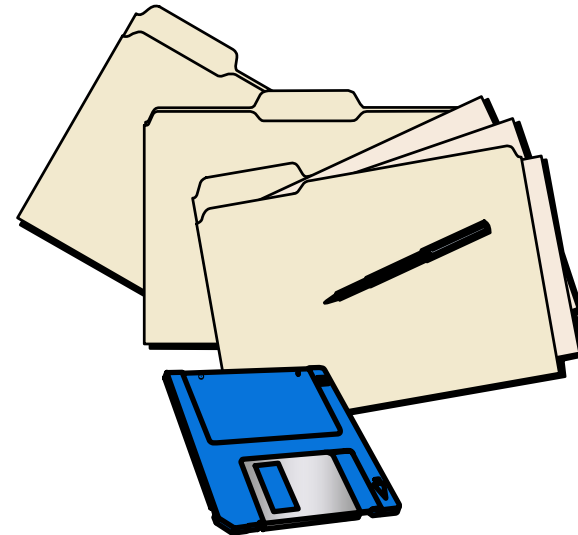
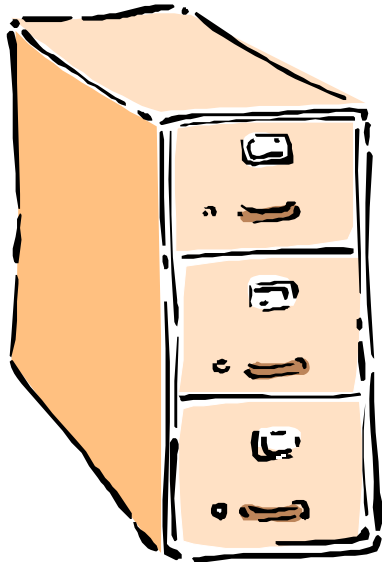


Freedom of Information and Protection of Privacy

Municipal Councillors Professional Development Program November 25, 2005

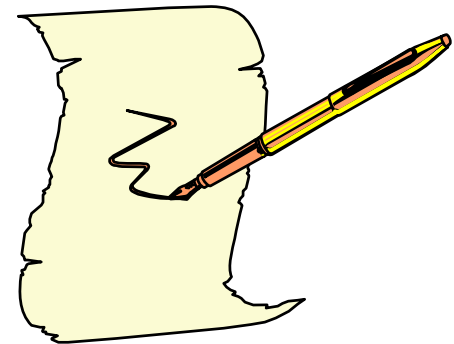


Session Objectives

- What is FOIPOP and why do we have it?
- What are the FOIPOP roles in a municipality?
- When does FOIPOP apply?
- How does FOIPOP affect me as a councillor?
- Where can I find more information re FOIPOP?

Information Access Legislation

- Federal Gov - Access to Information Act (1980s)
- Other Provinces - all have legislation
- Nova Scotia
 - Province of N.S. - *FOIPOP Act (1993)*
 - Municipalities/villages/service commissions
MGA - Part XX (April 1999)
 - Regulations - apply to the
Province & under the MGA



FOIPOP - Two Key Aspects

- FOI - process for accessing records/information; access unless exemptions apply
- POP - collection, use & disclosure of personal information by municipality



FOIPOP - Municipal roles

- Council
 - **NO direct role in FOIPOP processes**
 - **set records management policy (S. 421)**
 - **consider routine access policy**
- CAO
 - **“responsible officer” - administrator (S. 461(i))**
 - **may delegate responsibilities (S. 497)**
 - **process FOIPOP requests**
- Staff
 - **info disclosure consistent with FOIPOP**

Information/Records Access

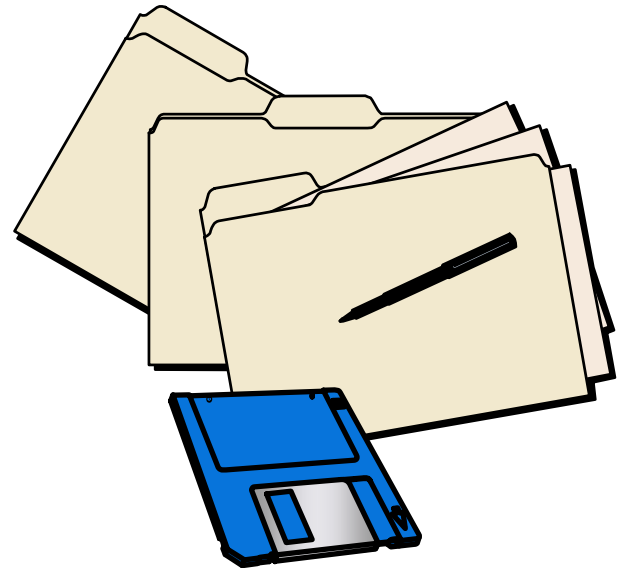
Different levels of accessibility

- Active dissemination
 - publicly available...web page, annual report, newsletters....
- Routine Access
 - custom or past practice to release
 - formal municipal decision to release
- FOIPOP
 - formal request required



What is a record under FOIPOP ?

- All recorded information
- Typed
- Hand-written
- Post-it notes
- Electronic files
- Capable of reproduction
- Notebooks
- Own files



Access to Records

When is a FOIPOP request needed?

- When there is no past practice or formalized policy to release
- 3rd party personal information
- Sensitive info subject to exemptions



FOIPOP - Records Request

Basic Process

- Application - written request, specific information/records,\$
- CAO(or delegate) processes request - seek records, fee estimate, notify 3rd party
- Decision - grant in full or part, not in custody/control, no records exits, denied
- Review/Appeal - applicant, 3rd party - to Review Officer or Supreme Court

Possible Exemptions

Freedom of Information Access Requests

- **Intergovernmental** (S. 472)
- **Private meeting** (S. 473)
- **Advice** (S. 474)
- **Law enforcement** (S. 475)
- **Solicitor-Client** (S. 476)
- **Financial / economic** (S. 477)
- **Health & safety** (S. 478)
- **Conservation** (S. 479)
- **Labour conciliation** (S. 479A)
- **Personal / confidential** (S. 480 & 481)



Personal Information

What is it ? MGA [S. 461(f)]

- About an “identifiable individual”
- Can include:
 - ▶ Name, address, phone #
 - ▶ Characteristics
 - ▶ Status
 - ▶ Personal history
 - ▶ Opinions about the individual
 - ▶ Individual’s own views or opinions



Personal Information

Municipal Examples

- Permits/Licenses - applications, approvals
- Assessment & taxation information
- Utility (e.g. water, electric) records
- Constituent-municipal correspondence
- Surveys
- Website

Personal Information - Management

Protection of Privacy (POP) (MGA 483-486)

- Collection - expressly authorized by an Act/Regs. or municipal program/activity
- Use - purpose originally collected or compatible purpose
- Disclosure - permitted by an Act/Regs.; original/compatible purpose; written permission of individual

Records Issues

- What is a record ?
 - Anything recorded in whatever form
- What records are subject to Act ?
 - Those in municipal custody or control
- Municipal councillors' records
 - In municipal custody or control ?
 - Where located ?
 - Who has access rights ?

Access Process

- Applications
 - FOIPOP Administrator processes
 - Fact of application on need to know basis
- Applicants
 - Identity kept confidential
 - Need to know ID knowledge only
- Third parties
 - Same need to know

Relevant FOIPOP Exemptions

- Advice
- Law enforcement
- Closed meeting exemption
 - **Background info may be subject to disclosure**
 - **If decision public, implemented, or 5yrs. past**
- Economic Interests
- Personal privacy
- Business confidential information

FOIPOP Access Guidance

- Leave access process to FOI Staff
- Don't ask who applied
- Don't ask who third party is
- If council needs to know, will be informed

Examples

- E-Mail from councillor to CAO & vice versa
 - CAO record in municipal custody/control
- Handwritten councillor meeting notes
 - Any right of municipality to record ?
- E-mails between councillor & constituent
 - Any right of municipality to record ?
- Municipal leased computer for councillor ?
 - Any right of municipality to hard drive ?
 - Is record constituent or municipal record ?

Privacy Issues

- Constituent seeks assistance
 - Get written consent to follow-up
- Councilor wants basis of personnel matter
 - Need to know only if business of council
- Want to know identity of complainant
 - Act prevents providing identity
- Media seek info re funds audit
 - Confidential if personal info involved

Privacy Guidance

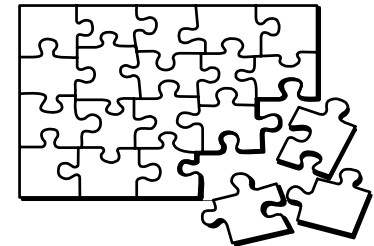
- Seek only necessary info for council work
- Avoid PI in e-mails where possible
- Respect personal privacy of staff
- Respect personal privacy of constituents
- Keep personal info consent forms on hand
- Check with FOIPOP Administrator

BMPs - for Councillors

- Don't get involved in FOIPOP process
- Be professional in your correspondence
- Respect the privacy of personal information
- Separate personal & municipal information
- Keep only necessary closed door meeting info

FOIPOP - In Conclusion

- FOIPOP applies to all municipal records
- Full public accountability; access unless exemptions met; protection of personal info
- Councillors do not play a direct role in FOIPOP processes



Information Resources

- MGA - Resource Binder - Act, Regulations & Introductory Guide to Part 20 (FOIPOP)
<http://www.gov.ns.ca/snsmr/muns/manuals/mga.asp>
- FOIPOP Office - Dept. of Justice 424-2719
www.gov.ns.ca/just/foi/foisvcs.htm
- FOIPOP Review Office 424-4684 / 1-866-243-1564
www.foipop.ns.ca/

Questions

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Thank You

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