



AUDIT, FINANCE AND ADMINISTRATION COMMITTEE REPORT 21-001

9:30 a.m.

January 14, 2021
Council Chambers
Hamilton City Hall

Present: Councillors B. Clark (Chair), C. Collins, L. Ferguson, B. Johnson, M. Pearson, A. VanderBeek, and M. Wilson

Absent: Councillor J. Partridge – Personal

Also Present: Councillor J.P. Danko

THE AUDIT, FINANCE AND ADMINISTRATION COMMITTEE PRESENTS REPORT 21-001 AND RESPECTFULLY RECOMMENDS:

1. **Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)) (City Wide) (Item 9.1)**
 - (a) That the City Development Charges (DC) demolition credits for the Mountain Plaza Mall (651-677 Upper James Street), be extended for an additional two years and funded by \$106,579.73 from the Water Reserve, \$212,263.84 from the Wastewater Reserve, and \$521,255.50 from the Unallocated Capital Reserve; with the following conditions:
 - (i) That the site plan be submitted within 9 months; and,
 - (ii) That no further extensions will be granted to this property;
 - (b) That the subject matter respecting the “Delegation from Kevin Rachman, SmartCentres REIT, regarding an Extension to a Development Charges Credit”, be identified as complete and removed from the Audit, Finance and Administration Committee Outstanding Business List.
2. **2020 City of Hamilton External Audit Plan (FCS21002) (City Wide) (Item 9.2)**

That Appendix “A” to Report FCS21002, respecting the 2020 City of Hamilton External Audit Plan prepared by KPMG, be received.

3. City of Hamilton / Ministry of Transportation Municipal Transit Enhanced Cleaning Transfer Payment Agreement (FCS21005) (City Wide) (Item 9.3)

- (a) That the Mayor and the City Clerk be authorized and directed to enter into a Transfer Payment Agreement attached as Appendix “A” to Audit, Finance & Administration Committee Report 21-001 between the City of Hamilton and the Province of Ontario related to the funding commitment made by the Province of Ontario to the municipality regarding Municipal Transit Enhanced Cleaning funding in a form satisfactory to the City Solicitor;
- (b) That, upon being passed, a certified copy of the authorizing By-law and resolution, together with the signed Transfer Payment Agreement for the Municipal Transit Enhanced Cleaning be forwarded to the Ministry of Transportation.

4. Protection of Privacy Policy (FCS21003) (City Wide) (Added Item 9.4)

- (a) That Report FCS21003, respecting the Protection of Privacy Policy, be received;
- (b) That the Protection of Privacy Policy, attached as Appendix “B” to Audit, Finance & Administration Committee Report 21-001, be approved; and,
- (c) That the request for 1 FTE to support the administration of the privacy policy, be referred to 2021 budget deliberations for consideration.

5. Waiving of the ‘False Alarm’ Fee for Famee Furlane (Added Item 11.1)

WHEREAS, the Famee Furlane of Hamilton is the social and cultural centre for Italians from the FRIULI, the northeastern most region of Italy and a non-profit community-based organization with membership comprised mostly of people of FRIULAN origin;

WHEREAS, Famee Furlane of Hamilton’s revenues have been significantly impacted by the Coronavirus pandemic;

WHEREAS, the organization is comprised of volunteers;

WHEREAS, on November 30, 2020 Famee Furlane of Hamilton had a new volunteer testing their fire alarm and he was unaware that the Fire Department needed to be contacted first; and

WHEREAS, Famee Furlane of Hamilton was therefore issued a “false alarm” fee as per the City of Hamilton’s User Fee bylaw;

THEREFORE, BE IT RESOLVED:

That staff be directed to waive the “false alarm” fee of \$753.50 for Famee Furlane’s false alarm on November 30, 2020, as compassionate relief, and that

staff communicate to Famee Furlane of Hamilton that this is a one-time waiving of the 2021 fee only.

FOR INFORMATION:

(a) CHANGES TO THE AGENDA (Item 1)

The Committee Clerk advised of the following changes to the agenda:

5. DELEGATION REQUESTS

- 5.3 Robert Ridley, on behalf of Olympia Gerl, respecting a Water Billing Charging Anomaly (For a future meeting)

9. DISCUSSION ITEMS

- 9.4 Protection of Privacy Policy (FCS21003) (City Wide)

11. NOTICES OF MOTION

- 11.1 Waiving of the 'False Alarm' Fee for Famee Furlane

The agenda for the January 14, 2021 Audit, Finance and Administration Committee meeting was approved, as amended.

(b) DECLARATIONS OF INTEREST (Item 2)

There were no declarations of interest.

(c) APPROVAL OF MINUTES OF PREVIOUS MEETING (Item 3)

(i) December 10, 2020 (Item 3.1)

The Minutes of the December 10, 2020 meeting of the Audit, Finance and Administration Committee were approved, as presented.

(d) DELEGATION REQUESTS (Item 5)

(i) Sanaullah Chaudhry, respecting a water bill totaling \$2,193.34 (for October 18 - Dec. 18th through Alectra-Bill) (For a future meeting) (Item 5.1)

The Delegation Request from Sanaullah Chaudhry, respecting a water bill totaling \$2,193.34 (for October 18 - Dec. 18th through Alectra-Bill), was approved for a future meeting.

- (ii) **Kevin Rachman, SmartCentres REIT, respecting staff Report FCS17008(a) (Item 9.1 on today's agenda) on a request made, on behalf of SmartCentres (For today's meeting) (Item 5.2)**

The Delegation Request from Kevin Rachman, SmartCentres REIT, respecting Item 9.1 - Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)), was approved for a today's meeting.

- (iii) **Robert Ridley, on behalf of Olympia Gerl respecting a Water Billing Charging Anomaly (For a future meeting) (Added Item 5.3)**

The Delegation Request from Robert Ridley, on behalf of Olympia Gerl respecting a Water Billing Charging Anomaly, was approved for a future meeting.

(e) **PUBLIC HEARINGS / WRITTEN DELEGATIONS / VIRTUAL DELEGATIONS (Item 7)**

- (i) **Kevin Rachman, SmartCentres REIT, respecting staff Report FCS17008(a) (Item 9.1 on today's agenda) on a request made, on behalf of SmartCentres (Added Item 7.1)**

Kevin Rachman, SmartCentres REIT, addressed the Committee respecting Item 9.1 - Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)).

The delegation from Kevin Rachman, SmartCentres REIT, respecting Item 9.1 - Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)), was received.

(f) **DISCUSSION ITEMS (Item 9)**

- (i) **Development Charge (DC) Demolition Credit Extension Request, 651-677 Upper James Street (Mountain Plaza Mall) (FCS17008(a)) (City Wide) (Item 9.1)**

That sub-section (a) ***be amended*** as follows:

- (a) That the City Development Charges (DC) demolition credits for the Mountain Plaza Mall (651-677 Upper James Street) ~~for an additional five years, to January 12, 2025, be denied;~~ ***be extended for an additional two years and funded by \$106,579.73 from the Water Reserve, \$212,263.84 from the Wastewater Reserve, and \$521,255.50 from the Unallocated Capital Reserve; with the following conditions:***

- (i) *That the site plan be submitted within 9 months;
and,*
- (ii) *That no further extensions will be granted to this
property;*

For further disposition of this matter, refer to Item 1.

(g) NOTICES OF MOTION (Item 11)

(i) Waiving of the 'False Alarm' Fee for Famee Furlane (Added item 11.1)

The Rules of Order be waived to allow for the introduction of a Motion respecting Waiving of the 'False Alarm' Fee for Famee Furlane.

For further disposition of this matter, refer to Item 5.

(h) PRIVATE AND CONFIDENTIAL (Item 13)

(i) December 10, 2020 – Closed Minutes (Item 13.1)

- (a) The Closed Session Minutes of the December 10, 2020 Audit, Finance and Administration Committee meeting, were approved as presented; and,
- (b) The Closed Session Minutes of the December 10, 2020 Audit, Finance and Administration Committee meeting, remain confidential.

(i) ADJOURNMENT (Item 14)

There being no further business, the Audit, Finance and Administration Committee, adjourned at 11:24 a.m.

Respectfully submitted,

Councillor Clark, Chair
Audit, Finance and Administration
Committee

Angela McRae
Legislative Coordinator
Office of the City Clerk

TRANSFER PAYMENT AGREEMENT FOR MUNICIPAL TRANSIT ENHANCED CLEANING

THIS TRANSFER PAYMENT AGREEMENT for Municipal Transit Enhanced Cleaning (the "Agreement") is effective as of the Effective Date (both "Agreement" and "Effective Date" as further defined in section A1.2 (Definitions)).

B E T W E E N:

Her Majesty the Queen in right of Ontario as represented by the
Minister of Transportation for the Province of Ontario

(the "**Province**")

- and -

City of Hamilton

(the "**Recipient**")

BACKGROUND:

In response to the COVID-19 pandemic and subject to the terms and conditions set out in the Agreement, the Province has agreed to provide funding to the Recipient for the Municipal Transit Enhanced Cleaning ("MTEC" as further defined in section A1.2 (Definitions)).

CONSIDERATION:

In consideration of the mutual covenants and agreements contained in the Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

1.0 ENTIRE AGREEMENT

1.1 Schedules and Sub-schedule to the Agreement. The following schedules and sub-schedule form part of the Agreement:

Schedule "A" - General Terms and Conditions

Schedule "B" - Contact Information and Authorized Representatives

Schedule "C" - Eligible Expenditures and Ineligible Expenditures

Schedule "D" - Claim and Attestation Submission, Supporting Documentation and
Payment Procedures

Sub-schedule "D.1" - Claim and Attestation Form

- 1.2 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties (as defined in section A1.2 (Definitions)) with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

2.0 CONFLICT OR INCONSISTENCY

- 2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between any of the requirements of:

- (a) Schedule "A" (General Terms and Conditions) and any of the requirements of another schedule or a sub-schedule, Schedule "A" (General Terms and Conditions) will prevail to the extent of the inconsistency; or
- (b) a schedule and any of the requirements of a sub-schedule, the schedule will prevail to the extent of the inconsistency.

3.0 COUNTERPARTS

- 3.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

3.2 **Electronic Execution and Delivery of Agreement.**

- (a) The Agreement may:
 - (i) be executed and delivered by scanning the manually signed Agreement as a PDF and delivering it by email to the other Party; or
 - (ii) subject to the Province's prior written consent, be executed and delivered electronically to the other Party.
- (b) The respective electronic signature of the Parties is the legal equivalent of a manual signature.

4.0 AMENDING THE AGREEMENT

- 4.1 **Amendments.** The Agreement may only be amended by a written agreement.

- 4.2 **Execution of Amending Agreements.** An amending agreement under section 4.1 (Amendments) may be executed by the respective representatives of the

Parties listed in Schedule "B" (Contact Information and Authorized Representatives).

5.0 ACKNOWLEDGEMENT

5.1 Acknowledgement. The Recipient acknowledges that:

- (a) the Funds are to assist the Recipient to carry out the MTEC and not to provide goods or services to the Province;
- (b) the Province is not responsible for carrying out the MTEC; and
- (c) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the MTEC or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

5.2 Acknowledgement from Province. The Province acknowledges that the Recipient is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and any information provided to the Recipient in connection with the MTEC or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

- SIGNATURE PAGE FOLLOWS -

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ONTARIO**, represented by the
Minister of Transportation for the Province of Ontario

Date

Name: Caroline Mulroney
Title: Minister

CITY OF HAMILTON

Date

Name: Fred Eisenberger
Title: Mayor

I have authority to bind the Recipient.

Date

Name: Andrea Holland
Title: City Clerk

I have authority to bind the Recipient.

SCHEDULE "A"

GENERAL TERMS AND CONDITIONS

A1.0 INTERPRETATION AND DEFINITIONS

A1.1 Interpretation. For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) all accounting terms not otherwise defined in the Agreement have their ordinary meanings.

A1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Agreement" means this agreement, entered into between the Province and the Recipient, all of the schedules and the sub-schedule listed in section 1.1 (Schedules and Sub-schedule to the Agreement), and any amending agreement entered into pursuant to section 4.1 (Amendments).

"Authorities" means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement or the MTEC, or both.

"Business Day" means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

"Effective Date" means the date of signature by the last signing Party to the Agreement.

"Eligible Expenditures" means the costs of the MTEC that are eligible for funding by the Province under the Agreement, and that are further described in section C2.1 (Scope of Eligible Expenditures).

"Event of Default" has the meaning ascribed to it in section A12.1 (Events of Default).

"Expiry Date" means June 30, 2021.

"Funds" means the money the Province provides to the Recipient pursuant to the Agreement.

"Indemnified Parties" means Her Majesty the Queen in right of Ontario, and includes Her ministers, agents, appointees, and employees.

"Ineligible Expenditures" means the costs of the MTEC that are ineligible for funding by the Province under the Agreement, and that are further described in section C3.1 (Scope of Ineligible Expenditures).

"Loss" means any cause of action, liability, loss, cost, damage, or expense (including legal, expert and consultant fees) that anyone incurs or sustains as a result of or in connection with the MTEC or any other part of the Agreement.

"Maximum Funds" means \$464,413.

"MTEC" means the municipal transit enhanced cleaning as described in section C1.1 (Description of the MTEC).

"Notice" means any communication given or required to be given pursuant to the Agreement.

"Notice Period" means the period of time within which the Recipient is required to remedy an Event of Default, pursuant to paragraph A12.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A12.4 (Recipient not Remediating).

"Parties" means the Province and the Recipient.

"Party" means either the Province or the Recipient.

"Proceeding" means any action, claim, demand, lawsuit, or other proceeding that anyone makes, brings or prosecutes as a result of or in connection with the MTEC or with any other part of the Agreement.

"Records Review" means any assessment the Province conducts pursuant to section A7.4 (Records Review).

"Reports" means the reports described in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedures).

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, approvals, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities.

A2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

A2.1 General. The Recipient represents, warrants and covenants that:

- (a) it has, and will continue to have, the experience and expertise necessary to carry out the MTEC;
- (b) it is in compliance with, and will continue to comply with, all Requirements of Law related to any aspect of the MTEC, the Funds, or both;
- (c) if Funds are used for acquired goods or services, or both, these were acquired in compliance with the Recipient’s policies and procedures and, to the extent possible under the COVID-19 unprecedented times, through a process that promotes the best value for the money;
- (d) it is in compliance with the insurance requirements set out in section A10.1 (Recipient’s Insurance); and
- (e) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds including, without limitation, information relating to any eligibility requirements, the MTEC and related timelines was true and complete at the time the Recipient provided it and will continue to be true and complete.

A2.2 Execution of Agreement. The Recipient represents and warrants that it has:

- (a) the full power and authority to enter into the Agreement; and
- (b) taken all necessary actions to authorize the execution of the Agreement, including passing a municipal by-law authorizing the Recipient to enter into the Agreement.

A2.3 Governance. The Recipient represents, warrants and covenants that it has, will maintain, in writing, and will follow:

- (a) procedures to enable the Recipient to manage the Funds prudently and effectively;
- (b) procedures to enable the Recipient to complete the MTEC successfully;

- (c) procedures to address any identified risks to the MTEC initiatives, all in a timely manner;
- (d) procedures to enable the preparation and submission of all Reports required pursuant to Article A7.0 (Reporting, Accounting and Review); and
- (e) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to carry out its obligations under the Agreement.

A2.4 Supporting Proof. Upon request of the Province and within the timelines set out in the request, the Recipient will provide the Province with proof of the matters referred to in this Article A2.0 (Representations, Warranties and Covenants).

A3.0 TERM OF THE AGREEMENT

A3.1 Term. The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article A11.0 (Termination on Notice) or Article A12.0 (Event of Default, Corrective Action and Termination for Event of Default).

A4.0 FUNDS AND CARRYING OUT THE MTEC

A4.1 Funds Provided. The Province will:

- (a) provide the Recipient up to the Maximum Funds towards the Eligible Expenditures the Recipient incurred and paid for the purpose of carrying out the MTEC;
- (b) provide the Funds to the Recipient in accordance with the payment procedures provided for in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedures); and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

A4.2 Limitation on Payment of Funds. Despite section A4.1 (Funds Provided):

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides evidence satisfactory to the Province that the Recipient's council has authorized the execution of the Agreement by the

Recipient by municipal by-law; and

- (b) the Province may adjust the amount of Funds it provides to the Recipient based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.2 (Preparation and Submission).

A4.3 Use of Funds and Carry Out the MTEC. The Recipient will do all of the following:

- (a) spend the Funds only for Eligible Expenditures; and
- (b) not use the Funds to cover any Eligible Expenditure that has or will be funded or reimbursed by one or more of any third party, including any level of government, or ministry, agency, or organization of the Government of Ontario, other than the Province pursuant to the Agreement.

A4.4 Rebates, Credits and Refunds. The Province will calculate Funds based on the actual Eligible Expenditures to the Recipient to carry out the MTEC, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

A5.0 RECIPIENT'S DISPOSAL OF ASSETS

A5.1 Disposal. The Recipient agrees not to sell, lease or otherwise dispose of any assets acquired with the Funds without the Province's prior written consent.

A6.0 CONFLICT OF INTEREST

A6.1 No Conflict of Interest. The Recipient represents and warrants that there is and there will continue to be no conflict of interest in respect to how the MTEC has been and will continue to be carried out and that the Recipient will use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 Conflict of Interest Includes. For the purposes of this Article A6.0 (Conflict of Interest), a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships, or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased, and impartial judgment relating to the MTEC, the use of the Funds, or both.

A6.3 Disclosure to Province. The Recipient will:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential, or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

A7.0 REPORTING, ACCOUNTING AND REVIEW

A7.1 Province Includes. For the purposes of sections A7.4, A7.5 and A7.6, "Province" includes any auditor or representative the Province may identify.

A7.2 Preparation and Submission. The Recipient will:

- (a) submit to the Province at the address referred to in section A15.1 (Notice in Writing and Addressed):
 - (i) all Reports in accordance with the timelines and content requirements as provided for in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedure); and
 - (ii) any other reports in accordance with any timelines and content requirements the Province may specify from time to time; and
- (b) ensure that all Reports and other reports are:
 - (i) completed to the satisfaction of the Province; and
 - (ii) signed by an authorized signing officer of the Recipient.

A7.3 Record Maintenance. The Recipient will keep and maintain for a period of seven years from their creation:

- (a) proper and accurate financial accounts and records, kept in a manner consistent with generally accepted accounting principles in effect in Canada or with the public sector accounting standards approved or recommended by the Public Sector Accounting Board including, without limitation, its contracts, invoices, statements, receipts, and vouchers and any other evidence of payment relating to the Funds or otherwise to the MTEC; and
- (b) all non-financial records and documents relating to the Funds or otherwise to the MTEC.

A7.4 Records Review. The Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to conduct an audit or investigation of the Recipient regarding the Recipient's compliance with the Agreement, including assessing any of the following:

- (a) the truth of any of the Recipient's representations and warranties; and
- (b) the Recipient's allocation and expenditure of the Funds.

A7.5 Inspection and Removal. For the purposes of any Records Review, the Province may take one or more of the following actions:

- (a) inspect and copy any records and documents referred to in section A7.3 (Record Maintenance); and
- (b) remove any copies the Province makes pursuant to section A7.5(a).

A7.6 Cooperation. To assist the Province in respect of its rights provided for in section A7.5 (Inspection and Removal), the Recipient will cooperate with the Province by:

- (a) ensuring that the Province has access to the records and documents including, without limitation, paid invoices and original receipts, wherever they are located;
- (b) assisting the Province in copying records and documents;
- (c) providing to the Province, in the form the Province specifies, any information the Province identifies; and
- (d) carrying out any other activities the Province requests.

A7.7 No Control of Records. No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

A7.8 Auditor General. The Province's rights under Article A7.0 (Reporting, Accounting and Review) are in addition to any rights provided to the Auditor General pursuant to section 9.2 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 Acknowledge Support. Unless the Province directs the Recipient to do otherwise, the Recipient will in each of its MTEC-related publications whether written, oral or visual:

- (a) acknowledge the support of the Province for the MTEC;
- (b) ensure that any acknowledgement is in a form and manner as the Province directs; and
- (c) indicate that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A9.0 INDEMNITY

A9.1 Indemnification. The Recipient will indemnify and hold harmless the Indemnified Parties from and against any Loss and any Proceeding, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A10.0 INSURANCE

A10.1 Recipient's Insurance. The Recipient is responsible for its own insurance and has been carrying, at its own costs and expense, and requiring the same from its subcontractors, all the necessary and appropriate insurance that a prudent municipality in similar circumstances would maintain in order to protect itself and the Indemnified Parties and support the Recipient's indemnification set out in section A9.1 (Indemnification). For greater certainty, the Recipient is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Recipient by the Government of Ontario for any Loss or Proceeding that may arise out of the MTEC or the Agreement.

A11.0 TERMINATION ON NOTICE

A11.1 Termination on Notice. The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 30 days' Notice to the Recipient.

A11.2 Consequences of Termination on Notice by the Province. If the Province terminates the Agreement pursuant to section A11.1 (Termination on Notice), the Province may take one or more of the following actions:

- (a) cancel all further instalments of Funds; and
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient.

A12.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A12.1 Events of Default. It will constitute an Event of Default if, in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement including, without limitation, failing to do any of the following in accordance with the terms and conditions of the Agreement:

- (a) use or spend any of the Funds or related interest for a purpose other than that contemplated under the Agreement without the prior written consent of the Province; or
- (b) provide, in accordance with section A7.2 (Preparation and Submission), Reports or such other reports as may have been requested pursuant to paragraph A7.2(b).

A12.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) provide the Recipient with an opportunity to remedy the Event of Default;
- (b) suspend the payment of Funds for such period as the Province determines appropriate;
- (c) reduce the amount of the Funds;
- (d) cancel all further instalments of Funds;
- (e) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (f) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient;
- (h) demand from the Recipient the payment of an amount equal to the costs the Province incurred or incurs to enforce its rights under the Agreement, including the costs of any Record Review and the costs it incurs to collect any amounts the Recipient owes to the Province; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A12.3 Opportunity to Remedy. If, in accordance with paragraph A12.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

A12.4 Recipient not Remediating. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to paragraph A12.2(a), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i).

A12.5 When Termination Effective. Termination under this Article A12.0 (Event of Default, Corrective Action, and Termination for Default) will take effect as provided for in the Notice.

A13.0 FUNDS UPON EXPIRY

A13.1 Funds Upon Expiry. The Recipient will, upon expiry of the Agreement, pay to the Province any Funds and interest remaining in its possession or under its control.

A14.0 DEBT DUE AND PAYMENT

A14.1 Payment of Overpayment. If at any time the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement, the Province may:

- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
- (b) demand that the Recipient pay an amount equal to the excess Funds to the Province.

A14.2 Debt Due. If, pursuant to the Agreement:

- (a) the Province demands from the Recipient the payment of any Funds or an amount equal to any Funds; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not the Province has demanded their payment,

such amounts will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay the amounts to the Province immediately, unless the Province directs otherwise.

A14.3 Interest Rate. The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

A14.4 Payment of Money to Province. The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province as provided for in Schedule "B" (Contact Information and Authorized Representatives).

A14.5 Fails to Pay. Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

A15.0 NOTICE

A15.1 Notice in Writing and Addressed. Notice will be:

- (a) in writing;
- (b) delivered by email, postage-prepaid mail, personal delivery or courier; and
- (c) addressed to the Province and the Recipient as set out in Schedule "B" (Contact Information and Authorized Representatives), or as either Party later designates to the other by Notice.

A15.2 Notice Given. Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; and
- (b) in the case of email, personal delivery or courier on the date on which the Notice is delivered.

A15.3 Postal Disruption. Despite paragraph A15.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail will not be deemed to be given; and
- (b) the Party giving Notice will provide Notice by email, personal delivery or courier.

A16.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A16.1 Consent. When the Province provides its consent pursuant to the Agreement:

- (a) it will do so by Notice;
- (b) it may attach any terms and conditions to the consent; and
- (c) the Recipient may rely on the consent only if the Recipient complies with any terms and conditions the Province may have attached to the consent.

A17.0 SEVERABILITY OF PROVISIONS

A17.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement.

A18.0 WAIVER

A18.1 Waiver Request. Either Party may, by Notice, ask the other Party to waive an obligation under the Agreement.

A18.2 Waiver Applies. If in response to a request made pursuant to section A18.1 (Waiver Request) a Party consents to a waiver, the waiver will:

- (a) be valid only if the Party that consents to the waiver provides the consent by Notice; and
- (b) apply only to the specific obligation referred to in the waiver.

A19.0 INDEPENDENT PARTIES

A19.1 Parties Independent. The Recipient is not an agent, joint venturer, partner or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any

actions that could establish or imply such a relationship.

A20.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A20.1 No Assignment. The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A20.2 Agreement Binding. All rights and obligations contained in the Agreement will extend to and be binding on:

- (a) the Recipient's successors, and permitted assigns; and
- (b) the successors to Her Majesty the Queen in right of Ontario.

A21.0 GOVERNING LAW

A21.1 Governing Law. The Agreement and the rights, obligations and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

A22.0 FURTHER ASSURANCES

A22.1 Agreement into Effect. The Recipient will:

- (a) provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains; and
- (b) do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

A23.0 JOINT AND SEVERAL LIABILITY

A23.1 Joint and Several Liability. Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

A24.0 RIGHTS AND REMEDIES CUMULATIVE

A24.1 Rights and Remedies Cumulative. The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in

substitution for, any of its rights and remedies provided by law or in equity.

A25.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A25.1 Other Agreements. If the Recipient:

- (a) has failed to comply with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a "**Failure**");
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

A26.0 SURVIVAL

A26.1 Survival. The following Articles, sections and paragraphs, and all applicable cross-referenced Articles, sections, paragraphs, schedules and sub-schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Articles 1.0 (Entire Agreement), 2.0 (Conflict or Inconsistency), 5.0 (Acknowledgment), and A1.0 (Interpretation and Definitions) and any other applicable definitions, paragraph A2.1(a), sections A4.4 (Rebates, Credits and Refunds), A5.1 (Disposal), A7.1 (Province Includes), A7.2 (Preparation and Submission) to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province, A7.3 (Record Maintenance), A7.4 (Records Review), A7.5 (Inspection and Removal), A7.6 (Cooperation), A7.7 (No Control of Records), A7.8 (Auditor General), Articles A8.0 (Communications Requirements) and A9.0 (Indemnity), sections A11.2 (Consequences of Termination on Notice by the Province) and A12.1 (Events of Default), paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i), Articles A13.0 (Funds Upon Expiry), A14.0 (Debt Due and Payment), A15.0 (Notice) and A17.0 (Severability of Provisions), section A20.2 (Agreement Binding), Articles A21.0 (Governing Law), A23.0 (Joint and Several Liability), and A24.0 (Rights and Remedies Cumulative), and this Article A26.0 (Survival).

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"
CONTACT INFORMATION AND AUTHORIZED REPRESENTATIVES

Contact information for the purposes of Notice to the Province	<p>Address: Strategic Investments Office Ministry of Transportation 777 Bay, 30th Floor Toronto, ON M7A 2J8</p> <p>Attention: Kevin Dowling, Manager, Strategic Investments Office</p> <p>Phone: (416) 585-6312 Email: kevin.dowling@ontario.ca</p>
Contact information for the purposes of Notice to the Recipient	<p>Position: Director of Transit Address: 2200 Upper James Street Mount Hope ON L0R 1W0</p> <p>Attention: Debbie Dalle Vedove</p> <p>Phone: (905) 564-2424 x1860 Email: debbie.dallevedove@hamilton.ca</p>
Contact information for the senior financial official in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province in respect of the Agreement	<p>Position: General Manager, Finance and Corporate Services Address: 71 Main St W Hamilton ON L8P 4Y5</p> <p>Attention: Mike Zegarac</p> <p>Phone: (905) 540-6150 Email: mike.zegarac@hamilton.ca</p>
Authorized representative of the Province for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)	<p>Position: Director, Municipal Programs Branch, Ministry of Transportation</p>
Authorized representative of the Recipient for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)	<p>Position: Director of Transit</p>

SCHEDULE "C"

ELIGIBLE EXPENDITURES AND INELIGIBLE EXPENDITURES

C1.0 MTEC

- C1.1 Description of the MTEC.** To address health related issues in respect of the COVID-19 pandemic, the Recipient has been acquiring goods and services for the MTEC of its transit system. Subject to Article C2.1 (Scope of Eligible Expenditures) and for greater clarity, the costs of the MTEC that are eligible for funding by the Province under the Agreement are only those that are supplemental to the Recipient's regular transit system cleaning.

C2.0 ELIGIBLE EXPENDITURES

- C2.1 Scope of Eligible Expenditures.** Subject to Article C3.0 (Ineligible Expenditures), Eligible Expenditures include the direct costs incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020 and that, in the opinion of the Province, are considered to have been properly and reasonably incurred and are necessary for the MTEC of transit vehicles and any other public and non-public facing transit assets, that provide or support transit services. In addition to having been incurred, these costs will have to have been paid by the Recipient prior to being submitted to the Province for payment and may include:

- (a) costs of cleaning materials for the MTEC;
- (b) costs of hand sanitizer for passenger and staff use;
- (c) costs of safety wear for the MTEC, such as gloves or goggles;
- (d) costs of equipment purchased for the MTEC;
- (e) costs of contracted services for the MTEC;
- (f) costs of salaries, including redeployment of staff, for the MTEC; and
- (g) any other costs that, in the opinion of the Province, are considered necessary for the MTEC.

C3.0 INELIGIBLE EXPENDITURES

- C3.1 Scope of Ineligible Expenditures.** Without limitation, the following costs will be considered Ineligible Expenditures:

- (a) costs incurred before April 1, 2020 and after December 31, 2020;
- (b) costs not paid prior to having been submitted to the Province for payment;
- (c) marketing costs including advertising, promotion and communications;
- (d) core administrative and overhead costs (e.g., rent, telephone and communication lines/services, insurance, and computers);
- (e) Recipient's staff, including permanent and seasonal, salaries and travel costs unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (f) legal, audit, or interest fees;
- (g) budget deficits;
- (h) personal protective equipment, unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (i) refundable Harmonized Sales Tax or other refundable expenses (e.g., security deposits, etc.); and
- (j) any other costs that, in the opinion of the Province, are considered ineligible for payment under the Agreement.

SCHEDULE "D"

CLAIM AND ATTESTATION SUBMISSION, SUPPORTING DOCUMENTATION AND PAYMENT PROCEDURES

D1.0 CLAIM AND ATTESTATION

D1.1 Claim and Attestation from the Recipient's Senior Financial Official. The Recipient will use the form in Sub-schedule "D.1" (Claim and Attestation Form) for the submission of its claim for payment.

D2.0 SUPPORTING DOCUMENTATION

D2.1 Report on Expenditures and Additional Report and Information. The Recipient will, together with the claim form described in section D1.1 (Claim and Attestation from the Recipient's Senior Financial Official), submit the following supporting documentation with its claim for payment:

- (a) a report on expenditures using the form in Appendix A (Form of Report on Expenditures) to Sub-schedule "D.1" (Claim and Attestation Form); and
- (b) any additional reports or information, or both, the Province may request at its sole discretion and in a form provided by the Province.

D3.0 PAYMENT PROCEDURES

D3.1 Submission of Claim for Payment and Required Documentation. The Recipient will submit its claim for payment, together with the supporting documentation set out in section D1.1 (Claim and Attestation from the Recipient's Senior Financial Official) and section D2.1 (Report on Expenditures and Additional Report and Information) on or before January 31, 2021.

D3.2 Claim Payments. Subject to the terms and conditions set out in the Agreement and if due and owing under the Agreement, the Province will use its reasonable efforts to make the payment to the Recipient for the claim submitted pursuant to section D3.1 (Submission of Claim for Payment and Required Documentation) in a timely manner.

D3.3 No Interest. The Province will under no circumstances be liable for interest for failure to make a payment within the time limit provided for in section D3.2 (Claim Payments).

D3.4 **No Obligation to Pay.** For greater clarity and without limitation to any other right of the Province, the Province will have no obligation to pay a claim if it does not meet the terms and conditions of the Agreement including, without limitation, if the claim is missing any of the required supporting documentation or is submitted after January 31, 2021, or both.

SUB-SCHEDULE "D.1"
CLAIM AND ATTESTATION FORM

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transportation Programs Office
10th Floor
151 Bloor Street West
Toronto, ON M5S 1S4

Attention: Manager, Transportation Programs Office
Email: MTO-Transit Cleaning Funding @Ontario.ca

FROM: **[Insert address of the senior official]**

Attention: **[insert name and title of Recipient senior official]**
Telephone No.: **[insert telephone number of Recipient senior official]**

RE: Transfer Payment Agreement for Municipal Transit Enhanced Cleaning

In the matter of the Transfer Payment Agreement for Municipal Transit Enhanced Cleaning entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the **[insert the name of the Recipient]** (the "Recipient"), on **[insert the month day, and year]** _____ (the "Agreement").

I, _____ **[insert the name and title of the senior official]**, an authorized representative of the Recipient, having made such inquiries as I have deemed necessary for this attestation, hereby certify that to the best of my knowledge, information and belief.

1. On and as of the date set out below:
 - a. all representations and warranties contained in Article A2.0 (Representations, Warranties and Covenants) and section A6.1 (No Conflict of Interest) of the Agreement are true and accurate;
 - b. Funds have been solely used on Eligible Expenditures as claimed in this Claim and Attestation Form and the Form of Report on Expenditures attached as Appendix A (Form of Report on Expenditures) to this Claim and Attestation Form;

- c. the Recipient is in compliance with all the terms and conditions of the Agreement, and no Event of Default, as described in the Agreement, has occurred and is continuing; and
 - d. all records (including, without limitation, contracts, invoices, statements, receipts, vouchers) are being retained in accordance with the requirements of the Agreement.
2. The Eligible Expenditures have been incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020, and paid on or before January 31, 2021.

By signing below, I hereby claim a payment in the amount of \$ _____, on behalf of the Recipient, on account of the Province's contribution towards the Eligible Expenditures of the MTEC costs.

Declared at _____ (city), in the Province of Ontario, this _____ day of _____, 20____.

(Signatures)

Name:

Title:

Witness Name:

Title:

I have authority to bind the Recipient.

**APPENDIX A
FORM OF REPORT ON EXPENDITURES
TO
SUB-SCHEDULE "D.1" (CLAIM AND ATTESTATION FORM)**

MTEC Expenditure Report - April 1, 2020 to December 31, 2020	
Date:	
Recipient's Name:	
Total Funds Allocated:	
Total Funds Claimed:	
Remaining Allocation:	

Date of Invoice (if Applicable) (DD/MM/YY)	Period of Work Performed		Vendor Name	Description of Expense	Eligibility per Schedule "C"	Amount Paid (\$)				
	From (DD/MM/YY)	To (DD/MM/YY)				Subtotal w/o HST (\$) (a)	Total HST (\$) (b)	Recoverable HST (\$) (c)	Net Total (\$) (a) + (b) - (c)	Amount Claimed (\$)
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
Total						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

<u>Results Achieved with Provincial Funding:</u>
<u>Additional Comments:</u>
<u>Conclusion:</u>

Recommended for payment:

Date:

**[insert/print the name and title of the
Recipient's authorized representative]**

Recommended for payment:

Date:

**[insert/print the name of the
Director]
Director, Ministry of Transportation**

Protection of Privacy Policy

Policy Statement

The City of Hamilton recognizes that it is responsible for information assets created through the provision and management of city services. Ensuring sensitive personal information is protected is integral to maintaining public trust and confidence in government.

The City is legislatively obligated to protect personal information under *the Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA) and the *Personal Health Information Protection Act* (PHIPA). The City is committed to protecting the privacy of individuals while balancing an open, transparent and accessible approach to governing.

The City will embed the protection of privacy 'into the design and architecture of IT systems and business practices'.¹

Purpose

The purpose of this policy is to establish staff accountability, define roles and responsibilities and support staff through legislated privacy requirements and guidelines. All City Departments shall adhere to the requirements of MFIPPA in respect of exemptions to disclosure of sensitive personal and confidential information.

MFIPPA provides a formal right of access to records that are in the City's custody, or under its control, subject to limited and specific exemptions to disclosure. MFIPPA also provides individuals with an expectation of privacy.

Application

This policy applies to:

- All personal information including personal health information in the custody and control of the City, not limited by the scope of any individual statute or regulation.
- All City employees including full-time, part-time, casual, contract, volunteer and student/co-op placement employees hired or placed by the City.
- Vendors, contractors or consultants working for the City. They are required to uphold MFIPPA requirements and are subject to the same obligations for the handling of personal information, including privacy breach reporting. Departments are required to include MFIPPA obligations when contracting with Vendors and under Vendor

¹ Privacy by Design *The 7 Foundational Principles*, Ann Cavoukian, Ph.D

Performance Management obligations, this includes undertaking privacy impact assessments and identifying privacy design obligations when a Vendor is handling personal information on behalf of the City.

- The delivery of services, systems and activities that manage information within the City. Privacy obligations and overall governance of personal information must be considered within existing policies and practices of the City.

This Policy does not apply to:

- Personal information and/or constituency records of Members of Council, and/or Council appointees, which are not considered to be in the custody and control of the City. The use of personal and confidential information by elected officials and or appointee's is governed by the Code of Conduct. Complaints regarding the misuse of such information are investigated by the City's Integrity Commissioner.
- The City's Auditor General and Integrity Commissioner / Lobbyist Registrar are directly accountable to City Council. The Municipal Act requires that these officers perform their duties in an independent matter and establishes confidentiality requirements of their information.
- Separate institutions as defined under MFIPPA, including but not limited to Library Board, Police Services Board, CityHousing Hamilton.
- Information subject to legislation that overrides the privacy provisions of MFIPPA.

Policy Requirements

Personal Information - Protection of Personal Privacy

One of the key principles of the *Municipal Freedom of Information and Protection of Privacy Act* is the protection of personal privacy. For the definition of personal information, see Appendix A entitled 'What is Personal Information'.

Collection of Personal Information

The City's employees, or agents acting on the City's behalf, shall only collect personal information that they are authorized to collect. This authority can be one of the following:

- collection of the information is expressly authorized by provincial or federal legislation;
- the information is used for the purposes of law enforcement; or,
- the information is necessary to the proper administration of a lawfully authorized activity.

The City shall only collect personal information directly from the individual to whom it relates, except in circumstances set out in MFIPPA or other legislation. Examples of these include:

- where the individual authorizes another method of collection;
- the personal information may be disclosed to the City under the authority of the Freedom of Information and Protection of Privacy Act ("FIPPA");
- where the Information & Privacy Commissioner of Ontario (IPC) has authorized the City to collect the information indirectly from another person;
- the information is collected for the purpose of law enforcement; and,
- where other legislation provides for a different method of collection.

When collecting personal information, the City must provide the individual with a notice of collection statement that contains:

- the City's legal authority to collect the information;
- the principal purposes for which the information is intended to be used; and,
- the title, business address and telephone number of an officer or employee who can answer questions about the collection (why it is being collected, how it will be used).

Notice of collection statements are prepared by staff in consultation with the Privacy staff. See Appendix B attached entitled Providing Notice of Collection.

Use of Personal Information

The City is required to take reasonable steps to ensure that personal information is not used unless it is accurate and up to date. The City may only use information if the use is consistent with the purpose for which it was collected. Any other use may only occur with the expressed consent of the individual.

The City is only permitted to use personal information:

- if the individual has consented to the particular information being used;
- for the purpose for which it was obtained or compiled;
- for a consistent purpose, (i.e. the individual might reasonably expect the use);
- for a purpose permitted by MFIPPA or other legislation; or
- for the purpose for which the information was collected by the City under MFIPPA.

Disclosure of Personal Information

The City is only permitted to disclose personal information in the following circumstances:

- in compliance with Part I of the Act – Right of Access, or other provisions of MFIPPA;
- if the individual has consented to its disclosure;
- for the purpose for which it was collected;
- for a consistent purpose, (i.e. the individual might reasonably expect the disclosure);

- disclosure is made to an employee, consultant or agent of the City who needs the record in the performance of their duties, and if the disclosure is necessary and proper in the discharge of the City's functions;
- to comply with federal or provincial legislation;
- to a law enforcement agency in Canada to aid an investigation;
- in compelling circumstances affecting personal health or safety;
- in compassionate circumstances, (to contact next of kin or friend of an injured, ill or deceased person);
- to a provincial or federal government department for auditing of cost-shared programs; and
- as specifically permitted by other legislation.

Retention of Personal Information

Personal information that has been collected by the City shall be retained for at least one year after it is used, unless another retention period has been provided in the City's Records Retention by-law 11-040, as amended, or the individual has consented to its earlier disposal. The purpose of this retention period is to ensure that individuals have a reasonable opportunity to obtain access to their personal information.

Privacy Complaints and Investigations

Individuals may submit a complaint to the Information & Privacy Commissioner of Ontario (IPC) if they believe that the City of Hamilton has improperly collected, used, disclosed, retained or disposed of their personal information. The City Clerk shall receive notice from the IPC in the event that an individual has lodged a complaint and an investigation is being undertaken.

The City's corporate Privacy Office shall, in consultation with appropriate Division staff, represent the institution during a privacy complaint investigation. The responsible Divisional employee shall cooperate and assist the Privacy Office during the course of the investigation.

Responding to a Privacy Breach Under the Act

Upon learning of a privacy breach or a potential privacy breach under MFIPPA, staff shall immediately notify their Manager and the Privacy Office. The Privacy Office will assist the responsible employee in responding to the breach of personal privacy.

See Appendix C for Guidelines on Managing Privacy Breaches.

Roles and Responsibilities

Employees

- Protect privacy in executing operational duties and ensure personal information is handled with care and confidentiality in all City activities.
- Ensure the collection, use and disclosure of personal information is consistent with obligations of MFIPPA and guidance of the IPC and Privacy Office.
- Only collect personal information with proper authority and informed consent and only collect information necessary and proper in the discharge of the Division's functions.
- Ensure personal information is accessed only as required to carry out assigned duties and service delivery.
- Report a potential privacy breach to a supervisor/manager immediately if unauthorized access, collection, or dissemination of information is suspected. Assistance is sought to contain and assess impact and response to a potential breach.
- Take mandatory privacy awareness training for the appropriate handling of personal information to understand responsibilities and protect privacy in the performance of their duties.
- Take reasonable steps to ensure that personal information is not used unless it is accurate and up to date.
- Ensure privacy obligations and impact is assessed for all projects that handle data through the completion of a Privacy Impact Assessment. Project management must include an assessment of data architecture, a review of governance obligations, and required safeguards.
- Ensure Vendor contracts and performance complies with all privacy requirements, including mandatory breach response and reporting to the City.

Management within each Department

- Promote a culture and business practices that ensure City information is accessible, while respecting legislative requirements and the principles for responsible collection, use, protection and disclosure of personal information set out in this policy;
- Ensure that policies, procedures, and privacy breach reporting requirements are followed to prevent unauthorized use or disclosure of personal information. This may include security and safeguarding protocols for information management and data governance within a Department/Division, between Departments/Divisions, Vendor responsibilities, and external access.
- Ensure that the retention of personal information under the custody and control of the City is in keeping with this Policy and the Records Retention By-law 11-040;

- When introducing new services, programs, systems and technologies, prepare a Privacy Impact Assessment to address privacy implications, as required, in compliance with the principles set out in this policy;
- With respect to information security, ensure all information is protected and cannot be accessed by unauthorized individuals and processes are in place to maintain its integrity;
- Ensure privacy is embedded into the creation of all procedures for the collection, use, protection and disclosure of personal information by City employees and third parties (e.g. vendors, contractors);
- Release requested personal information directly to a requesting individual, when the information does not fall under one of the exemptions to disclosure of personal information set out in Section 38 of MFIPPA. When not permitting the release of personal information to the individual to whom it pertains, advise that individual that they may file a formal request for access to information from the Access & Privacy Office; and
- Report apparent and suspected breaches of privacy to the Privacy Office immediately, taking steps to contain the breach and mitigate privacy risks as first priority.

Medical Officer of Health

- Responsible and accountable for overseeing the administration of the Personal Health Information Protection Act (PHIPA)

City Clerk

- Responsible and accountable for overseeing the administration of the *Municipal Freedom of Information & Protection of Privacy Act* (MFIPPA), and the *Personal Information Protection and Electronic Documents Act* (PIPEDA) within the municipality and for decisions made under the above legislation;
- Ensure oversight and compliance with this policy; and
- Investigate and respond to privacy complaints received from the Information Privacy Commissioner of Ontario (IPC).

Director of Information Technology

- Ensure all information handled on behalf of a Department is subject to IT architecture and governance that upholds the data use and access restrictions required under the consent and use for which the information was collected.
- Ensure Privacy by Design principles, attached as Appendix D, privacy risk assessment and data architecture is integrated throughout IT project design, security assessment, business impact assessment, and project management governance, in cooperation with the Privacy Office.

- Ensure platforms, data handling protocols, data analytics, and associated governance do not create or access personally identifiable information without consent.
- Ensure IT Vendor obligations uphold MFIPPA requirements.
- Establish clear breach response protocols for all IT data architecture projects
- Establish audit trail best practices that are supported by technology tools in place within the City to ensure unauthorized internal access to information is monitored and reported.

Manager, Corporate Records and Freedom of Information (Office of the City Clerk, Privacy Office)

- Manage the corporate Privacy Office;
- Provide advice and establish standards, protocols and procedures to support this policy;
- Review Departmental guidelines and procedures with respect to privacy upon request from the Department;
- Review and make recommendations regarding the privacy impact of new and existing City services, programs, systems and technologies upon request from the Department (i.e. conduct Privacy Impact Assessments);
- Develop privacy awareness tools and training and make available to all City staff to improve privacy awareness; and
- Investigate reports of privacy breaches and complaints of the misuse of personal information brought to their attention by City staff and advise staff on their response.

Program Manager, Healthy and Safe Communities

- Provide advice and establish standards, protocols and procedures to support the *Personal Health Information Protection Act* (PHIPA);
- Investigate reports of privacy breaches and complaints of the misuse of personal health information brought to their attention by City staff and advise staff on their response.

Monitoring

The City Clerk shall be responsible for receiving complaints or concerns related to this policy.

Legislative and Administrative Authorities

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) governs the collection, use and disclosure of information by certain institutions in Ontario including municipalities, public library boards, and police services boards. The purpose of MFIPPA is to provide a right of access to information in the custody of and under the control of the institutions with the principle that information should be made available to the public and that necessary

exemptions from the right of access should be limited and specific. The purpose of MFIPPA is also to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The *Personal Health Information Protection Act* (PHIPA) sets out rules for the collection, use and disclosure of personal health information. These rules will apply to all health information custodians operating within the province of Ontario and to individuals and organizations that receive personal health information from health information custodians. The rules recognize the unique character of personal health information – as one of the most sensitive types of personal information that is frequently shared for a variety of purposes, including care and treatment, health research, and managing our publicly funded health care system.

The *Personal Information Protection and Electronic Documents Act* (PIPEDA) is a Canadian law relating to data privacy. It governs how private sector organizations collect, use and disclose personal information in the course of commercial business. In addition, the Act contains various provisions to facilitate the use of electronic documents. PIPEDA became law on 13 April 2000 to promote consumer trust in electronic commerce. The act was also intended to reassure the European Union that the Canadian privacy law was adequate to protect the personal information of European citizens.

Definitions

Collection means the collection of personal information from or about the individual to whom the information relates including unintended or unprompted receipt.

Disclosure means the release of personal information by any method (e.g., sharing information by any means such as verbally, sending an email, posting online) to anybody or person.

Disposition means the action taken with regards to personal information including destruction, transfer to another entity, or permanent preservation.

Information Management means planning, creating, capturing, organizing, protecting, using, controlling, sharing, disposing of its information assets through which the value of that information is identified, and trusted.

Personal information is recorded information about an identifiable individual. Refer to section 2 (1) of MFIPPA for additional information.

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m56_e.htm

Personal Health Information is identifying information about an individual that relates to their health or providing health care to the individual. Refer to section 4 PHIPA for additional information:

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_04p03_e.htm#BK5

Privacy by Design means to build privacy and data protection, into the design specifications and architecture of information and communication systems and technologies at the beginning, in order to facilitate compliance with privacy and data protection principles.

<http://www.privacybydesign.ca/>

Privacy breach means the improper or unauthorized creation, collection, use, disclosure, retention or disposition of personal information.

Privacy Impact Assessment (PIA) is a process for identifying, assessing and mitigating privacy risks.

Use means the purpose(s) for which the information was obtained or compiled.

Confidential information means information that is subject to the exemptions to disclosure found in s. 9 (Relations with Governments), s. 10 (Third Party Proprietary Information) and s. 14 (1) (Personal Privacy) of MFIPPA, as well as any other information that the City deems to be confidential.

References

Privacy by Design Principles – Information & Privacy Commissioner of Ontario

Municipal Freedom of Information & Protection of Privacy Act

Records Retention By-law 11-040, as amended

Appendices

Appendix A – What is Personal Information

Appendix B – Providing Notice of Collection

Appendix C – Guidelines on Managing Privacy Breaches

Appendix D – Privacy by Design Principles



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Fact Sheet

What is Personal Information?

October 2016

INTRODUCTION

The *Freedom of Information and Protection of Privacy Act (FIPPA)* and the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* (the acts) protect the privacy of personal information while providing individuals with a right of access to their own information.

In this fact sheet, we provide guidance about how the Information and Privacy Commissioner (IPC) interprets the term “personal information.”

HOW IS PERSONAL INFORMATION DEFINED IN THE ACTS?

The acts define personal information as “recorded information about an identifiable individual,” and include a list of examples of personal information (see Appendix A for the full definition).

Recorded information

Information can be recorded in any format, such as paper records, electronic records, digital photographs, videos or maps.

About an identifiable individual

Information is about an identifiable individual if:

- it is about the individual in a personal capacity; that is, it reveals something of a personal nature about the individual, and
- it is reasonable to expect that an individual can be identified from the information (either alone or by combining it with other information)

The listed examples include a person's name when combined with other information about them, such as their address, sex, age, education, or medical history. These examples are not exhaustive and many other kinds of information may still qualify as personal information.

FREQUENTLY ASKED QUESTIONS

What if an individual is acting in a business, professional or official capacity?

The acts specifically exclude from the definition of personal information the name, title, contact information or designation that identifies a person in a business, professional or official capacity. This includes a business carried out in a home.

As a general rule, information about an individual in a business, professional or official capacity is not considered to be personal information.

However, even if information relates to an individual in such a capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual. The context in which the information appears is important.

Is an address personal information?

An address, by itself, is not personal information because it is about a property and not an individual. However, information about a property can qualify as personal information if it reveals something personal. For example, a police service placed a lawn sign on a property stating that it was the site of a search warrant for illicit drugs. The IPC decided that the address on the sign was personal information because it revealed allegations of criminal activity against individuals associated with the property.

Does an individual's name qualify as personal information?

Like an address, a name by itself is not personal information. A name is personal information 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.

Can information about a business be personal information?

Generally, business information is not considered personal information. The term "individual" in the definition of personal information means that it only relates to natural persons. Sometimes confidential business information is confused with personal information. Business information may hold tremendous value and importance for organizations, but it is not personal information.

Is information about deceased individuals their personal information?

Information about an individual is not personal information if they have been dead for more than thirty years.

CONCLUSION

It is important to examine the context in which information appears in determining whether the information is "about" an individual and whether the individual is "identifiable." Depending on the context, information may not meet the definition of personal information because it is, for example, information about a property or business, or about an individual in a business capacity. You can find IPC orders and complaint reports regarding the definition of personal information on the IPC's website (www.ipc.on.ca).

APPENDIX

Definition of “personal information” in the acts

“personal information” 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 where 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 where 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.



NUMBERS

REVISED SEPTEMBER 1998

IPC Practices

PUTTING ONTARIO'S INFORMATION AND PRIVACY LEGISLATION TO WORK

INFORMATION AND PRIVACY COMMISSIONER/ONTARIO

ANN CAVOUKIAN, Ph.D., COMMISSIONER

Providing Notice of Collection

Under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act (the Acts), government organizations must provide notice to individuals when collecting personal information - whether collection is made directly or indirectly.

Quite often complaints received by the Information and Privacy Commissioner (IPC) are the result of the lack of notice or incomplete notice. The IPC has found that while most institutions provide notice, some are not providing adequate notice.

This issue of IPC Practices explains the notice requirements and suggests procedures for providing proper notice.

Section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act* state that when collecting personal information, unless an exception applies, an institution **must** provide the individual to whom the personal information relates with notice which includes specific details on the following three requirements:

- the legal authority for the collection;
- the principle purpose(s) for which the personal information is intended to be used;
- the title, business address and telephone number of a person employed by the institution who can answer questions about the collection.

Manner of Providing Notice

Notice may be provided either orally - in person, over the telephone; or in writing - on an application form,

on a posted sign, in a newspaper ad; or in any other manner which informs the individual about the collection.

Exceptions to Providing Notice

- provincial and municipal Acts

Sections 39(2) and (3) of the provincial *Act* and section 29(3) of the municipal *Act* state that the notice requirement does not apply where:

- the Minister (who is the Chair, Management Board of Cabinet) waives notice; or
- the head cites a law enforcement exemption.

- municipal Act only

In addition, section 29(3)(c) of the municipal *Act* provides that the notice requirement does not apply if the *Act's* regulations provide that notice is not required.

Section 4 of Regulation 823 under the municipal *Act* states that where a head makes available to the public a statement describing the purpose(s) of the collection of personal information and the reason that notice has not been given, then the institution is not required to give notice of the collection to each individual. However, this only applies where:

- providing notice would frustrate the purpose of the collection;
- providing notice might result in an unjustifiable invasion of another individual's privacy; or
- the collection is for the purpose of determining suitability or eligibility for an award or honour.



Unsolicited Personal Information

Sometimes institutions receive personal information, such as resumes, which they did not request. If an institution does not retain unsolicited personal information, notice is not required. However, if an institution subsequently uses this personal information, for example, by placing unsolicited resumes in an inventory or by considering them at a later date, then the institution is obliged to notify the individual.

Recommended Procedures

The IPC encourages institutions to consider the following procedures for providing notice:

1. Advise all staff that under sections 38(2) of the provincial *Act* and 28(2) of the municipal *Act*, an institution must be certain that it has the authority to collect personal information, either directly or indirectly.
2. When notice is provided, ensure that the notice meets the three requirements listed in section 39(2) of the provincial *Act* and section 29(2) of the municipal *Act*:

- *The legal authority for the collection:* Cite the proper legal authority that permits the collection by referring to the specific act and section which authorizes the collection. Where an act does not specifically refer to collection, provide the specific section of an act or by-law which authorizes the activity or program for which the information must be collected.

Note: It is insufficient to say, "This information is being collected in accordance with *the Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*."

- *The principal purpose(s) for which the personal information is intended to be used:* Be sure to fully inform the individual from whom the information is collected about how the information will be used.

Many complaints received by the IPC's Compliance department about collection, use and disclosure are the result of inadequate notice to the individual regarding the intended use of his or her personal information.

- *The title, business address and telephone number of a person employed by the institution who can answer any questions about the collection:* Ensure that the individual will have no difficulty in contacting someone who can provide answers to questions or additional information about the collection.

3. Include procedures in your operations/procedures manual for staff to follow when giving oral or written notice. This will ensure that all staff are aware of their responsibilities to provide notice and that the notice meets the *Acts*' three requirements.

Example of Written Notice

Here is an example of notice that may be used on a job application form:

Personal information on this form is collected under the authority of *the Municipal Act*, R.S.O. 1980, c.302 (as amended), and will be used to determine the qualifications for employment with the Town of Cityville. Questions about this collection should be directed to the Human Resources Co-ordinator, 110 Elm Street, Cityville, Ontario, L3P 2N1, (313) 234-5678.

IPC Practices

is published regularly by the **Office of the Information and Privacy Commissioner.**

If you have any comments regarding this publication, wish to advise of a change of address or be added to the mailing list, contact:

Communications Department
Information and Privacy Commissioner/Ontario
80 Bloor Street West, Suite 1700
Toronto, Ontario M5S 2V1
Telephone: (416) 326-3333 • 1-800-387-0073
Facsimile: (416) 325-9195
TTY (Teletype writer): (416) 325-7539
Website: <http://www.ipc.on.ca>



50% recycled
including 20%
post-consumer
fibre

T.O.
00
0 0
—
Z
C 1
Q

Privacy Breaches Guidelines for Public Sector Organizations



Information and Privacy
Commissioner of Ontario
Commissaire à l'information et à la
protection de la vie privée de l'Ontario

Ontario's privacy laws set out the rules for how public sector organizations should manage information about identifiable individuals – namely, personal information.

This guide explains what a privacy breach is and how to respond to one. It can also help you develop your own privacy breach response plan.

If you are an organization subject to Ontario's health privacy law, you should refer to our guidance, *Responding to a Health Privacy Breach: Guidelines for the Health Sector*.

WHAT IS A PRIVACY BREACH?

A privacy breach occurs when personal information is collected, retained, used, disclosed, or disposed of in ways that do not comply with Ontario's privacy laws. The most common privacy breaches occur when unauthorized persons gain access to personal information. For example, personal information may be seized in a cyberattack, stolen (such as through theft of a portable device) or accessed by an employee for improper purposes.

RESPONDING TO A PRIVACY BREACH

When a privacy breach occurs, you should do the following:

IMMEDIATELY ALERT APPROPRIATE PARTIES

Alert all relevant staff of the breach, including your freedom of information and privacy coordinator, and determine who else within your organization should be involved in addressing the breach.

CONTAIN THE BREACH

Identify the nature and scope of the breach and the action you need to take to contain it:

- determine what personal information is involved
- take corrective action, for example:
 - ensure that no personal information has been retained by an unauthorized recipient and get their contact information in case follow-up is required
 - ensure that the breach does not allow unauthorized access to any other personal information by taking appropriate action (for example, changing passwords or identification numbers, or temporarily shutting down a system)
 - in a case of unauthorized access by staff, consider suspending their access rights
 - retrieve hard copies of any personal information that has been disclosed

NOTIFY THOSE AFFECTED BY THE BREACH

You should notify those affected as soon as reasonably possible if you determine that the breach poses a real risk of significant harm to the individual, taking into consideration the sensitivity of the information and whether it is likely to be misused. If law enforcement is involved, ensure that notification will not interfere with any investigations.

Notification should be direct, such as by telephone, letter, email or in person. Indirect notification can be used in situations where direct notification is not possible or reasonably practical, for instance, when contact information is unknown or the breach affects a large number of people.

Notification to affected individuals should include:

- details of the extent of the breach and the specifics of the personal information that was compromised
- the steps taken and planned to address the breach, both immediate and long-term

- a suggestion, if financial information or information from government-issued documents is involved, to:
 - contact their bank, credit card company, and appropriate government departments to advise them of the breach
 - monitor and verify all bank account, credit card and other financial transaction statements for any suspicious activity
 - obtain a copy of their credit report from a credit reporting bureau
- contact information for someone within your organization who can provide additional information and assistance, and answer questions
- a statement that they have a right to make a complaint to the IPC and how to do so

INVESTIGATE

- Identify and analyze the events that led to the breach
- Review your policies and practices in protecting personal information, privacy breach response plans and staff training to determine whether changes are needed
- Determine whether the breach was a result of a systemic issue and if so, review your program-wide or institution-wide procedures
- Take corrective action to prevent similar breaches in the future and ensure your staff are adequately trained
- If you have contacted the IPC, advise us of your findings and remedial measures, and cooperate with any further investigation we undertake into the incident

NOTIFYING THE IPC

You should notify the IPC of significant breaches, such as those that may involve sensitive personal information or large numbers of individuals, or when you are having difficulties containing the breach. In these situations, you should notify the IPC as soon as reasonably possible.

In situations where you will be notifying a large number of individuals, it is important to contact the IPC before you begin the notification process, so that we are prepared to respond to inquiries. The IPC can assist you with your breach response plan.

WHAT HAPPENS WHEN THE IPC INVESTIGATES?

When responding to a report or complaint of a privacy breach, or initiating our own investigation, we may:

- assess whether the breach has been contained and affected individuals adequately notified
- interview individuals involved
- review and provide advice on your organization's policies and any other relevant documents
- issue a report after the investigation, which may include recommendations
- issue an order

The purpose of the IPC investigation is future-oriented — that is, if there was a privacy breach, the IPC will assist the institution in taking steps to prevent similar occurrences.

HOW TO REDUCE THE RISK OF FUTURE PRIVACY BREACHES

You should consider the following measures to prevent privacy breaches:

- educate your staff about Ontario's privacy laws and your organization's policies and practices governing the collection, retention, use, security, disclosure and disposal of personal information
- conduct privacy impact assessments before introducing or changing technologies, information systems, and processes to ensure privacy risks are identified and addressed
- seek input from appropriate parties such as your legal counsel and security units, your freedom of information and privacy coordinator, the Ontario ministry responsible for information and privacy matters, and our office, as necessary

ADDITIONAL RESOURCES

The IPC has guidance that can assist your organization in meeting its privacy responsibilities and avoiding a privacy breach. You can find these documents in the guidance section of the IPC's website (www.ipc.on.ca).

About the IPC

The role of the Information and Privacy Commissioner is set out in the *Freedom of Information and Protection of Privacy Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Personal Health Information Protection Act*. The commissioner is appointed by the Legislative Assembly of Ontario and is independent of the government of the day.



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

2 Bloor Street East, Suite 1400
Toronto, Ontario, Canada M4W 1A8
Phone: (416) 326-3333 / 1-800-387-0073
TDD/TTY: 416-325-7539

www.ipc.on.ca
info@ipc.on.ca

September 2019



Privacy by Design

The 7 Foundational Principles

Ann Cavoukian, Ph.D.

Information & Privacy Commissioner
Ontario, Canada

Privacy by Design is a concept I developed back in the 90's, to address the ever-growing and systemic effects of Information and Communication Technologies, and of large-scale networked data systems.

Privacy by Design advances the view that the future of privacy cannot be assured solely by compliance with regulatory frameworks; rather, privacy assurance must ideally become an organization's default mode of operation.

Initially, deploying Privacy-Enhancing Technologies (PETs) was seen as the solution. Today, we realize that a more substantial approach is required — extending the use of PETs to *PETS Plus* — taking a positive-sum (full functionality) approach, not zero-sum. That's the "*Plus*" in *PETS Plus*: positive-sum, not the either/or of zero-sum (a false dichotomy).

Privacy by Design extends to a "Trilogy" of encompassing applications: 1) IT systems; 2) accountable business practices; and 3) physical design and networked infrastructure.

Principles of *Privacy by Design* may be applied to all types of personal information, but should be applied with special vigour to sensitive data such as medical information and financial data. The strength of privacy measures tends to be commensurate with the sensitivity of the data.

The objectives of *Privacy by Design* — ensuring privacy and gaining personal control over one's information and, for organizations, gaining a sustainable competitive advantage — may be accomplished by practicing the following 7 Foundational Principles (*see over page*):

The 7 Foundational Principles

1. **Proactive** not Reactive; **Preventative** not Remedial

The *Privacy by Design* (PbD) approach is characterized by proactive rather than reactive measures. It anticipates and prevents privacy invasive events *before* they happen. PbD does not wait for privacy risks to materialize, nor does it offer remedies for resolving privacy infractions once they have occurred — it aims to *prevent* them from occurring. In short, *Privacy by Design* comes before-the-fact, not after.

2. Privacy as the **Default Setting**

We can all be certain of one thing — the default rules! *Privacy by Design* seeks to deliver the maximum degree of privacy by ensuring that personal data are automatically protected in any given IT system or business practice. If an individual does nothing, their privacy still remains intact. No action is required on the part of the individual to protect their privacy — it is built into the system, *by default*.

3. Privacy **Embedded** into Design

Privacy by Design is embedded into the design and architecture of IT systems and business practices. It is not bolted on as an add-on, after the fact. The result is that privacy becomes an essential component of the core functionality being delivered. Privacy is integral to the system, without diminishing functionality.

4. Full Functionality — **Positive-Sum**, not Zero-Sum

Privacy by Design seeks to accommodate all legitimate interests and objectives in a positive-sum “win-win” manner, not through a dated, zero-sum approach, where unnecessary trade-offs are made. *Privacy by Design* avoids the pretense of false dichotomies, such as privacy *vs.* security, demonstrating that it *is* possible to have both.

5. End-to-End Security — **Full Lifecycle Protection**

Privacy by Design, having been embedded into the system prior to the first element of information being collected, extends securely throughout the entire lifecycle of the data involved — strong security measures are essential to privacy, from start to finish. This ensures that all data are securely retained, and then securely destroyed at the end of the process, in a timely fashion. Thus, *Privacy by Design* ensures cradle to grave, secure lifecycle management of information, end-to-end.

6. **Visibility** and **Transparency** — Keep it **Open**

Privacy by Design seeks to assure all stakeholders that whatever the business practice or technology involved, it is in fact, operating according to the stated promises and objectives, subject to independent verification. Its component parts and operations remain visible and transparent, to users and providers alike. Remember, trust but verify.

7. **Respect** for User Privacy — Keep it **User-Centric**

Above all, *Privacy by Design* requires architects and operators to keep the interests of the individual uppermost by offering such measures as strong privacy defaults, appropriate notice, and empowering user-friendly options. Keep it user-centric.

Revised: January 2011
Originally Published: August 2009

Information and Privacy Commissioner of Ontario

2 Bloor Street East, Suite 1400
Toronto, Ontario • CANADA • M4W 1A8

Telephone: 416-326-3333 • 1-800-387-0073
Web: www.ipc.on.ca • www.privacybydesign.ca
E-mail: info@ipc.on.ca