

Response to FOIPOP Working Group

Repealing Part XX of the *Municipal Government Act* (and the similar section of the *Halifax Charter*) and having one comprehensive *FOIPOP Act* apply to all public bodies, including municipalities.

- While there was some positive feedback received that consolidating this legislation may be easier to navigate and would create a sense that the legislation is housed in one place, negative feedback was also received
- Municipalities vary in size and scope, and many are smaller organizations that lack resources
- With consolidation, municipal units may be required to comply with regulations and rulings that are all encompassing and may be subject to regulations that are actually aimed at larger public bodies
- Consolidated legislation will be more comprehensive and difficult to navigate
- At present, Section XX of the *Municipal Government Act* concisely addresses the scope of FOIPOP for municipal units, contained within the legislation that is most relevant to this level of government

OIPC Privacy Oversight

- This change was viewed negatively
- These changes will impact municipal units; many units are smaller organizations and will be challenged to comply with these new requirements
- Many member and non-member municipal units do not have the capacity or the resources to conduct Privacy Impact Assessments or have Privacy Management Programs
- These changes in legislation may have the unintended consequence that will result in municipal units having to hire Privacy Officers to manage compliance; this will be costly as this expertise does not come cheap
- This will impact local communities; compliance will become a priority over other local issues

OIPC Binding Recommendations

- This change was viewed negatively
- Concern has been expressed that these changes will impact on municipal autonomy
- With this change, municipal units will either be bound by the binding recommendations of the OIPC or have to challenge the decision in court
- This leaves an expensive court process as the only means of recourse, which is costly in terms of time, money, and resources
- Binding recommendations made by the OIPC could result in municipal units having to change financial, planning, and/or IT systems, which is a costly endeavor
- Costs such as these create a significant impact on the operations and finances of local government
- Concern has been expressed that significant impact can result from OIPC officials making decisions which create an impact they either have not considered or are not concerned with

Timeline for Correction Requests

- Response to the timeline for response to correction requests (30 days) generally viewed as acceptable

Timeline for Public Bodies to respond to a Fee

- Response to the timeline for responding to waiving a fee generally viewed as acceptable, provided the timeline recognizes the time required to accurately assess the request and the scope associated with it

Fees

- We encourage the Working Group to keep in mind that only a small number of municipalities have a dedicated Privacy Officer, who has the expertise to manage this file
- This differentiates local government organizations from other public service bodies and government departments
- Several municipal units have experienced requests for information that can be considered frivolous in scope
- Parameters need to be established to limit or narrow the scope of requests, since some requests are unreasonable
- The nature of the scope impacts all timelines, particularly since municipalities have limited resources to respond
- Hence, there are cost implications
- The \$5 fee is intended to act as a deterrent for the submission of these types of requests
 - Feedback received that a fee should be maintained
 - Some feedback was received that the access fee should be increased to \$25, with the continued ability to ask for the fee to be waived
 - Some feedback was received that legislation should address or limit individuals or groups who make an unreasonable amount of access requests
- The recommendation of the first five hours of search time being free was viewed negatively
 - The ability to charge for costs helps encourage the requestor to narrow the scope of the request in an effort to process the request feasibly
 - Fees should not be set to a particular cost per hour as most requests are being processed and reviewed by staff members earning between \$30 - \$80 per hour
 - These costs do need to be recovered in order to protect the ratepayer
 - Legislation could cap the cost of a search to no more than the documented direct cost recovery
 - The current cost model does not permit recouping the costs of legal review, which can be substantial
- The recommendation for no fee for severing records was received negatively
 - The time spent on this activity is viewed as substantial and time consuming
 - Cost recovery is necessary

Refund fees if decisions are issued late

- We encourage the Working Group to keep in mind that only a small number of municipalities have staff dedicated to managing this type of a file
- Most municipal units are extremely challenged in terms of bandwidth and information requests, particularly those which are broad, demand a lot of resources to process
- The time spent on these activities impacts on the rest of the organization

- The timeline has to recognize that sometimes there are issues that impact the entire community which take precedent over these requests

Requiring all public bodies, including municipalities, to report annually on what they have done to implement the *FOIPOP Act*.

- No feedback received
- Perhaps clarify what value this change presents
- Municipalities vary in size and scope, and many are smaller organizations that lack resources
- Legislation should reflect this

Requiring all public bodies, including municipalities, to have a privacy policy in place that includes a person designated to be responsible for privacy in the organization, training requirements, and processes for responding to privacy breaches and complaints.

- No feedback received
- Municipalities vary in size and scope, and many are smaller organizations that lack resources
- Legislation should reflect this

Any changes in legislation must consider that the duly elected Council should be able to prioritize the work around access and privacy against other priorities in their communities. Further, consider what supports will be available to municipalities should some, or all, of these changes be adopted. Perhaps a role or position, who works with individuals and groups in the municipalities to provide a safe space to talk about an issue or concern without fear of repercussions would be helpful. Financial support for policy, process, and technology changes to be compliant with legislation should also be considered.

Definition of a public body as outlined in Act is too broad:

NSFM is a not-for-profit member-based organization, established by [*An Act to Incorporate the Union of Nova Scotia Municipalities \(1981\)*](#). The objects of the organization are outlined in the Act, but are largely limited in scope to:

- Representing the interests of local government
- Conducting research
- Exchanging information
- Holding conferences and workshops
- Strengthening local governance
- Fostering cooperation between municipal units
- Furthering municipal interests

The OIPC considers NSFM to be a public body, based on the definition, as outlined in Section 3 (1) (i) (b) of the Act. This argument would be based on the OIPC's expansive interpretation of the definition of "public body" under *FOIPOP*, and specifically that NSFM's members are "public officers" in the discharge of their duties.

For clarity, the NSFM membership is comprised of municipalities who have opted to join the organization. The NSFM Board of Directors is comprised of municipally elected officials who are chosen by the elected officials to serve, and one member appointed from the Association of Municipal Administrators Nova

Scotia (AMANS) to serve. The members of the Board are neither appointed by the Governor in Council, nor acting as public officers in the discharge of their duties, nor are they appointed by or through public appointment processes.

The purpose of the Board is outlined and limited in the legislation to the following:

- exercise the powers of the Union
- appoint committees and delegate to committees such powers and duties as the Board of Directors considers necessary or desirable

Typically, not-for-profits are limited in their resource capacity. Based on the applicable legislative definitions and the role/mandate of NSFM, is the definition of a “public body” too broad? Should consideration be given to the definition of a “public body” to limit its scope and for a definition to be legislated that is not so expansive that it includes a not-for-profit member-based organization, such as NSFM.