



November 7, 2024

Sent electronically to: [william.trask@novascotia.ca](mailto:william.trask@novascotia.ca)

William Trask

Chair

Freedom of Information and Protection of Privacy (FOIPOP) Act Review Working Group

Department of Justice

**Re: Freedom of Information and Protection of Privacy (FOIPOP) Act Review**

Dear Mr. Trask:

On behalf of the Board of Directors of the Association of Municipal Administrators, Nova Scotia (AMANS), we appreciate the time you and your colleagues took to meet with us on Friday, October 25 to discuss the work involving the FOIPOP Act Review. As you are aware from that meeting, AMANS has many concerns about implications of the potential amendments from the Office of the Information & Privacy Commissioner (OIPC) to administration, resourcing, autonomy, and capacity of municipalities and villages across the province.

**Consolidation: Privacy Management and Oversight**

On the recommendation considering consolidation of Part XX of the *Municipal Government Act* and *Personal Information International Disclosure Protection Act* into one overarching piece of legislation that would apply to the Government of Nova Scotia and other public bodies including municipalities, villages, and hospitals, we are concerned that the merging of these acts will further stretch the limited resources of municipalities. Consolidation may be more appropriate for bodies that have the infrastructure in place to handle large volumes of requests, but a one size fits all approach to all public sector entities does not take into consideration the capacity and resourcing constraints that are faced at the local government level.

There will be impacts of these changes on municipal autonomy and the ability of smaller entities to comply with new standards with OIPC oversight of municipalities and villages. Many municipalities have neither the resources to do in-depth privacy impact assessments nor the capacity to implement extensive Privacy Management Programs. Even with provincial support, a significant amount of individual work at the municipal level will need to be undertaken.

Proposed consolidation may result in many municipalities having to prioritize hiring Privacy Officers over other competing priorities of Council that have greater impact on the local community. This has been a common occurrence with provincial legislation that impacts municipal operations. There is generally a dearth of resources provided by the Government of Nova Scotia to meet new provincial standards. Furthermore, these matters always take precedent over local issues because they are mandated.

AMANS feels that Part XX of the *Municipal Government Act* as it is currently drafted is specific to the requirements of municipalities and deals concisely with issues related to access and privacy.

### **OIPC and Binding Recommendations**

AMANS has serious concerns regarding recommendations that would make decisions of the OIPC binding upon municipalities. Taking this path would undermine overall municipal autonomy. From AMANS perspective, municipalities will either be bound by the orders of the OIPC – and all associated costs of those orders including reputational and monetary – or will be required to challenge the order in a court of law. This could potentially cost a municipality thousands of dollars for each challenge in both legal fees and staff time. As an example, the legal costs of a planning appeal to the Nova Scotia Utility and Review Board can be in the range of \$30,000 to \$50,000. Municipalities are mandated to deliver local services to communities. If threatened by the possibility of court action with each challenge, legal cases will take precedence for the municipality rather than upholding the quality of services residents expect. In the end, local rate payers will end up bearing the burden of the cost of legal proceedings along with experiencing potential reduction in services as resources are reallocated.

Decisions regarding matters related to privacy could result in municipalities being ordered to make substantial changes to existing systems such as information technology, financial, planning as well as cyber security. These changes could be very costly and may not be aligned with current local administration and operational considerations. AMANS is concerned about the lack of understanding of municipal operations by provincial authorities and the consequences of binding municipalities and villages to these decisions.

In terms of access to information orders, these could also be very costly to municipalities. The proposed amendments do not address the ability for municipalities to recover any of its actual costs in the new fees structure. If a municipality challenges the FOIPOP request and the decision is overturned by the OIPC, municipalities will face significant legal costs in court fees and/or potential consultant fees to enable the order to be satisfied and the work to be completed.

Municipalities and villages require local autonomy to run the day-to-day business of the corporation. By providing municipal governments with enabling legislation or regulation to manage matters related to privacy e.g. land information, etc., it would allow the sector to address issues directly, protect citizens and staff, allow municipalities to retain autonomy, and continue to deliver the services at levels that our residents expect. It would also be beneficial if the Government of Nova Scotia provided support to municipalities with advisory services and expertise from a privacy perspective to help the sector when assistance is required. Alternatively, legislation or regulation

that requires municipal councils to have policies in place that follow the advice of the OIPC could be a more suitable approach. However, the ultimate decision on approving policies would rest with municipal councils. Municipalities need support both preventing and managing a potential privacy breach. A partnership approach, rather than one that is punitive to municipal government, would be beneficial to all parties involved.

## **Fees**

Municipalities rely on fees to recoup time and effort spent on FOIPOP requests. Often this work is done by one staff person in addition to their normal day-to-day role with the municipality. Only a few municipalities have a dedicated staff person that manages FOIPOP requests. Also, many municipalities have Routine Access Policies in place and most of the time information that is requested is already publicly available either through Committee and/or Council agendas, online Council expense claims, online website information on year end results, etc.

Many municipalities are dealing with individuals in the public that submit frivolous and vexatious requests for access to information. The fee is in place as a deterrent to people that submit these types of requests. Eliminating the fee will only compound the impact and potentially increase the number frivolous and vexatious requests municipalities must address. AMANS feels that this fee is outdated, and instead of eliminating the fee, it should be increased to at least \$25 to reflect current staff time and resources spent managing requests with the continued ability to ask for a waiver. AMANS also feels that legislative amendments should be considered that provide municipalities with the tools to identify these individuals/organizations and limit the number of requests and individual/organization can have on the go that directly impacts municipal resources and time.

AMANS also cannot support the potential amendment recommended by the OIPC that the first five hours of searching be free. The cost of recovering requested information should be covered by the applicant. Most of the information municipalities manage is open to the public as noted above. Charging applicants for time spent searching helps encourage narrowing the scope in order to control the cost of time from the municipality. This could also be managed with legislative controls on the breadth of allowable requests; something that encourages applicants to narrow the scope of their request.

Fees should not be limited to a set dollar amount per hour. Most FOIPOP requests are being managed and reviewed by staff who are making between \$30 to \$80 per hour and municipalities should be able to recover those direct costs. Legal review is not included in the current cost recovery model, which is also problematic, especially if decisions will be able to be challenged to the OIPC and the decision of the OIPC is binding. Potential amendments to legislation should be considered that could cap the cost of a search to no more than documented direct cost recovery.

AMANS cannot support removing the fee for severing/redacting records. Requiring municipalities to complete this work at no charge is unreasonable. Redaction within documents is time consuming and is often done in consultation with legal support which further adds time and resources spent managing requests.

AMANS feels that adding a timeline for public bodies to respond to fee waiver requests would be acceptable so long as it recognizes that municipal staff managing these requests have other priorities that require to be met within the community. Time spent is time paid for by the local rate payer so allowing flexibility for municipal staff in managing requests is critical. Some form of schedule to communicate might be a good idea that lets requesters know that more time is required to fulfill requests.

### **Refund fees if decisions are issued late**

As you know, municipal government is not like the provincial government. Municipalities and villages do not have the same amount of staff that departments within the Government of Nova Scotia has at its disposal. Often if a staff person is out of the office, only their most important work is completed. Particularly in smaller municipalities when there is a situation where the staff person responsible for managing FOIPOP requests is unavailable for an extended period of time, the response to a request may take further time to complete. Municipalities want to be in a position to succeed when responding to FOIPOP requests and they will complete them to the best of their ability. AMANS cannot support refunding fees to requestors if decisions are made late. It just does not take into consideration the realities faced by municipal staff on a day-to-day basis, a key theme that is addressed throughout this letter.

### **Moving Forward**

AMANS would urge caution as the FOIPOP Act Review Working Group moves forward with its consultation. The amendments recommended by the OIPC would place municipal autonomy at severe risk and the cost of managing FOIPOP will escalate significantly for rate payers across Nova Scotia. Councils, as elected representatives of local rate payers, should be able to prioritize the work around access and privacy against other priorities in their communities, understanding that larger municipalities are already undertaking this work.

Provincial support, whether its advisory services or expertise, in completing work involving access and privacy would be very beneficial to municipalities and villages. Having specific contacts of experts within the Government of Nova Scotia that municipal staff can reach out to for advice without fear of repercussions would be helpful. Furthermore, with proposed amendments that would directly impact municipal operations and systems, financial support for policy, process, and technology changes to be compliant with legislation should be considered.

The recent consultation feels heavily weighted towards satisfying the OIPC. We would strongly encourage you to continue meeting with the AMANS Board of Directors and engaging with municipal administrators across the province as you move forward with consultations to receive balanced feedback as you work to develop options for government consideration.

Sincerely,



Kim Ramsay

President, AMANS

cc.

Byron Rafuse, Deputy Minister, Department of Municipal Affairs and Housing

Valerie Pottie Bunge, Associate Deputy Minister, Department of Municipal Affairs and Housing

Elizabeth Kennedy, Executive Director, Policy, Planning and Sector Relations, Department of Municipal Affairs and Housing

Juanita Spencer, CEO, Nova Scotia Federation of Municipalities (NSFM)