



**City of Kingston  
Information Report to Council  
Report Number 16-041**

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<b>To:</b>	<b>Mayor and Members of Council</b>
<b>From:</b>	<b>Cynthia Beach, Commissioner, Corporate &amp; Strategic Initiatives</b>
<b>Resource Staff:</b>	<b>Susan Nicholson, Director of Legal Services and City Solicitor</b>
<b>Date of Meeting:</b>	<b>December 15, 2015</b>
<b>Subject:</b>	<b>Public Sector and MPP Accountability and Transparency Act, 2014</b>

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**EXECUTIVE SUMMARY:**

This report is to provide Council with general information on the Public Sector and MPP Accountability and Transparency Act, 2014 and on those provisions in the legislation that affect the municipality effective January 1, 2016.

The stated purpose of the new legislation is to “build a more transparent and responsible government that is accountable to all Ontarians” and to strengthen accountability and oversight by expanding the role of the Ontario Ombudsman. The legislation covers a range of topics including matters dealing with Members of Provincial Parliament and provincial boards, however, it is those changes which amend the Municipal Act, 2001 and the Municipal Freedom of Information and Protection of Privacy Act that are highlighted in this report.

The new statute expands the scope of the provincial ombudsman to oversee the administration, governance and operation of municipal government as well as school boards and universities.

The legislation also directly affects the municipality with further legal requirements under the Municipal Freedom of Information and Protection of Privacy Act requiring that all institutions covered by provincial and municipal freedom of information legislation must securely preserve and prohibit the wilful destruction of records. Penalties have been introduced to enforce this requirement.

There is also the creation of the a new role by provincial government, that being a Patient Ombudsman whose mandate is to respond to complaints about public hospitals, long-term care homes, such as Rideaucrest Home, and community care access centres.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER  
**Cynthia Beach, Commissioner,  
Corporate & Strategic Initiatives**

ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER  
**Gerard Hunt, Chief Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Lanie Hurdle, Community Services	Not required
Denis Leger, Transportation, Facilities & Emergency Services	Not required
Jim Keech, President and CEO, Utilities Kingston	Not required
Desiree Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:**

Several legislative acts are amended based on the Public Sector and MPP Accountability and Transparency Act, 2014 including the Broader Public Sector Executive Compensation Act, 2014, the Ambulance Act, the Freedom of Information and Protection of Privacy Act, the Municipal Freedom of Information and Privacy Act, the Ombudsman Act and the Municipal Act, 2001.

**Amendments to the Ombudsman Act: Addition of the MUSH Sector**

The function of the Ontario Ombudsman is to investigate any decision or recommendation made or any act done or omitted in the course of the administration of a public sector body and affecting any person or body of persons in his, her or its personal capacity.

The mandate of the Ontario Ombudsman is expanded from provincial government organizations to a new group of public sector entities including municipalities, universities, school boards and hospitals, frequently referred to as the MUSH sector. The amendments to the Ombudsman Act include the definitions for a local board, a municipally controlled corporation, a municipal ombudsman (appointed under the Municipal Act, 2001) and a municipal sector entity.

**Ability to Investigate:**

The Ontario Ombudsman may make any such investigation on a complaint made to him or her by any person affected or by any member of the Assembly to whom a complaint is made by any person affected, or of the Ombudsman's own motion. Before investigating a municipality, the Ontario Ombudsman must inform council or the designated head of the municipality.

The investigation abilities of the Ontario Ombudsman in relation to municipalities are summarized as follows:

1. Municipalities can appoint an investigator to investigate, upon complaint, whether the municipality or local board has complied with the closed meeting requirements in section 239 of the Municipal Act or their local procedure by-law in respect of a closed meeting.

If there is a complaint pursuant to the closed meeting requirements and if the municipality has not appointed an investigator, the Ontario Ombudsman will serve as the meeting investigator.

The Municipal Act, 2001, currently provides for this application.

2. Where local accountability officers are appointed (i.e., Municipal Ombudsman, Integrity Commissioner, Auditor General, Lobbyist Registrar), the Ontario Ombudsman can only investigate complaints within the jurisdiction of the local accountability officers after local processes have been completed and this has been defined as a complaint has been made and investigation concluded; the local officer has refused to investigate; or time for bringing the complaint has expired.

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3. If there is a right to appeal or to be heard by a tribunal or court, the Ontario Ombudsman cannot investigate until after that right has been exercised or until the time for exercising that right expires.
4. The Ontario Ombudsman cannot investigate the decisions, recommendations, acts or omissions of a legal adviser to a municipality.
5. The Ontario Ombudsman does have the ability to investigate on his/her own motion, where the local accountability officer has its process to ensure that policies and procedures were correctly followed or where the matter is one outside of the local accountability officer.
6. If any question arises whether the Ontario Ombudsman has jurisdiction to investigate any case or class of cases under this Act, the Ombudsman may, if he or she thinks fit, apply to the Divisional Court for a declaratory order determining the question.

**Reports:**

If the Ontario Ombudsman does investigate a municipal matter, the Ontario Ombudsman shall report his or her opinion and the reasons for it, to the municipality or local board, as the case may be, and may make such recommendations as he or she thinks fit. The act requires that the municipality or local board shall ensure that reports received are made available to the public. The Ontario Ombudsman may, after making the report, publish the report or otherwise make it available to the public.

**Refusal to Investigate:**

The Ontario Ombudsman has discretion to refuse to investigate under some circumstances:

1. When, in the Ontario Ombudsman's opinion, a complaint is trivial, frivolous, vexatious, or not made in good faith;
2. When the person complaining does not have a sufficient personal interest in the subject of the complaint;
3. When it appears to the Ontario Ombudsman that another adequate remedy already exists.

**Other Provisions:**

The Ontario Ombudsman's Office determines how to prioritize matters brought to its attention through complaints. Therefore the amendments to the Ombudsman Act will not replace or override municipalities' existing accountability, transparency, and integrity frameworks, nor does the Ontario Ombudsman does not replace local complaint resolution processes.

The Ontario Ombudsman does not impose penalties or override past municipal/board decisions.

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**Patient Ombudsman:**

The Province of Ontario has indicated that recruitment for the position of Ontario's first Patient Ombudsman has begun. This new ombudsman will ensure the voices of patients and caregivers at hospitals, long-term care homes and Community Care Access Centres (CCAC) are heard. This role will be available for long term care facilities such as Rideaucrest Home. The province will provide further updates on this initiative.

**Amendments to the Municipal Act, 2001:**

New exceptions added to the Municipal Act, 2001 as of January 1, 2016 require meetings to be held in closed session when considering:

an ongoing investigation by the locally appointed municipal Ombudsman;

an ongoing investigation by the Ontario Ombudsman; and

an ongoing investigation by a meeting investigator.

**Municipal Freedom of Information and Protection of Privacy Act:**

Additional obligations have been added to this legislation to ensure proper record keeping by adding that every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the institution. Penalty provisions have been added to prevent willful destruction of records.

**Existing Policy/By-Law/ Policy Statements:**

There are no existing Policies/By-Laws concerning this subject, on record, to date.

**Notice Provisions:**

Not Applicable

**Accessibility Considerations:**

Not Applicable

**Financial Considerations:**

No financial implications are to be considered in this report.

**Contacts:**

Susan Nicholson, Director of Legal Services and City Solicitor, 613-546-4291, ext. 1293

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**Other City of Kingston Staff Consulted:**

None

**Exhibits Attached:**

Not Applicable