

# FORMAL REPORT

<b>To:</b>	Chair Strathtdee and Members of Strategic Priorities Committee
<b>Prepared by:</b>	Trisha McKibbin, Director of Corporate Services / Deputy Clerk
<b>Date of Meeting:</b>	20 March 2018
<b>Subject:</b>	<b>COR 07-2018 Video Surveillance Policy</b>

## PURPOSE

To provide the Strategic Priorities Committee with information on video surveillance in the municipality, the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* implications, and to present the Committee with a draft Municipal Video Surveillance Policy.

## RECOMMENDATION

THAT COR 07-2018 Video Surveillance Policy report be received; and

THAT the Strategic Priorities Committee recommends to Council:

THAT the draft Municipal Video Surveillance Policy be approved.

## BACKGROUND

Video surveillance may be either covert or overt depending on whether its use is concealed or made known to the individuals affected by it. As well, it may be fixed to a specific location (wall) or mobile such as in the case of body-worn cameras and drones. The video surveillance discussed in this report and accompanying draft Video Surveillance Policy is referring to overt, fixed surveillance.

The municipality has obligations under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* in regards to the use of video surveillance. As the video surveillance will involve the collection, possible use or disclosure of personal information the municipality is required to comply with *MFIPPA* with respect to information that falls under the definition of personal information. Section 2(1) of *MFIPPA* defines “personal information” as “recorded information about an identifiable individual,” which includes, but is not limited to, “information relating to the race, national or ethnic origin, colour, religion, age [or] sex” of the individual.

Section 28(2) of *MFIPPA* sets out the conditions under which personal information may be collected. This sections provide that no person shall collect personal information on behalf of an institution, unless the collection is:

1. Expressly authorized by statute,
2. Used for the purposes of law enforcement or
3. Necessary to the proper administration of a lawfully authorized activity.

At least one of these three conditions must be met in order for the municipality to have the legal authority to collect personal information.

In regards to #3 *Necessary to the proper administration of a lawfully authorized activity*, this condition may authorize a collection of personal information in a wide range of circumstances. To satisfy this condition, you must be able to demonstrate two things:

(1) That the activity for which personal information is collected is “lawfully authorized”. In the case of video surveillance, the activity will typically relate to the safe and secure operation of a building, facility or public space. The “lawfully authorized” may come in the form of a by-law or policy authorized by the municipality.

(2) That the collection of personal information is “necessary” to that activity.

## **REPORT**

### Notice of Collection

*MFIPPA* requires that individuals be notified of the collection of their personal information, subject to specific and narrow exceptions. Specifically, section 29(2) of *MFIPPA* provides that an individual must be informed of:

- (a) The legal authority for the collection;
- (b) The principal purpose or purposes for which the personal information is intended to be used; and
- (c) The title, business address and business telephone number of a public official who can answer the individual’s questions about the collection.

It is therefore recommended that the Town implement the following:

- Signs with a clear, language-neutral graphical depiction of the use of video surveillance are prominently displayed at the perimeter of the monitored areas and at key locations within the areas. The signs should include basic information to clarify that video surveillance is being used in the area.
- The information required by paragraphs (a)–(c) of section 29(2) of *MFIPPA* is available and easily accessible on the Town’s website.

### Lawful Disclosure

While there may be other situations where the disclosure of video surveillance footage is permitted, video surveillance may be disclosed to a law enforcement agency when:

- the law enforcement agency approaches the Town with a warrant requiring the disclosure of the footage, as per section 32(e) of *MFIPPA*,
- the law enforcement agency approaches the Town, without a warrant, and asks that we disclose the footage to aid an investigation from which a proceeding is likely to result, as per section 32(g) of *MFIPPA*, or
- staff observe an illegal activity on our premises and disclose the footage to a law enforcement agency to aid an investigation from which a proceeding is likely to result, as per section 32(g) of *MFIPPA*.

In the instances where disclosure is permitted, the Town must protect the privacy and security of the personal information on the video surveillance. Section 3 of Regulation 823 of *MFIPPA* requires institutions to define, document and put in place reasonable measures to prevent unauthorized access as well as inadvertent destruction or damage of records. Accordingly, when disclosing personal information, it is important that the municipality:

- Maintains an auditable log of each disclosure;
- Ensures the log includes the date, time and location of the footage and, where applicable, the case file number of the law enforcement agency’s investigation;
- Ensures the log also includes a description of the circumstances justifying the disclosure, the amount of footage involved, the name, title and agency to whom the footage is being disclosed, the legal authority for the disclosure, the means used to disclose the footage and whether the footage will be returned or securely destroyed after use;

- Ensures that if digitized, the footage is securely encrypted.

### Access

Individuals have a general right of access to records in the custody or under the control of institutions, under section 4 of *MFIPPA*. Additionally, individuals whose personal information is in the custody or under the control of institutions have a right of access to that personal information under section 36(1) of *MFIPPA*.

While an individual may have a right to access the relevant footage, the Town must remove or redact information from the video footage to protect the personal privacy of others on the video.

### Retention

Section 5 of Regulation 823 of *MFIPPA* require institutions in general to retain personal information for at least one year after use, although Regulation 823 permits municipal institutions to reduce this time period through a resolution or bylaw. It is important to note that this retention requirement applies only to personal information that has been “used” by institutions. It does not apply to personal information that has been collected but not used, which in the case of video surveillance may have much shorter retention requirements.

### Video Surveillance Policy

A Video Surveillance Policy assists the Town in defining, documenting and fulfilling the requirements set out in section 3 of Regulation 823 of *MFIPPA*. The attached draft Surveillance Policy sets out the guidelines for the following:

Guidelines	Section of Policy
A description of the status of the Town under <i>MFIPPA</i> and the duties and responsibilities that arise as a result of this status. Includes the Town's obligations with respect to notice, access, use, disclosure, retention and disposal of records in accordance with <i>MFIPPA</i> .	Section 1.0, pg. 1 Section 2.0, pg. 1
The rationale, objectives and justification for implementing the video surveillance program.	Section 1.0, pg. 1
Description of the nature of the personal information collected.	Section 3.0, pg. 1
Limitations placed on access to and use of personal information by employees, including the individuals that can view the information and under what circumstances it may be viewed.  A description of the procedure that must be followed in the event that an employee is requested to disclose personal information.	Section 5.4, pg. 3
The potential consequences to employees if they breach policies or procedures.	Section 8.0, pg. 5
The designation of a senior staff member to be responsible for the Town's privacy obligations under <i>MFIPPA</i> and its policy.	Section 6.0, pg. 4
The administrative, technical and physical safeguards implemented by the Town to prevent unauthorized access to personal information and	Section 5.4 , pg. 3

Guidelines	Section of Policy
to protect personal information from inadvertent destruction or damage.	
The duties and responsibilities of employees in implementing the administrative, technical and physical safeguards put in place. This includes the signing of a written agreement to adhere to these duties, including an undertaking of confidentiality, and to undergo initial and ongoing privacy training.	Section 6.0, pg. 4
The retention periods of the surveillance footage.	Section 5.5, pg. 3

## SUMMARY

This report provides the Strategic Priorities Committee with information on video surveillance and the Town's obligations under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), as well as a draft Video Surveillance Policy for the Committee's review and consideration.

## FINANCIAL IMPLICATIONS

Manufacturing and installation of new signage - \$2,000

## STRATEGIC PLAN

☒ Not applicable to this report.

## OTHERS CONSULTED

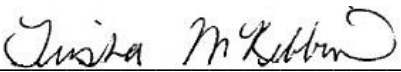
Information and Privacy Commissioner of Ontario  
Mike Kuttschutter, IT Network Administrator  
Senior Management Team  
Ray Cousineau, Facilities Supervisor

## ATTACHMENTS

Draft Video Surveillance Policy  
List of Video Surveillance Systems


## REVIEWED BY

### Recommended by the Department



Trisha McKibbin  
Director of Corporate Services / Deputy Clerk

### Recommended by the CAO



Brent Kittmer  
CAO / Clerk