



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

5.13

December 9, 2013

VIA FACSIMILE

His Worship Mayor Bob Bratina  
City of Hamilton  
71 Main Street West, 2nd Floor  
Hamilton, ON  
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Dear Mayor Bratina:

I am writing in response to your letter to Commissioner Ann Cavoukian dated November 18, 2013 regarding councillor access to information held by municipal governments. The Commissioner has asked me to respond on her behalf.

The issue of access by councillors to the municipal government databases has been repeatedly considered by our office over the years. General information in municipal databases that does not contain personal information may be freely disclosed to individual councillors, where the specific information is not subject to a mandatory exemption from disclosure in the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). There is, however, no provision in the *Act* that allows for individual councillors to obtain unfettered access to personal information in order to carry out their constituency function.

Personal information may only be disclosed within the parameters of the disclosure rules provided under section 32 of the *Act*. In the past, this office has taken the position that routine, automatic access by councillors to the municipal government databases that contain personal information is not consistent with section 32. Previous decisions of this office have found municipal councillors are not "officers or employees" of the municipal government, as contemplated by section 32(d) of the *Act*. That section provides for disclosure of personal information to "an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if disclosure is necessary and proper in the discharge of the institution's functions...". Previous decisions have also held that, except in unusual circumstances, a member of municipal council is generally not considered to be an officer or employee of a municipal corporation. It is important to distinguish between the duties performed on behalf of the municipality (as functions of an institution), and the constituency activities of individual councillors, where councillors may not routinely obtain access to personal information under section 32(d). As an elected representative of the municipal council, councillors represent constituents in the wards in which they are elected. Their activities on behalf of constituents have not traditionally been seen as "municipal business".

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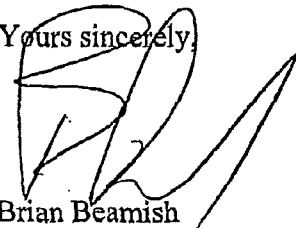
- 2 -

It is also important to note that other parts of section 32 may support the disclosure of some information from municipal government databases to councillors. Under section 32(b), a constituent could consent to the disclosure of their personal information contained in the database to a councillor. In addition, in some situations, a councillor may be able to rely on section 32(c) if the councillor intends to use the personal information for a purpose consistent with the purpose of the original collection. The ability to rely on this "consistent purpose" exemption, will, by necessity, be fact specific. However, in our view, despite the potential for access under sections 32(b) and (c), unlimited access by councillors to the personal information databases does not appear to be supported by the *Act*.

Finally, the legal status of individual council members was discussed in a relatively recent decision by this office. A copy of this decision, Order MO-2821, is attached for your information. In particular, I would draw your attention to the discussion found at paragraphs 16, 26-30 of this order.

I trust this letter will provide greater clarity to members of Hamilton City Council on the issue of access to municipal government databases.

Yours sincerely,



Brian Beamish  
Assistant Commissioner

Encl.