

December 8, 2005

Chair, Board of Management
Swansea Town Hall Community Centre
95 Lavinia Avenue
Toronto, ON M6S 3H9

Dear Mr. Slaughter:

In your letter dated November 8, 2005, you have advised that the Board of Management of Swansea Town Hall Community Centre passed a resolution to request guidance on the implications of adding the duties "Privacy Officer" under PIPEDA to the duties assigned to the Executive Director of the Centre.

The *Personal Information Protection and Electronic Documents Act* ("PIPEDA") is federal legislation that applies to every organization that collects, uses or discloses personal information in the course of "commercial activities", as defined in that legislation. Therefore, in determining whether PIPEDA applies to one of its activities, the City of Toronto must determine whether that activity falls within the above definition of "commercial activities", thereby bringing the City within the scope of the PIPEDA.

The Office of the Privacy Commissioner of Canada has published a "Fact Sheet" about PIPEDA on-line that advises as follows:

... our Office is of the view that, as a general rule, PIPEDA does not apply to the core activities of municipalities ... By core activities we mean those activities that are central to the mandate and responsibilities of these institutions. Providing a service for a fee does not necessarily trigger the application of the Act if the service is part of the institution's core activities. [Emphasis added.]

In order to determine whether PIPEDA applies to Swansea Town Hall Community Centre, it is therefore necessary to determine the nature of the Centre's activities. Section 25-35B of the former City of Toronto's Municipal Code provides that the Centre's Board "shall manage and control the premises as a community recreation centre." Pursuant to this by-law provision, I understand that, rooms are rented for a fee at Swansea Town Hall Community Centre for recreational and community purposes.

Generally, renting rooms for a fee may be characterized as a commercial activity. However, although the matter is not free from doubt, this activity may be characterized

as a “core activity” of the municipality since renting premises for community recreation purposes facilitates an activity that is described as a sphere of jurisdiction under paragraph 5 of subs. 11(1) of the *Municipal Act, 2001*. This section of the *Municipal Act, 2001* gives the City authority to pass by-laws respecting matters relating to culture, parks, recreation and heritage. If an activity is determined to be a “core activity” of the City, rather than a “commercial activity” as defined above, then PIPEDA does not apply.

However, it is important to note that the *Municipal Freedom of Information and Protection of Privacy Act* and PIPEDA are substantially similar and compliance with the former statute often means that the City is in compliance with the latter.

In any event, questions and concerns regarding compliance with MFIPPA, PIPEDA or any other access and privacy legislation should be directed to the Corporate Access and Privacy Office (“CAP Office”). Since the CAP Office’s responsibilities include assisting City staff, including those at Swansea Town Hall Community Centre, in fulfilling the City’s access and privacy obligations, it is therefore unnecessary for the Centre’s Executive Director to act as a “Privacy Officer” under PIPEDA. Please feel free to contact the CAP Office at 416-392-9684.

Yours truly,



Shirley Hoy
City Manager

cc: Suzanne Craig, Director – Corporate Access and Privacy Office