



To: Regional Council

Meeting Date: June 27, 2024

From: Dino Basso
Commissioner of Corporate Services

Re: **York Region’s Response to Bill 194 – *Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024***

This memorandum informs Council of the submission, attached at Appendix A, made by Regional staff to the Ministry of Public and Business Service Delivery and Procurement (“Ministry”) in response to the Ministry’s initial consultation on Bill 194, the *Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024* (“Bill 194”).

On May 13, 2024, the Ministry of Public and Business Service Delivery and Procurement tabled Bill 194

Under Bill 194, the Ministry proposes two sets of legislative changes:

- (i) a new law, the *Enhancing Digital Security and Trust Act, 2024* (“EDSTA”); and
- (ii) amendments to Ontario’s *Freedom of Information and Protection of Privacy Act* (“FIPPA”).

Bill 194 passed first reading on May 13, 2024. Second reading was debated on May 28, 2024, and the debate was adjourned. The Province invited comments on the proposed legislation from May 13, 2024 to June 11, 2024.

Bill 194 proposes legislation to govern cyber security and artificial intelligence in provincial and municipal public sectors

EDSTA would apply to “public sector entities”, defined to include a range of public sector institutions including provincial ministries, municipalities, school boards, children’s aid societies, colleges, universities, and hospitals.

If enacted, EDSTA would permit regulations requiring public sector entities to have cyber security programs, education and awareness measures, incident response systems, and program oversight. The Minister of Public and Business Service Delivery and Procurement would have authority to implement technical standards and issue cyber security directives without notice or consultation.

With respect to artificial intelligence, EDSTA would regulate the use of “artificial intelligence systems” in prescribed circumstances. Public sector organizations would be required to appoint an individual to oversee the use of artificial intelligence systems and meet regulatory obligations.

Bill 194 also proposes amendments to provincial privacy legislation

Bill 194 proposes several amendments to FIPPA. For example, provincial institutions governed under FIPPA would be required to conduct privacy impact assessments (“PIAs”) before collecting any personal information, unless the regulations provide otherwise. If significant changes are made to the purposes for which such personal information is used or disclosed, institutions would have to update the PIAs and implement additional steps, as appropriate.

The Bill would also require FIPPA institutions to establish reasonable safeguards to protect personal information from theft, loss, and unauthorized use or disclosure, and to protect against unauthorized copying, modification, or disposal. The Ontario Information and Privacy Commissioner could conduct complaint-based and proactive reviews of an institution’s information practices.

While the Bill is not currently proposing any amendments to the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”), it is possible that similar provisions may emerge in the future.

The Region is well positioned to meet the broad requirements resulting from Bill 194, if passed

The Region currently has a mature cyber security program in place that aligns with the broad provisions of the EDSTA. Similarly, while Bill 194 does not propose amendments to MFIPPA, the Region’s privacy program already undertakes many of the required processes, such as privacy impact assessments. The full scope of the proposed changes will not be clear until more detailed regulations are issued.

The Region’s submission generally supports the intent of Bill 194, with recommendations to closely consider the impact on municipal institutions

The Ministry invited comments on Bill 194 from May 13, 2024 to June 11, 2024. The Region’s submission (Appendix A) provided several recommendations for the Ministry’s consideration, including the following key recommendations:

- The term “artificial intelligence system” proposed by the EDSTA must be more clearly defined. The Region further suggests aligning the definition of this term with definitions provided by other jurisdictions, including the EU and the USA.
- Risk management requirements under the EDSTA should take account of the overall risk of the artificial intelligence system. The Region strongly recommends the Ministry consider a risk-based approach to artificial intelligence regulation rather than a universal one.

- Similarly, the Region recommends that a risk-based approach be applied to the proposed requirement for FIPPA-governed institutions to conduct PIAs. This would ensure the PIA process is proportionate to the risk of the information collection proposed.
- Lastly, the Region advocates for maintaining consistency between FIPPA and MFIPPA to the extent possible. If the Ministry plans to introduce amendments to MFIPPA, the Region recommends these be proposed together with amendments to FIPPA as part of Bill 194.

Next Steps

Staff will continue to monitor Bill 194 as it progresses and provide updates to Council.

For more information on this memo, please contact Dino Basso, Commissioner of Corporate Services, at 1-877-464-9675 ext. 71500. Accessible formats or communication supports are available upon request.



Dino Basso
Commissioner of Corporate Services



Erin Mahoney
Chief Administrative Officer

June 18, 2024
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Appendix A - York Region's Submission to Ministry of Public and Business Service Delivery and Procurement

SUBMISSION TO THE MINISTRY OF PUBLIC AND BUSINESS SERVICE DELIVERY AND PROCUREMENT ON PROPOSED *STRENGTHENING CYBER SECURITY AND BUILDING TRUST IN THE PUBLIC SECTOR ACT, 2024*

Submitted by: The Regional Municipality of York

Date: June 11, 2024

Introduction

The Regional Municipality of York (“York Region”) makes this submission to the Ministry of Public and Business Service Delivery and Procurement (“Ministry”) with respect to the proposed *Strengthening Cyber Security and Building Trust in the Public Sector Act, 2024* (“Bill 194”).

As of 2021, York Region was home to more than 1.17 million residents, and currently delivers 15 core legislated services to the public to provide a high quality of life for its residents. York Region continuously strives to enhance its services delivery, including through updated technological tools and digital processes.

If enacted, Bill 194 would be an important step to providing a more robust framework to regulate cyber security, use of artificial intelligence (“AI”), and digital technology affecting minors across public sector institutions.

Recommendations and comments on Bill 194

York Region has provided recommendations and comments for the Ministry’s consideration below. Our recommendations and comments are made with a particular view to ensuring that municipal institutions are considered in the Ministry’s enactment of the legislation and, ultimately, regulations.

(i) Schedule 1 - Enhancing Digital Security and Trust Act, 2024

1. Section 1(1) - Definition of “artificial intelligence system”:

- a. The definition of “artificial intelligence system” provided in the proposed *Enhancing Digital Security and Trust Act, 2024* (“EDSTA”) should be more clearly defined to ensure legal certainty and uniformity. Key concepts within the proposed definition must distinguish it from simpler traditional software systems to ensure public sector entities are able to comply with their obligations.

York Region recommends the following:

- i. Consider if ‘artificial intelligence system’ as defined in the EDSTA should be aligned with definitions in other jurisdictions, such as the EU and U.S.A to facilitate international acceptance while providing flexibility as AI rapidly evolves. An AI system uses the inputs it receives to generate outputs. The objectives of an AI system may be different from its intended purposes, and the objectives may also be context specific. Certain AI systems can be used

on a stand-alone basis while others can be designed to operate with varying levels of autonomy. As such, public sector entities require clear guidelines on their specific obligations when procuring and developing artificial intelligence systems under EDTSA.

- ii. We recommend that the definition of artificial intelligence systems, cyber security incidents, unauthorized access and other terms used throughout the EDTSA be as consistent as possible with other prevailing definitions of such terms in the information technology and AI industry.
- iii. We propose that guidance be developed to assist public sector entities in raising awareness and providing training to their staff by producing a glossary to support AI literacy. The supporting glossary may cover both basic and advanced terminology and include defined terms such as “machine-based system”, “AI inputs” and “AI outputs”. Guidance materials could also be supplemented by providing real world examples and use cases to ensure that terminology is explained as clearly as possible.

2. Section 5(4) – Risk Management:

- a. We recommend that the risk management requirements developed by the Ministry in the regulations to the EDTSA set out any criteria that public sector entities must consider as they develop artificial intelligence systems, including whether public sector entities will need to disclose how they identify, evaluate and monitor artificial intelligence systems that they develop or procure.
 - b. More generally, we would recommend that risk management requirements under the EDTSA distinguish between low- and high-risk artificial intelligence systems. York Region proposes that low- and high-risk artificial intelligence systems can be distinguished based on: (i) the sensitivity, nature and amount of data processed; (ii) the intended purpose of the system; (iii) the ability of the artificial intelligence system to act autonomously, and (iv) potential risk of harm to the health, safety or human rights of an individual. Artificial intelligence systems that do not pose a significant risk of harm to health, safety or impact the fundamental human rights of an individual should not be considered to be high risk. For example, the use of an artificial intelligence system to manage essential infrastructure has a different risk profile as compared to a pothole detection system. Using generative artificial intelligence to assist with drafting a new job description will have a differing impact and audience than a report to a municipal council that may change the direction of a social services program. We would strongly recommend that the Ministry consider a risk-based approach to artificial intelligence regulation rather than a universal one.
3. The substance of the EDTSA will be mainly left to regulations and directives, which the current draft allows for without notice or comment. York Region strongly advocates for ongoing consultation with public sector entities during development of the regulations.

(ii) *Schedule 2 – Freedom of Information and Protection of Privacy Act*

1. Harmonizing FIPPA and MFIPPA:

- a. The EDSTA would apply to institutions as defined under both the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) and the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”). Despite this, Bill 194 only proposes amendments to FIPPA to modernize this legislation and accompany the new EDSTA requirements. York Region would recommend that if similar amendments are planned for MFIPPA, that these be proposed together with amendments to FIPPA as part of Bill 194.

This is recommended for the following reasons:

- FIPPA and MFIPPA have, historically, mirrored one another, providing consistency between municipal and provincial institutions. While a number of the proposed amendments to FIPPA reflect existing standard privacy practices, setting this out in the legislation ensures that all applicable institutions abide by the same expectations. By only amending FIPPA to legislate these requirements, there will remain some ambiguity or inconsistency as to the expectations for institutions governed under MFIPPA.
- Municipalities, including York Region, deliver many services on behalf of and pursuant to agreements with provincial ministries. Under the EDSTA, several key obligations will apply not only to public sector entities prescribed by the regulations, but also to third parties providing services on their behalf (see sections 1(2)(c) and 1(3)). We expect that provincial ministries would obligate municipalities delivering services on their behalf to follow at least the same information and privacy practices as the ministries would be required to follow. To facilitate consistency and coordination between municipal and provincial institutions, it would be important to maintain as much consistency between FIPPA and MFIPPA as possible.
- Even if municipal public sector entities will not be ‘prescribed’ public sector entities in the first set of regulations to be enacted under the EDSTA, it is anticipated that regulations would eventually be enacted to prescribe municipal entities. If so, York Region would recommend that amendments to MFIPPA relating to information practices be considered at this time. This would allow greater predictability for MFIPPA-regulated institutions, as well as the opportunity to better prepare for further legislative changes as they will arise. This would significantly assist municipal entities in ensuring compliance with any such changes.

2. Privacy Impact Assessments:

- a. York Region supports the overall intent of the changes proposed to section 38 of FIPPA, as Privacy Impact Assessments (“PIAs”) significantly assist organizations in ensuring personal information is collected, used, and disclosed appropriately. We are concerned, however, that the application of the proposed changes, as they are written, would be overbroad and create significant burden for public sector entities. As written, the proposed changes would require a PIA for any personal information

- that the institution intends to collect. This may become unduly onerous. Many public institutions have limited resources and operate within constrained budgets.
- b. York Region therefore recommends that a risk-based approach be used to identify a threshold of risk that would require a fulsome PIA to be completed. Alternatively, if the Ministry wishes to require all institutions to complete PIAs for all instances of personal information collection, York Region would recommend that there be simplified PIA requirements for lower-risk instances of collection, and that comprehensive requirements only be applied to high-risk instances of collection.

3. Service Provider Organizations:

- a. York Region supports the “tell us once” approach being implemented by the Ministry. As a municipality, this is something that we strive for. Digital municipal service delivery that streamlines the customer experience has the potential to allow residents to access programs that are right for them, at a time that is convenient for them. The proposed amendments to section 65.1 of FIPPA are essential to York Region residents being able to seamlessly access the many programs and services that are available to support individuals at all stages of their life. York Region would support similar provisions being added to MFIPPA to provide clearer legislative guidance on how a “tell us once” approach could be implemented at the municipal level.

Conclusion

York Region appreciates the opportunity to provide the Ministry with comments on Bill 194. The EDTSA is a great step in promoting trust in public sector institutions’ use of cyber security and artificial intelligence systems, and developing a human-centric approach to these systems.