

Scan of Selected School Boards and Other Public Organizations: Information Flow Protocol

Summary:

The results of the scan indicate that several school boards and the majority of municipalities in Ontario have established rules governing access to information and information flow between elected officials and staff. While the scan focused on Ontario's public organizations, somewhat similar findings were observed in school boards and municipalities in some other Canadian provinces.

In Ontario, access to information and protection of personal information at both school boards and municipalities are governed by the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The powers and responsibilities of elected official at school boards and legal relationship between their governing bodies (Boards of Trustees) and staff are outlined by the *Education Act*. The *Municipal Act* is the corresponding governing legislation for city councils and staff at municipalities.

The TDSB, as other Ontario school boards, is governed by the *Education Act* and MFIPPA. The Board adopted the Freedom of Information and Protection of Privacy Policy (P094), Board Member Code of Conduct (P075) as well as Governance Policy (P086) which impact the flow of certain information between administration and elected officials. In response to a Board decision, the TDSB is also in the process of developing a Communications Policy.

The scan centred on the rules governing information flow between staff and elected officials in seventeen (17) school boards and municipalities. The majority of the reviewed organizations adopted such rules through applicable provisions in their board/council bylaws or policies. Only a few organizations (e.g., Toronto Catholic DSB, Town of Oakville, City of Guelph) had standalone information flow protocols or procedures.

Common themes were noted in the policies, procedures and bylaws of reviewed organizations, which are summarized below.

1. Guiding Principles including Board/Council-Staff Relations

Across all organizational policies/procedures, the flow of information between staff and members of board/council reflected the principles of transparency, accountability and when required, confidentiality. Most organizations (i.e., City of Brampton, Town of Oakville) stressed the importance of a healthy respectful workplace and working partnership between staff and elected officials to produce

the best results and outcomes for the organization and communities served. In other examples (e.g., City of Brampton, City of Burlington, Toronto Catholic DSB, Town of Amherstburg, Town of Oakville), open lines of communication as well as timely and responsive communication were cited as being essential, along with formal communication channels to raise and manage operational issues.

The TDSB in its Board Member Code of Conduct (P075) and Governance Policy (P086) has similar guiding principles based on good governance. In addition, there is emphasis on the importance of Trustees and staff working together in the public interest and in a manner that respects respective roles. The TDSB's forthcoming Communications Policy and Information Flow Protocol will propose provisions on access to timely information, responsiveness and the managing overall expectations.

2. Roles and Responsibilities

All organizations included in this scan recognized the importance of, and difference between, the political/representative role and the administrative/operational management role necessary for the provision of efficient, responsible and accountable governance. Although one organization (i.e., Town of Bancroft) was explicit in mentioning that elected officials do not have an administrative managerial role in the day-to-day business of the organization, the need for mutual trust and respect between both parties was a common theme in order for the effective execution of respective duties and functions (e.g., City of Burlington, City of Brampton, City of Kingston, Council of Directors of Education, OPSBA).

Nearly all organizations included a list of core responsibilities based on key roles including the organizational head (either Director or CAO), board chair or mayor, individual members, and the collective governing body. In one school board (i.e., York Region DSB), this section appears to be based on OPSBA's Guide on Good Governance and provincial legislation. For example, it was noted that only the Board of Trustees as a whole has the authority to make decisions or take action. In order to support the collective governing body's work, Board members rely on the director of education and senior staff for expertise and advice to help them reach informed decisions.

Within the TDSB, the Governance Policy (P086) distinguishes the roles and responsibilities of elected officials and staff based on the *Education Act* as well as OPSBA's Guide on Good Governance. To be sure, the Director of Education and other staff are responsible for the day-to-day management and administration of all schools and departments and the implementation of the policies approved by the Board of Trustees. Meanwhile, the Board of Trustees' role is to govern and provide strategic direction. It should be noted, though, that Trustees carry a dual responsibility as a representative of their ward and as a member of the board. While all staff report to the Board of Trustees through the Director of Education, decision-making rests only with the collective Board of Trustees.

3. Information Flow to the Board of Trustees and Various Communication Channels

Within school boards, the Director of Education is responsible for maintaining effective and consistent channels of communication with all stakeholders including the Board and its members (e.g., York Region DSB, Toronto Catholic DSB). As demonstrated in one organization's protocol (i.e., City of Guelph), the most significant flow of information to an elected body from staff/administration is related to the legislative process (e.g., committee/board or council meetings) through active files and reports being presented for consideration.

Though, in principle, members of council/board have the same rights of access to information as members of the community (e.g., City of Brampton, City of Burlington, TCDSB), elected members are often provided with information such as open committee/council meeting agendas and minutes in advance to ensure they can make informed decisions and adequately respond to members of the public and/or media (e.g., City of Guelph, Town of Bancroft). For some organizations (e.g., Town of Amherstburg, Town of Oakville), emphasis is put on keeping the council or board apprised of any known issues that may impact their decision-making process in a timely manner. In recognizing the importance of a two-way communication process, the same applies in the case of individual members where staff is expected to apprise them of known issues in advance regarding events, meetings and actions that may impact constituents in their respective wards.

However, despite an administration's best efforts, the board/council or individual members will often times require additional or new information from staff. Although these requests are handled differently across all organizations included in this scan, there are both formal and informal processes in place and they sometimes depend on the situation at hand. When the board/council or individual member, for example, has questions of clarification regarding existing or upcoming reports, several organizations (e.g., City of Burlington, City of Brampton, Edmonton Public School Board, Town of Bancroft) authorize the respective department head to respond to the report in question. At other organizations, such as the Toronto Catholic DSB, the information is provided through the Director's Office.

A theme consistent across all organizations is that the board/council can direct staff to provide the requested information by way of formal resolution at a meeting.

Members of the board/council may also exercise this right during committee and board/council meetings by way of a member motion.

The TDSB is consistent with the practices outlined above and provides information to Board and its members both informally and through more formal channels such as the committee/board structure, in accordance with the Board Bylaws or the freedom of information process as outlined in the Freedom of Information and Protection of Privacy Policy (P094).

4. Requests from Individual Members

Most policies/protocols (e.g., City of Kingston, Town of Bancroft, Toronto Catholic DSB) also include rules concerning information requests from individual members.

One school board (i.e., Toronto Catholic DSB), for example, indicates that information requests by an individual Trustee should be directed to the Director of Education. Information will be provided to an individual Trustee when it is in accordance with regulations and is (i) reasonably necessary under the exercise of an individual Trustee's duties and responsibilities in order for the Board of Trustees to exercise its powers and duties; (ii) readily available; and (iii) not sensitive. Information will not be released routinely if it is not readily available. Information is "readily available" when it is already in the possession of a person employed by the organization, and the retrieval of the information will not require more than three hours for one staff member to complete.

In another example (i.e., Town of Oakville), information requests are handled based on whether they are classified as routine and non-routine matters. A "routine matter," which is similar to information that is "readily available" as identified above, refers to a communication by an elected member with a member of staff which:

- In the ordinary course of business constitutes a type of communication that would typically occur between a member of the public and staff;
- Constitutes a request for information that is routinely produced by the member of staff in the course of their duties; or
- Constitutes a request for a service that is routinely done by staff in the course of their duties and which requires no expenditure of unbudgeted resources.

By comparison, a "non-routine matter" refers to a communication, request for information or service that is not typically undertaken in the ordinary course of business, and/or for which there is no routine policy, procedure or guideline to guide members and staff. At this organization (i.e., Town of Oakville), members of council may direct these types of questions and concerns which may exceed two hours of staff time to process, to management staff (the respective department's director).

In recognizing that an individual member may not be granted the information they request, most organizations (e.g., TCDSB, Town of Amherstburg, Town of Oakville) include an appeal/resolution process to review the request. While in these cases either the Director of Education or CAO handles the concerns/complaints related to the flow of information given that they maintain responsibility for initiating appropriate processes and remedies to address such issues, one organization (i.e., Town of Bancroft) takes a similar approach but requires that the Mayor be contacted. The Mayor will then bring the matter to the attention of the staff member's manager or the CAO.

Ultimately, when information is released to an individual member, nearly all organizations included in the scan (e.g., City of Brampton, City of Burlington, Edmonton Public School Board, Toronto Catholic DSB, Town of Bancroft) require

that the information be shared with all members of the governing body, unless it relates to a local matter and has no organizational-wide impact.

In addition, any member of the public, including council/board and staff members are able to make freedom of information requests under MFIPPA for requested information.

Trustee access to information under the custody and control of the TDSB has been discussed in the Integrity Commissioner's 2018 annual report. In response to the recommendations of the report, this process will be documented in the TDSB's Information Flow Protocol and considered by the Board of Trustees for approval.

5. Information that is Restricted, Confidential or Sensitive

The rights of access to information and obligations to protect the confidentiality of information including personal information are set out in the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. While it is recognized that under MFIPPA, city councils/boards of trustees are referred to as the "heads" of the organization for the purpose of the Act, city councils/boards of trustees as a collective body under internal administrative processes usually do not get full access to information that is protected under MFIPPA (e.g., City of Hamilton, City of Toronto, Town of Bancroft, Town of Oakville, Toronto Catholic DSB, York Region DSB). As an example, several municipalities (e.g., City of Burlington, City of Hamilton, Town of Oakville) when discussing personal or confidential information (even if requested by resolution) will typically provide their council with an oral update in closed/private session or will distribute "library copies", with certain information redacted if necessary. Most organizations stipulate in their codes of conduct that elected officials who have access to records containing personal or other confidential information have a responsibility to protect this information while it is in their possession.

While individual members are provided access to board/city information, personal or confidential information is generally not provided through routine disclosure in most organizations. In one organization (i.e., City of Toronto), requests for information not available or where the information may relate to private individuals or other third party interests are usually directed through the city's formal freedom of information process.

At the Toronto Catholic District School Board, information is not provided to individual members if it is considered sensitive. Information is considered "sensitive" when it is required or permitted by law to be kept confidential; it is person-identified, by name, position or otherwise; its possession could be prejudicial to the interest of the Board; or it is tentative, incomplete or misleading by reason that the subject matter is in the conceptual or developmental stage. At the TDSB, several documents including the Board Bylaws, the Board Member Code of Conduct (P075) and Freedom of Information and Protection of Privacy Policy (P094) govern member responsibilities and the information types which

generally cannot be released to members of the public including the Board and its members under MFIPPA. Greater clarity will be provided with the TDSB's proposed Information Flow Protocol and forthcoming Communications Policy.

Organizations Reviewed (17): City of Brampton, City of Burlington, City of Dawson Creek, B.C., City of Elk Grove, California, City of Guelph, City of Hamilton, City of Kingston, City of Toronto, Council of Ontario Directors of Education (CODE), Edmonton Public School Board, OPSBA, Toronto District School Board, Toronto Catholic District School Board, Town of Amherstburg, Town of Bancroft, Town of Oakville, York Region DSB.