



City of Moose Jaw

COMMUNICATION # CC-2019-0092

TITLE: Response to the Review Report 219-2018 by the Office of the Saskatchewan Information and Privacy Commissioner (OIPC)

TO: City Council

FROM: Myron Gulka-Tiechko, City Clerk/Solicitor and Privacy and Access Officer

DATE: June 26, 2019

PUBLIC: This is a public document.

RECOMMENDATION

THAT the City of Moose Jaw respond to the OIPC signifying its concurrence with the recommendations made at page 12 of the OIPC Review Report 219-2018; and further

THAT City Council rescinds Resolution 102 of 2017 which read: THAT the contact email for each individual City Councillor on the City of Moose Jaw website be at the discretion of the individual Councillor.

TOPIC AND PURPOSE

The purpose of this report is to convey Review Report 219-2018 of the OIPC to City Council, and request concurrence in the Report recommendations, including ensuring that all City business is conducted on the City's secure email network.

BACKGROUND

The provincial legislation which governs information access and privacy protection in municipalities is *The Local Authority Freedom of Information and Protection of Privacy Act (LAFOIPP)*. LAFOIPP provides the framework under which municipalities are obliged to protect the privacy of proprietary and personal information it holds, while at the same time providing the public an avenue for accessing information. As an authority which expends public funds there is an expectation that activities involving the use of those funds be fully transparent, barring appropriate exemptions.

The Review Report under consideration is rooted in a Freedom of Information (FOI) Request which the City Clerk's office received on August 29, 2018. The Clerk's Office undertook a search for those records including a request to a City Councillor for email

communications related to the request. On collating those records, the applicant received a response on September 26, 2018. The applicant took exception to a number of redactions which had been made and also believed a full disclosure of records had not occurred. As such, he had the right to request a review by the OIPC. The Review Report, attached at Schedule A, provides a full account of the exchanges which occurred over the intervening period and also provides the analysis of the OIPC with respect to whether it was satisfied that the City had undertaken an appropriate search, disclosed appropriate information and claimed the appropriate exemptions for information not initially released.

The overall findings of the OIPC was that a reasonable search for records had been undertaken. The OIPC, however, believed that some redactions had occurred which were not justified. As such, they have made specific recommendations around release of third-party financial information (which was available in the public realm via ISC reporting and had been circulated to City Council previously). Participant names and a publicly available email address were also recommended for release. The most significant recommendation made in the Report, however, is regarding the use of personal email by elected officials to do what is considered City business.

As context, Review Reports and recommendations made by the provincial Privacy Commissioner do not have the standing of a Court Order as an example. Rather, they are "recommendations" which are publicly reported and viewed to be suggestions for best practice.

The LAFOIPP also provides a framework for how a public body is to respond where a Review Report is issued by OIPC. Sections 44 and 45 of the LAFOIPP reads:

Report of commissioner

44(1) On completing a review or investigation, the commissioner may prepare a written report setting out the commissioner's recommendations with respect to the matter and the reasons for those recommendations.

(2) If a report is prepared pursuant to subsection (1), the commissioner shall forward a copy of the report to the head and, if the matter was referred to the commissioner by:

(a) an applicant or individual, to the applicant or individual and to any third party notified by the head pursuant to section 41; and

(b) a third party, to the third party and to the applicant.

(3) In the report mentioned in subsection (1), the commissioner may make any recommendations with respect to the matter under review or investigation that the commissioner considers appropriate.

2017, c 17, s.19.

Decision of head

45 Within 30 days after receiving a report of the commissioner pursuant to subsection 44(1), a head shall:

(a) make a decision to follow the recommendation of the commissioner or any other decision that the head considers appropriate; and

(b) give written notice of the decision to the commissioner and the persons mentioned in subsection 44(2).

1990-91, c.L-27.1, s.45; 2017, c 17, s.20.

DISCUSSION

Given legislative direction, the decision facing City Council is whether to accept and implement the recommendations set out in the Review Report, or to advise the affected parties, including the OIPC, that the City has chosen a different course of action.

City Administration is committed to continuous improvement and promoting the implementation of best practices. In that light, Administration recommends acceptance of the suggestions made by the Privacy commissioner. Administration accepts the criticism that we were overly cautious on exempting from release certain third-party financial information as well as names of participants in a meeting and at least one email address that was publicly available. On reflection, we would concur with the recommendations of the OIPC.

The more specific recommendation which requires Council concurrence, is whether to comply with the recommendation that all City business conducted by elected members be conducted within the City's secure IT network. i.e. on the City's network, using City email addresses.

As background, the City has historically provided email addresses to elected members on which to conduct business. In our increasingly digitized world, Council members were provided iPads on which to interact with Administration and receive reports. We have largely transitioned away from a very time-consuming paper based decision-making processes.

In advance of the last election in 2016, the City Clerk/Solicitor circulated a Memo to all candidates for mayoral and councillor positions. That Memo, dated October 5, 2016, is attached as Schedule B.

At page 2 of the Memo the following reference is made:

"Elected members will be assigned City iPads and an opportunity with IT staff for a brief orientation to the equipment. Council members will be assigned a City e-mail address to which all their weekly Council [packages and correspondence will be directed electronically. This will ensure optimum security and logistical reliability."

Early in the term, a Notice of Motion was brought forward to allow Council members a choice on what e-mail to use. That Motion, adopted at the February 13, 2017 regular meeting of City Council is as follows:

"Re: Website Contact Email for Councillors

*Moved by Coun. Swanson, seconded by Coun. Mitchell
Resolution #102*

THAT the contact email for each individual City Councillor on the City of Moose Jaw website be at the discretion of the individual Councillor.

Carried."

The OIPC Report, at pages 10 and 11, references a number of other reports where they have been critical of public officials using personal e-mail to conduct government business. This includes members of the provincial cabinet. As such, the recommendations made with respect to ensuring business is transacted on secure City websites aligns with best practices and the operating protocols used across the public sector. Administration also respectfully suggests that this recommendation also be concurred with.

OPTIONS TO RECOMMENDATION

That the City choose not to follow the recommendations made by the OIPC.

PUBLIC AND/OR STAKEHOLDER INVOLVEMENT

From the outset of receipt of the FOI request the City has been in contact with the applicant as well as the third-party organization involved. Given that the request was directed to the City, Clerk's view was that the response should properly come from the City. The OIPC has indicated that the third-party involved could also have provided input in the review process and do have the ability to appeal the decision of the OIPC if they so wished.

COMMUNICATION PLAN

The decision of Council will be communicated to the OIPC, the applicant, and the third-party organization involved.

STRATEGIC PLAN

The recommendations within comply with the goal of fostering a progressive civic administration.

BYLAW OR POLICY IMPLICATIONS

There are no bylaw implications. The central policy matter addressed in this report, however, is that the security of City-held information is paramount and that City business must be conducted within the City's secure sites.

PRIVACY IMPLICATIONS

This report, and the OIPC Review Report which it addresses, draws attention to the need to be vigilant on protecting personal and proprietary information, applying exemptions in response to an FOI request in a judicious manner, and most importantly, ensuring optimum IT security for information held by the City.

PUBLIC NOTICE

Public Notice pursuant to the Public Notice Policy is not required.

PRESENTATION

VERBAL: X

The City Clerk/Solicitor will provide an overview of the report and will be available for questions.

ATTACHMENTS

Schedule A – Office of the Saskatchewan Information and Privacy Commissioner
Review Report 219-2018

Schedule B – Memo to Candidates dated October 5, 2016

Report Approval

Written by: Myron Gulka-Tiechko, City Clerk/Solicitor

Approved by: Jim Puffalt, City Manager

Approved by: Fraser Tolmie, Mayor

To be completed by the Clerk's Department only.

Presented to Regular Council or Executive Committee on _____.

No. _____ Resolution No. _____