dealt with in accordance with the provisions of the Township's Discipline Policy.