
Inspection Reports

and the

Municipal Freedom of Information and Protection of Privacy Act

A Joint Project
of the
Town of Newmarket
and the
**Office of the Information
and Privacy Commissioner of Ontario**



Town of Newmarket



Information and Privacy Commissioner,
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Introduction

Ontario has two laws that give every individual the right to request access to information held by government institutions, including both operational and administrative documents, and records containing an individual's own personal information. The *Municipal Freedom of Information and Protection of Privacy Act* applies to all municipalities in Ontario, as well as local boards, agencies and commissions, including school boards, fire departments, police services and public utilities. The *Freedom of Information and Protection of Privacy Act* applies to provincial government ministries and agencies.

The *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), which came into effect January 1, 1991, also requires institutions to protect personal information contained in their record holdings. Public bodies covered by the *Act* are called "institutions." These requirements are outlined in a set of rules governing the proper collection, retention, use, disclosure and disposal of personal information.

This publication, a joint project of the Town of Newmarket (the Town) and Office of the Information and Privacy Commissioner of Ontario (the IPC), has been prepared to outline how the *Act* might apply to inspection reports prepared by the Town. We hope the information contained in this guide will also be useful in relation to the inspection reports of other municipal and provincial institutions with inspection duties.

Legislation authorizing inspections

A number of legislative schemes provide both municipal and provincial institutions with the authority to conduct a variety of inspections. Some examples of inspections conducted by the Town are those carried out pursuant to the:

- *Municipal Act*;
- *Building Code Act*;
- *Fire Protection and Prevention Act*; and
- *Public Works Protection Act*.

Types of inspection reports

Some common examples of the types of inspection reports produced by the Town include:

- fire inspection reports;
- building inspection reports;
- property standard inspection reports; and
- by-law inspection reports.

Generally speaking, inspections are of two types: routine or complaint-driven.

Routine inspection reports are those prepared in the course of routine inspections by an agency that is authorized to enforce and regulate compliance with a particular statute. For example:

- a report prepared by a By-law Enforcement Officer who, in the course of his or her duties, notes property standard or zoning deficiencies; and
- a report prepared by a Building Inspector in response to a request for inspection by a builder.

Complaint-driven inspection reports are initiated either in response to a complaint by a member of the public or upon the direction of the Director, Council and/or staff. For example:

- a report prepared by a By-law Enforcement Officer in response to a complaint from a member of the public that a neighbour's deck has been built too close to the lot line and is therefore in contravention of the Town by-law; and
- a report prepared by the fire department in response to a complaint by a member of the public that a neighbour is burning leaves in contravention of the *Fire Protection and Prevention Act*.

These types of inspection reports usually contain the location of the complaint, the nature of the complaint, the name of the complainant and the inspector's findings and comments.

Are inspection reports covered by the Act?

Yes. Section 4(1) of the *Act* grants every person a right of access to a record or part of a record in the custody or under the

control of an institution, although there are some exemptions that may apply. To be subject to the *Act*, a record must be either in the institution's custody *or* under its control.

The term “record” is defined in the *Act* as any record of information however recorded, whether in printed form, on film, by electronic means or otherwise.

The *Act* sets out that a record includes:

- correspondence;
- memoranda;
- plans;
- maps;
- drawings;
- diagrams;
- pictorial or graphic work;
- photographs;
- films;
- sound recordings;
- videotapes;
- machine readable records;
- any record capable of being produced from a machine readable record (subject to the regulations).

Whether an inspection is routine or complaint-driven, the report along with any other information about the inspection, **however recorded**, is a record within the meaning of the *Act*.

For example, a request under the *Act* for “all records relating to an inspection” would include any existing investigation report plus any other information created or compiled by the inspector relating to the inspection such as: e-mails, phone messages, handwritten notes and/or memos.

Whose reports are they?

Inspection reports belong to the Town and are not the personal property of inspectors. The reports fall within the wording of section 4(1) of the *Act*. If they are on the Town's premises they are in its custody, and if they are with an inspector out in the field they are under the Town's control.

Inspection reports, as a general rule, do not contain the inspector's personal information. **Personal information** is defined in the introductory wording of section 2(1) of the *Act* as “recorded information about an identifiable individual...” and includes, for example, an individual's name, address, telephone number along with any other information that would identify the individual.

While an inspector's name is usually indicated on an investigation report, generally speaking the report is not “about” the inspector and is therefore not considered the inspector's personal information.

As interpreted by the IPC, the *Act* differentiates between information that relates to employees in their professional capacity, which is usually not their personal information, and information that relates to employees in their personal capacity, which would often qualify as personal information. In short, inspection reports created by employees relate to their

professional capacity only, and are generally not the personal information of the inspectors.

The definition of “personal information” also includes “the personal opinions or views of an individual, except if it relates to another individual.” Therefore, if an inspection report contains an inspector’s personal opinions or views of Resident A, those opinions or views would be considered to be the personal information of Resident A.

In summary, inspection reports prepared by an inspector in his/her professional capacity are considered records within the custody or control of the Town. They are not the personal information of the inspector. Any and all of the information contained within an inspection report may be the subject of a request by the public under the *Act*.

How should inspectors record and maintain their reports?

Inspectors are responsible for recording, maintaining, filing and retaining their inspection reports in accordance with the Town’s established practices and procedures.

Inspection reports are one of the many types of records that inspectors create that may be the subject of a request for information under the *Act*. Given that the public may request access to any of these documents, it is important that good judgment be used in creating any and all records – including notes, correspondence, memos and inspection reports. As a general rule, recorded information about inspections should be relevant and based on the facts obtained during the course of the inspection. Nevertheless, there are times when inspectors

must record their views or opinions about the inspections. As previously discussed, inspectors should keep in mind that an inspector’s views or opinions about Resident A are considered the personal information of Resident A.

What happens when the Town receives an access request for an inspection report?

At the Town of Newmarket, the Clerk is also the Town’s Freedom of Information and Privacy Co-ordinator (the Co-ordinator) and has been delegated the *Act*’s administrative responsibilities. As well, the Clerk, Treasurer and Solicitor are part of a committee (the FOI Committee) that has been delegated the authority to issue decisions in response to written requests made under the *Act*.

The process begins by the Clerk’s office requesting that the inspector provide, by a specified date, all records in his/her possession that are responsive to the request. Timing is important because the *Act* imposes a 30-day time limit (in most cases) for the Town to issue an access decision. If the report and/or file of the inspector is currently in use, the inspector may photocopy the information and forward the copies to the Clerk’s office.

The FOI Committee will then review the information and make a decision under the *Act* with respect to whether the requester will be granted access (in whole or part) to the information.

If the inspector has not provided the Co-ordinator with a copy of his/her report within the specified due date, this can have a serious impact on the Co-ordinator’s ability to adhere to the statutory response timelines. Generally, a requester who does

not receive the Town's decision within the 30-day timeframe has a right to appeal this to the IPC as a "deemed refusal."

If, on the other hand, an inspector has been unable to locate a report that is the subject matter of the request, the Co-ordinator's decision that "no records exist" could result in a "reasonable search" appeal and an order from the Commissioner requiring an additional search for records and/or an order requiring the production of these records for the purpose of determining whether they should be disclosed.

It is clearly in the interests of both the requester and the Town to ensure that decisions are made on time and with full consideration of all responsive records.

Will the inspection report be disclosed?

It depends. The FOI committee will consider the purposes of the *Act* which provide a right of access to information in accordance with the principles that:

- information should be available to the public, and
- necessary exemptions from the right of access should be limited and specific.

While IPC orders have determined that a municipality's by-law enforcement process qualifies as a "law enforcement matter" for the purposes of sections 2(1) and 8 of the *Act*, subsection 8(4) of the *Act* is an exception to the exemption which requires the institution to disclose a routine inspection report (unless another exemption applies).

If the committee determines that the requester is entitled to the entire report and/or file, the Co-ordinator will release that information to the requester

If, on the other hand, the FOI committee determines that the requester is only entitled to part of the report and/or file, the Co-ordinator will sever the exempt information accordingly. For example, whether routine or complaint-driven, if an inspection report contains the personal information of individuals other than the requester, the FOI committee will consider the personal privacy protection provisions of section 14 and/or section 38 (if the report contains the personal information of both the requester and other individuals) in making its access decision. This is because the purposes of the *Act* also include the protection of individual privacy with respect to personal information held by institutions and a right of access for individuals to their own personal information.

If disclosure of the report might be an unjustified invasion of other individuals' privacy or would reveal information that might be exempt under section 10(1) of the *Act*, section 21 requires the Town to notify individuals whose interest might be affected and allow them to make representations on whether the record should be disclosed.

Summary of key points for inspectors

- Inspection reports and related file material are “records” under the *Act*.
- Any individual can make an access request for a copy of an inspection report and related file material.
- Inspection reports prepared by an inspector in his/her professional capacity do not belong to the inspector and, for the purposes of the *Act*, are in the custody or under the control of the Town.
- The personal opinions and/or views of an inspector about another individual (for example, a resident) are the personal information of that other individual.
- Inspectors should exercise good judgment by ensuring that their reports and notes are drafted in a professional manner.
- Inspectors should record, maintain, file and retain their records in accordance with the Town’s established practices and procedures. In the case of records that contain personal information, section 5 of Regulation 823 requires retention of personal information for at least one year after use unless the institution has a by-law or resolution authorizing earlier disposal, or the individual consents to earlier disposal.
- In order for the Town to meet the *Act*’s statutory 30-day time limit for responding to access requests, inspectors must provide the clerk’s office with copies of the responsive records within the time specified by that office.

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