



CORPORATE SERVICES – LEGISLATIVE SERVICES
TOWN OF NEWMARKET
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September 10, 2015

CORPORATE SERVICES – LEGISLATIVE SERVICES 2015-12

TO: Committee of the Whole
SUBJECT: Public Records Access Improvements
ORIGIN: Legislative Services

RECOMMENDATIONS

THAT Corporate Services – Legislative Services Report 2015-12 dated September 10, 2015 regarding “Public Records Access Improvements” be received and the following recommendation be adopted:

- 1. THAT the Routine Disclosure of Records Policy CORP.1-09 (attached as Appendix A) be approved.**

COMMENTS

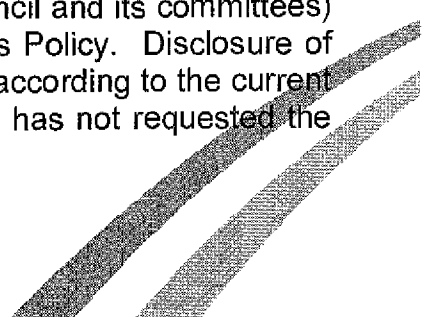
Purpose

The purpose of this report is to outline improvements to policy and administrative practices intended to enhance public access to the municipality's records, enhancing transparency.

Routine Disclosure Policy

The proposed Routine Disclosure of Records Policy establishes principles and procedures for releasing certain types of records retained by the Town without requiring the submission of a formal Freedom of Information (FOI) request made under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The proposed policy also sets out a framework for staff to manage requests for records under various circumstances, including requests made by researchers, law enforcement agencies and the coordination of requests for voluminous records and/or records requested from various departments.

Confidential records (including records of closed session meetings of Council and its committees) will not be disclosed through the proposed Routine Disclosure of Records Policy. Disclosure of confidential records must be reviewed against MFIPPA and are assessed according to the current situation. If a legal or property related matter is still ongoing and Council has not requested the



matter be made public, the Clerk will refuse access to information that falls under the mandatory exemptions and may choose to refuse access under the discretionary exemptions such as solicitor-client privilege, economic or other interests of the municipality and interference with a law enforcement matter. Once the matter is concluded the possible harms for disclosure decrease and the discretionary exemptions are assessed in the new situational context and the records disclosed, as appropriate. Both Council (who may direct confidential records to be disclosed) and members of the public must adhere to the same requirements of MFIPPA, including review and determination by the Clerk prior to release.

The proposed Routine Disclosure of Records Policy makes it clear which records are readily available to the public improving transparency and gives staff guidelines on what can be released routinely and how records requests will be handled, improving administrative efficiency.

The proposed Routine Disclosure of Records Policy is attached as Appendix A to this report.

Routine Disclosure of FOI Requests

In support of the Town's commitment to transparency, the Clerk will publish the records requested through an MFIPPA request on the Town's website on a go-forward basis, to start in the fall of 2015, once administrative protocols and web page content have been established. Initially, online posts will be a basic chronological list of MFIPPA requests and over time, staff will develop a user-friendly search/query tool.

Posting MFIPPA records online provides all members of the public access to records requested under MFIPPA, enhancing transparency and efficiency for the public and Town staff administering the MFIPPA process. A similar practice is currently in place in the cities of Toronto and Ottawa.

The MFIPPA records posted online:

- Will not include the name of the requestor, as this information is required to be kept confidential by the Information and Privacy Commissioner (IPC), an independent provincial body which adjudicates municipal decisions related to MFIPPA requests;
- Will exclude any information required to be redacted under MFIPPA should it be made available to the public (such as personal information and third party information);
- Will comply with accessibility requirements under the *Accessibility for Ontarians with Disabilities Act*. Where a record cannot be made available in an accessible format, they will be referred to the Clerk's Office to obtain a copy in an accessible format;
- Will not include extremely voluminous records or records which cannot be readily digitized to be made available online. In these circumstances, records will be identified and a notation will be made to contact the Clerk's Office to obtain such records;
- Will not include MFIPPA request records made prior to the date the web page content goes live. MFIPPA requests made prior to the date the web page content goes live may be added over time, depending on available resources and departmental priorities; and,

- Will note if an MFIPPA request has been appealed to the IPC and any supplemental decisions of the IPC or records provided will be posted with the original request when available. As well, links to any relevant IPC orders will be provided.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This policy relates to the key area of focus "Well-Equipped and Managed" of the Strategic Plan. The clear definition of what records and information can be routinely disclosed to the public links directly to the Core Values of Accountability and Accessibility.

CONSULTATION

All departments across the municipality were consulted in the development of the Routine Disclosure of Records Policy and appendices. Other municipalities in Ontario were consulted with respect to their practices and procedures for routine disclosure.

HUMAN RESOURCE CONSIDERATIONS

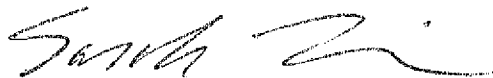
There are no human resource considerations associated with this report.

BUDGET IMPACT

There are no budget considerations associated with this report.

CONTACT

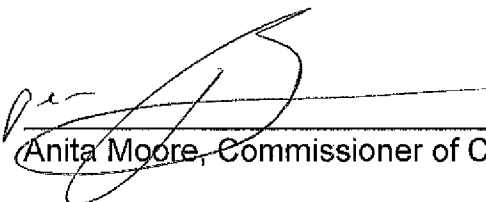
For more information, please contact Sarah Niezen, Records and Projects Coordinator at 905-953-5300, ext. 2213 or sniezen@newmarket.ca.



Sarah Niezen, Records/Projects Coordinator



Andrew Brouwer, Director of Legislative Services/Town Clerk



Anita Moore, Commissioner of Corporate Services



CORPORATE POLICY

Sub Topic:	Routine Disclosure	Policy No. CORP.1-09
Topic:	Corporate Records	Employees Covered: All Employees
Section:	Corporate Services	Council Adoption Date: Oct. 5, 2015
Effective Date: Oct. 5, 2015	Revision No:	Date:

Policy Statement & Strategic Plan Linkages

Routine Disclosure of information is a process that supports government transparency, a principle important to the Town of Newmarket and other governing legislation such the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* and the *Municipal Act, 2001*.

This policy relates to the key area of focus "Well-Equipped and Managed" of the Strategic Plan. The clear definition of what records and information can be routinely disclosed to the public links directly to the Core Values of Accountability and Accessibility.

Purpose

In order to improve public accessibility to records and information and support improved transparency, this policy will establish principles and procedures, for releasing certain types of records and information without requiring the submission of a formal Freedom of Information (FOI) request. The policy will identify to public and staff, the records and information that may be requested and disclosed routinely. It will also identify records and information that could be regularly and actively shared with the public.

Definitions

Active Dissemination means the periodic release or publication of government records and information.

Confidential information means any information that is of a personal nature to Town employees or clients or information that is not available to the public and that, if disclosed, could result in loss or damage to the Corporation or could give the persons to whom it is disclosed an advantage - as defined in Employee Code of Conduct Policy CORP.1-03

Freedom of Information (FOI) means a formal written request made under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

Personal Information as defined in MFIPPA means recorded information about an identifiable individual, including,

- a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- c) any identifying number, symbol or other particular assigned to the individual,
- d) the address, telephone number, fingerprints or blood type of the individual,
- e) the personal opinions or views of the individual except if they relate to another individual,
- f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- g) the views or opinions of another individual about the individual, and
- h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

Responsible Department refers to the department, division, or service area which holds custody and control of the original records for the length of time required under the retention schedule; as defined in Records Retention Policy Corp.1-06 Appendix A;

Routine Disclosure is the routine or automatic release of certain records and information in response to informal requests;

Third Party Information is personal information of a person other than the requester or scientific, technical, commercial, financial or labour relations information supplied in confidence by someone other than the requester or the Town of Newmarket.

Procedures

1. This policy does not apply to records or information subject to the exemptions in section 6 (1), 7 (1), 8 (1) (2), of the *Municipal Freedom of Information and Protection of Privacy Act*. (Appendix A)
2. Records or information identified in Appendix B will be provided or made available to the public or to any requester according to the noted conditions for releasing records. Records can be provided on request or actively disseminated as appropriate.
3. No records containing personal information will be disclosed to anyone other than the individual to whom the information pertains unless first severed; unless authorized by policy, bylaw or legislation. See Protection of Privacy Policy CORP.1-08

Requests for Routine Disclosure

4. Requests may be verbal or in writing. The Town reserves the right to require that a request be submitted in writing where the request is unclear or where the information being requested is of a personal, detailed, or sizeable nature.
5. Requests for records made under this policy should be directed to the responsible department. Notwithstanding, the Town reserves the right to require at any time that requestors make their requests through a single point of contact to be determined by the Town.
6. Records containing personal information will be disclosed to a law enforcement agency in Canada to aid in an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. All such requests must be made in writing to the Clerk or designate (See Request Form Appendix E). Records containing Confidential or Third Party information will not be disclosed to a law enforcement agency without a subpoena.
7. Requests for personal information for the purposes of any type of research or analysis shall require the completion of a signed research agreement (see appendix C) and shall be authorized by the department head or designate. All original completed forms shall be forwarded to the Clerk or designate.
8. Requests for creation of records including compilations, opinions, interpretations, analysis and research by staff may be made by contacting the appropriate department. The Director or Commissioner will evaluate the request following the procedures outlined in Appendix D.

9. Repetitive requests by an individual or organization for significant volumes of records, the separation of a request into several small requests totaling a large volume, requests made to more than one department related to a specific subject or issue will be centrally coordinated and referred to the Clerk or designate.
10. Requests determined to be frivolous or vexatious according to the Staff Guidelines for Assessing Frivolous and Vexatious Requests and Complaints (TBD) may be refused by the department head or designate.
11. Fees may be charged for the reproduction of records where authorized by policy, bylaw or statute.

Active Dissemination

12. Records and information that are to be published will be made available in the appropriate formats as determined by the department head or designate.
13. Where possible, records and information will be published or made available in accessible formats.

Responsibilities of Employees

1. Routine access requests are to be handled by the responsible department.
2. Each department will utilize the attached schedule (Appendix B) to identify records for routine disclosure or active dissemination.
3. Responses to requests for records made under this policy will be acknowledged in a reasonable timeframe in accordance with corporate standards. Requests will be completed in a reasonable timeframe as determined by staff workload.

Review Period

Periodic reviews to attached appendices will be undertaken by the Clerk or designate.

Cross References

Employee Code of Conduct Policy CAO.3-01

Municipal Freedom of Information and Protection of Privacy Act, R.S.O., 1990, C. M.56

Municipal Act, 2001, S.O. 2001, c .25

Records Retention Policy CORP.1-06

Protection of Personal Information Policy CORP.1-08

Accountability and Transparency Policy CORP.1-03

Fees and Charges Bylaw 2014-58

Appendices (Which may be amended)

Appendix A: Sections 6 (1), 7 (1), 8 (1) (2) of the Municipal Freedom of Information and Protection of Privacy Act

Appendix B: Records for Routine Disclosure or Active Dissemination

Appendix C: Research Agreement

Appendix D: Procedures for evaluating Requests for Creation of Records including Compilations, Opinions, Interpretations, Analysis and Research

Appendix E: Law Enforcement Request Form

Appendix A

Sections 6 (1), 7 (1), 8 (1)(2) of the Municipal Freedom of Information and Protection of Privacy Act R.S.O., 1990, C.M.56

6. (1) A head may refuse to disclose a record,
- (a) that contains a draft of a by-law or a draft of a private bill; or
 - (b) that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.
7. (1) A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.
8. (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
- (a) interfere with a law enforcement matter;
 - (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
 - (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
 - (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
 - (e) endanger the life or physical safety of a law enforcement officer or any other person;
 - (f) deprive a person of the right to a fair trial or impartial adjudication;
 - (g) interfere with the gathering of or reveal law enforcement intelligence information respecting organizations or persons;
 - (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
 - (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
 - (j) facilitate the escape from custody of a person who is under lawful detention;
 - (k) jeopardize the security of a centre for lawful detention; or
 - (l) facilitate the commission of an unlawful act or hamper the control of crime. R.S.O. 1990, c. M.56, s. 8 (1); 2002, c. 18, Sched. K, s. 14 (1).

Idem

- (2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record if the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority. R.S.O. 1990, c. M.56, s. 8 (2); 2002, c. 18, Sched. K, s. 14 (2).

Appendix B
Schedule of Records/Information for Routine Disclosure and/or Active Dissemination

Type of Record	Responsible Department(s)	Notes / Conditions on Release of Records
Accessory Dwelling Units	Legislative Services	A list of addresses with registered units is publicly available. Confirmation of registration date is provided verbally. Letters confirming registration dates for specific addresses are provided on request to the property owner or their representative.
Agendas of Council, Committee of the Whole and Advisory Committees	Legislative Services	Excludes Closed Session Materials.
Assessment Rolls	Financial Services	Ownership information can be viewed at the Municipal Office but is not provided over the phone to the public. Information is provided to government or law enforcement organizations upon request.
Agreements and Contracts	Subdivision Site Plan Encroachment	Excludes draft agreements. Signed and approved agreements are provided.
	Employment	Excludes draft agreements and individual employment contracts. Contracts and Agreements with Unions are provided.
	Lease	
	Facility Rental Contracts	Copies are provided to the signing parties.
	Sponsorship	Copies are provided to the parties only. A general summary of the terms of the agreement can be provided on request.
Audit Reports	Financial Services	Unofficial & Official Bid Results released on request and in public reports to Committee of the Whole as required.
Bids and Tenders	Results	

Type of Record		Responsible Department(s)	Notes / Conditions on Release of Records
	Call Documents	Procurement Services	Except for Confidential documents.
	Names of Bidders	Procurement Services	Public information, often announced publicly at bid or tender openings, with the exception of bids for cultural acquisitions.
Budgets – Operating and Capital		Financial Services	
BMA Study		Financial Services	
Bylaws		Legislative Services	
Corporate Policies and Procedures		Human Resources Strategic Initiatives and any department with written procedures	
Corporate structure / Organizational Charts		Human Resources	
Employment and salary statistics		Human Resources	
Expenses	Councillor	Financial Services	
	Departmental		
Freedom of Information Requests		Legislative Services	Identity of requesters is not provided.
Heritage property register & List of designated properties		Legislative Services Planning and Building Services	
Legal Proceedings – Outcomes and status reports		Legal Services	Excludes draft reports, draft decisions and any records subject to solicitor client privilege. Confirmation of issuance of a license for a specific driver is only provided to law enforcement or other government agencies as requested.
Licenses	Taxi	Legislative Services	
Maps		Information Technology	Excludes any maps subject to external copyright.
Minutes of Council, Committee of the Whole and Advisory Committees		Legislative Services	Excludes Closed Session Minutes.
Permits	Building	Planning and Building Services	Permit application forms are released to property owner or their representative. Permit application forms with information of owner removed are released upon request.

Type of Record	Responsible Department(s)	Notes / Conditions on Release of Records
Sign	Legislative Services	Copies of applications may be given to applicant or property owner. Confirmation of permits issued is provided verbally. A list of addresses issued permits is provided.
	Legislative Services	Copies of applications may be given to applicant or property owner. Confirmation of permits issued is provided verbally. A list of addresses issued permits is provided on request.
Planning Applications	Planning and Building Services	Formal comments from internal departments or external agencies can be provided on request.
Planning Policy Documents (Official Plan, Secondary Plan, Zoning By-law, Site Plan Approval process manual and more)	Planning and Building Services	Related background information may be provided on request.
Plans and Drawings	As constructed and profiles	Copies are provided on request. Copyright act applies to some drawings and plans
	Building Plans	Released to property owner or their representative. Copyright Act applies
	Construction specifications and drawings for Roads, Sewer, Watermain, Bridges, etc.	Copies are provided on request. Copyright Act applies to some drawings and plans

Type of Record		Responsible Department(s)	Notes / Conditions on Release of Records
	Site Plans and related information	Planning and Building Services	Site Plans for institutional, commercial, industrial are released on request. Residential site plans are released to property owner or representative only. No correspondence with other members of the public to be released.
	Site Servicing and Grading	Engineering Services	Copies are provided on request. Copyright Act applies to some drawings and plans.
	Subdivision Plans	Planning and Building Services	
Receipts	Recreation Program Registration	Customer Services	Payment receipts for program registrations are provided to account holder.
Reports	Information and Director's	Legislative Services	Excludes confidential reports and memorandums.
	Building Inspection	Planning and Building services	Released to property owner or representative only.
	Property Standards Inspections	Legislative Services	Photos and inspection reports released to property owner or representative only. Verbal confirmation of orders issued and the status of an investigation is provided on request.
	Sewer or water main lateral condition inspections – residential	Public Works Services	Sewer or water main back-up inspection reports released to property owner or their representative.
	Animal Control Incidents	Legislative Services – Licensing	Witness statement of incident provided to witness and pet owner. Personal information about witness to be removed from pet owner's copy. Animal Control officer's notes and report may be provided to parties involved.
	Incident / Accident	Recreation & Culture and Legislative Services	Copies of reports can be provided to individual involved or parent/guardian if identity and relationship verified. Copies will be provided to municipal insurer on request.

Type of Record		Responsible Department(s)	Notes / Conditions on Release of Records
	Playground Inspections	Public Works Services	Provided to School Boards on request where shared use agreements apply. Shared with municipal insurer as needed. Confirmation of inspections completed can be provided on request.
	Sidewalk Inspections	Public Works Services	Shared with municipal insurer as needed.
Security Camera footage		Public Works Services – Facilities, Planning and Building Services	Provided to law enforcement organizations.
Taxes - Property	Statement of Account	Financial Services, Customer Services	Provided to the property owner.
	Tax Certificate	Financial Services	
	Statement of taxes paid	Financial Services	Provided to the property owner.
Voters' List		Legislative Services	Available for viewing during and immediately prior to the election. Not available at any other time. Copies are provided to candidates during election period for election purposes.
Water – Annual Quality Reports		Public Works Services	

**Appendix D - Evaluation Procedures –
Requests for Creation of Records including Compilations, Opinions,
Interpretations, Analysis and Research**

1. All requests will be evaluated fairly and objectively.
2. Such requests must be made in writing and contain sufficient detail to understand the expected result.
3. The Director or Commissioner will review the request to:
 - assess the availability of requested data;
 - time required to complete the project;
 - staff availability to complete the project;
 - the benefit of the report and analysis as compared to the cost (as measured in staff time) to produce the report;
 - consideration will also be given whenever possible, to use prior reports and analysis in lieu of generating new reports and analysis.
4. The Director or Commissioner will delegate the request to the appropriate staff or handle directly.
5. The Director or Commissioner or delegated staff will contact the requestor with a time estimate for accommodating the request and to clarify any questions.
6. Responses will be provided to the requester in writing and will comply with corporate service standards.
7. If the Director or Commissioner determines that the cost of the request is prohibitive they may ask the requester to wait until staff has time to complete the request.
8. Responses may be provided to Town Council or published online as deemed appropriate by the Director or Commissioner.



Research Agreement

This agreement is made between referred to below as the researcher and **The Town of Newmarket** referred to below as the institution.

The researcher has requested access to the following records which contain personal information and are in the custody or in control of the institution:

The researcher understands and promises to abide by the following terms and conditions:

1. The researcher will not use the information in the records for any purpose other than the following research purpose unless the researcher has the institutions written authorization to do so: (Describe research purpose below)

2. The researcher will give access to personal information in a form in which the individual to whom it relates can be identified only to the following persons: (Name the persons below)

3. Before disclosing personal information to persons mentioned above, the researcher will enter into an agreement with those persons to ensure that they will not disclose it to any other person.

4. The researcher will keep the information in a physically secure location to which access is given only to the researcher and to the persons mentioned above.

5. The researcher will destroy all individual identification in the information by:

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6. The researcher will not contact any individual to whom personal information relates directly or indirectly without the prior written authority of the institution.

7. The researcher will notify the institution in writing immediately upon becoming aware that any of the conditions set out in this agreement have been breached.

Researcher

Name:	Signature:
Mailing Address:	
Telephone:	Email:

Representative of the institution

Name:	Signature:
Position:	Telephone:
Mailing Address:	

Signed at:	Date:
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Law Enforcement Officer Request Form: Access to Personal Information

The following information is being requested under section 32(g) of the Municipal Freedom of Information and Protection of Privacy Act which allows for the disclosure of records containing personal information for the purposes of aiding a law enforcement investigation.

This form is not to be used for requests for third party or confidential information held by the Town of Newmarket. All such requests are to be referred to the Town Clerk or designate.

This section to be completed by attending Law Enforcement Officer (including: York Regional Police, OPP, RCMP, Correctional Service of Canada, and Ontario Ministry of Correctional Services).

Subject Name:

Occurrence No.:

Warrant of Apprehension No.:

Review Original Documents: Yes ☐ No ☐

☐ Copies Requested

☐ Original Requested (release original under subpoena only)

I _____ request the personal information described below to aid an investigation undertaken by _____ with view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

This section to be completed by Town Staff:

Description of Records and personal information requested:

Description cont'd	
Location of Records (if known):	
Town staff contact name:	Phone #:

Signature of Investigating Officer

Badge/Identification No.

Date

Signature of Staff Member

Date

Return all completed ORIGINAL forms to the Town Clerk's Office.