



Ontario Association of Architects

December 19, 2019

[Sent via email to [digitalfeedback@toronto.ca](mailto:digitalfeedback@toronto.ca)]

Smart City TO Public Consultation  
100 Queen Street West  
Toronto, Ontario, M5H 2N2

Dear City Staff,

The Ontario Association of Architects (OAA) supports the City of Toronto taking steps toward a sustainable digital future. Building on feedback from our membership as well as rulings and recommendations from the Information and Privacy Commissioner or Ontario (IPCO), the OAA has met previously with city officials to discuss strategies that would make the building approval process better for both applicants (architects) and their clients (the public).

For a number of years, our membership has flagged the City's practice of posting unredacted copyrighted materials such as architectural drawings online as not only enabling or even promoting the theft of an architect's intellectual property, but also putting the public at risk.

While some of our members would prefer to move back to what the IPCO characterizes as "the days of attending at the municipal clerk's office to obtain a copy of a record", the OAA accepts the IPCO's findings that posting elements of a planning application online has become a public expectation and serves a relevant purpose. While not interested in trying to prevent a municipality from sharing relevant data or the public from accessing it for legitimate purposes, the OAA remains focused on recommendations issued by the IPCO.

One such recommendation surrounds the IPCO requirement for *data minimization*. Indeed, a pivotal comment from the IPCO is that "the municipality does not have the authority" to collect information that is "useful but not necessary". The OAA asserts that the City of Toronto is woefully and openly in contravention of this requirement. The IPCO also challenges the City to consider whether there is "a requirement to publish the information" and "[w]ill the information be needed by a member of the public to use the record for its intended purpose".

In particular, the OAA flags requirements for detailed floor plans when these are not one of the elements pertinent to the variance being sought. In its report, the IPCO cites the privacy risk associated with disclosure for "an individual who has been the victim of a stalker, or has an abusive ex-spouse who may be looking for him or her". Detailed floor plans showing the exact locations of bedrooms, bathrooms and other elements of the house should only be requested when explicitly required to consider

that specific element of the variance. Failure to minimize the information requested may put members of the public at risk.

While safety concerns are paramount, there are also significant concerns relating to the theft of intellectual property. Requiring full submissions irrespective of what variances are being sought also enables members of the public and of the design and construction community to steal an architect's intellectual property. Indeed, our members report that such practices are common. They also report the theft and illicit reproduction of their architectural seals, which puts the public at risk. The OAA is taking active steps to reduce or prevent this type of fraud by requiring its members to transition to a secure digital identity for seal applications.

The OAA asks the City to fully commit to data minimization and hold as an overarching rule to not contravene the IPCO by asking for, or requiring, information that is "useful but not necessary". If a minor variance is being sought for a yard setback, then the information and drawings required should only relate to the specific exterior section of the property requiring a variance. Similarly, if the minor variance is related to the height of an exterior main wall, then the information and drawings required should only relate to that exterior main wall.

Even in instances where elements such as a floor plan may be required, the IPCO rules in Privacy Complaint MC13-67 that "while municipalities move towards greater transparency by embracing the principles of Open Government, they must still ensure that personal privacy is protected." In this vein, the IPCO proposes "technological measures that obscure the contents of minor variance applications, or the personal information in such applications". Some applicants report success with submitting a greyed-out floor plan that doesn't show the functional layout and locations of things such as bedrooms, bathrooms, etc. Other applicants report that Committees of Adjustment have refused such applications. This shows a disregard for the IPCO as well as a lack of consistency and predictability within the City.

The IPCO also spends significant time talking about the need for municipalities to enable technological measures. The OAA has asked previously that the City, at a minimum, implements a click-through user agreement clearly indicating that the information (particularly architectural drawings or submissions) is copyrighted and cannot be used for any purpose other than for the consideration of the variance being requested. While this will not stop the theft of intellectual property, it will demonstrate that the City is a partner against theft as opposed to an enabler or promoter of it.

If the City wishes to take more active measures to prevent the theft of intellectual property, it could move to a mandatory registration system as outlined by the IPCO. In this instance, only people who register and have an account verified could be permitted to access the system and actions like document downloads could be tracked and disclosed as required when there are invasions of privacy or future litigation around the theft of intellectual property. Anonymous access would be

eliminated and users could be made aware that their actions on the system are being recorded.

Finally, the OAA would like to point the City to its own best practices as demonstrated by Toronto Building. On their webpage entitled [Request Building Records](#), the first paragraph references requirements under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), citing specific exemptions for personal information and “records, the disclosure of which could reasonably be expected to endanger the security of a building.”

Disclosure is restricted to “wholly residential buildings” and even in that instance, building owners, managers or permit applicants have the ability to object to disclosure if they feel there may be a security risk. There are fees associated with records disclosure, as well as time-based limitations on when records can be disclosed. The [application form](#) forces an individual to date, sign and submit a formal declaration. It also contains a section entitled *Information for Applicant* stressing, among other things, that “plans are subject to the provisions of the *Copyright Act*.”

It would appear that Toronto Building has put significant thought into how to do a reasonable, justified disclosure that allows access to the public while still respecting requirements under MFIPPA, protecting the privacy and security of building owners/occupants and discouraging the theft of intellectual property. The City, specifically City Planning, is encouraged to take inspiration from within its own ranks in reforming how disclosure is performed on planning approvals.

The OAA would be happy to work with your office to reform disclosure processes around planning approvals. For your convenience, the IPCO report, *Transparency, Privacy and the Internet: Municipal Balancing Acts*, is attached as well as a December 2018 letter the Association sent to its members and Michael Mizzi, the Director, Zoning and Secretary-Treasurer Committee of Adjustment for the City of Toronto.

While the discussion herein pertains primarily to approvals processes under the *Planning Act*, the OAA would be pleased to work with the City to address similar concerns with other processes relating to the submission and display of copyrighted architectural documents.

Sincerely,



Kathleen Kurtin, Architect  
OAA, FRAIC  
President

