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Halifax Regional Council
December 13, 2005

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in dark ink, appearing to read "M. E. Donovan", written over a horizontal line.

M. E. Donovan, A/Director, Legal Services

DATE: November 24, 2005

SUBJECT: 1. Matters for In Camera
2. Release of In Camera Reports

INFORMATION REPORT

ORIGIN

At the November 22, 2005 meeting of Halifax Regional Council, Councillor Mosher requested staff review and refresh the April, 2000 report on In Camera reports and to explain the rationale for what subject matters are properly In Camera.

BACKGROUND

Section 22 of the *Municipal Government Act* states:

- 22 (1) Except as otherwise provided in this Section, council meetings and meetings of committees appointed by council are open to the public.
- (2) The council or any committee appointed by the council may meet in closed session to discuss matters relating to
- (a) acquisition, sale, lease and security of municipal property;
 - (b) setting a minimum price to be accepted by the municipality at a tax sale;
 - (c) personnel matters;

- (d) labour relations;
- (e) contract negotiations;
- (f) litigation or potential litigation;
- (g) legal advice eligible for solicitor-client privilege;
- (h) public security.

(3) No decision shall be made at a private council meeting except a decision concerning procedural matters or to give direction to staff of, or solicitors for, the municipality.

(4) A record which is open to the public shall be made, noting the fact that council met in private, the type of matter that was discussed, as set out in subsection (2) and the date, but no other information.

(5) Subsections (3) and (4) apply to committee meetings or parts of them that the council has determined are not public.

DISCUSSION

The following outlines the rationale for discussing the subject matter In Camera in respect of each of the topics.

I Acquisition, Sale, Lease and Security Of Real Estate

In the case of individual real estate transactions, the public's right to know is offset by staff's requirement to provide Council with pertinent and relevant financial and valuation information.

In private enterprise, it is not unusual for the buyer or the seller to keep information to themselves which would be perceived as being advantageous to the other party to the negotiation. When the Municipality is negotiating the acquisition or disposition of real estate, it is under a duty to maximize the benefit to the public purse. If the same information that staff provided to Council in camera were made public and therefore available to the buyer or seller or other perspective buyers or sellers, the Municipality could be at a distinct competitive disadvantage.

As an example, when the Municipality sets prices for advertised real estate sales, it adds a premium over appraised value. While this is not an uncommon practice in the real estate business, if the amount of the margin were known to the general public or could reasonably be deduced from

information provided to Council, it would encourage lower prices than what we normally might receive. It is therefore likely if staff knew that all real estate reports were likely to be released to the public, staff would probably put less information in the in camera reports and would deliver more sensitive and critical information orally at the meetings themselves.

As for security of the municipality's real estate, it is difficult to imagine a situation in which it is in the public interest that such information be made public in the short term.

II Maximum Prices To Be Accepted At A Tax Sale

This provision is rarely utilized. It would probably be primarily used in the case of valuable and perhaps unique real estate where fairly substantial taxes are owed to the municipality and at the same time, where the municipality does not want to end up as the owner of the property.

III Personnel Matters

Generally speaking the very issues that cause a personnel matter to be discussed in private in the first instance constitute sufficient reason why the information should not be divulged to the public after the fact. The release of such information would be the exception rather than the rule and therefore should be dealt with on a case by case basis.

IV Labour Relations

It is important that Council receive frank and unfettered information and advice from its staff in respect of its dealings with the Municipality's labour force, whether union or non-union. Such would not be the case if senior management felt that the information and advice it was providing would be discussed in a public forum. Furthermore, the disclosure of such information could have damaging consequences on future staff relations.

V Contract Negotiations

The same considerations apply as to real estate matters.

VI Litigation and Potential Litigation

Advice to council and discussions with council in anticipation of or in the midst of litigation are best undertaken in private. Once a settlement has been negotiated, while the basic information about a legal settlement may be information that the public has every right to know; on the other hand, it may not be to the economic advantage of the Municipality to disclose all the details of the legal advice and debate which lead to the decision to settle. If for example HRM settled for \$5,000 because there was a small risk of liability and going to trial would cost \$10,000, that knowledge might encourage other marginal claims.

In cases which tend to repeat themselves, publicity may encourage additional claims. A typical illustration would be people claiming to be injured on buses. Staff are currently addressing concerns that the current number of claims being experienced is in part due to publicity about claim settlements.

The problem with having a presumption of release is that the information that goes into the report will be tailored to the audience that is expected to read it, i.e. the public. Crucial information in the long term best interests of the taxpayer will be left out. This may leave Council with less information or may make the reports less convincing to the public.

As with real estate items, it was considered that the release of reports dealing with settlements would better be left on a case by case basis and subject to a recommendation from staff.

VI Legal Advice

Legal advice is the property of the client, i.e. the Municipality. While there may be instances in which the Municipality may wish to release the advice, this is considered in each individual instance to avoid the risk of inadvertent release without consideration of the consequences.

VII Public Security

As with security of property, public security is not always advanced by public knowledge. This is a matter that should be given due consideration by Council in each instance.

Release of In Camera Reports

With respect to In Camera items, pursuant to subsection 4 of Section 22, Council is only required to make public the information specified in that subsection, namely, "that council met in private, the type of matter that was discussed, ... and the date, but no other information".

The rules respecting the disclosure of matters discussed or reports submitted In Camera were prescribed by the Regional Council in subsections (8) through (13) of Section 9 of Administrative Order Number 1 as follows:

- (8) Staff reports submitted to In Camera Meetings of Council and details of the matters discussed at and the minutes kept of such meetings, except background information, shall be maintained by the Clerk as confidential information for a period of five years following the date of the In Camera Meeting unless Council earlier determines that the information or any part thereof be made available to the public pursuant to subsection (10).

(9) It is determined by Council, following a recommendation of staff, that the release of minutes and other information identified as confidential, has the potential to unduly damage or embarrass or in other ways be detrimental to an individual or individuals, Council may decide to maintain the confidentiality of the information for a further specified or unspecified period of time. This clause will not, however, be used to protect an elected official from potential embarrassment or damage arising from a position taken, or remarks made, during In Camera meetings.

(10) Minutes of meetings, reports and other information arising out of In Camera meetings, for which Council determines no legitimate reason exists to maintain such records for any period of time as confidential information, will be made available to the public upon request in writing to the Clerk.

(11) When any member of the public requests access to In Camera discussion information, which is classified as confidential, the Municipality, under the signature of the Chief Administrative Officer, shall provide reasons in writing addressed to the inquirer why such information is so classified.

(12) For the purposes of subsection (11), merely identifying the requested information as being access restricted because it is considered to be of a confidential nature will not constitute a satisfactory response to a request for information.

(13) Where a request for information from an In Camera meeting has been denied on the grounds of it being confidential, or where such information is considered by the inquirer to have been withheld for an unreasonable period of time, the inquirer may in writing request Council to review the decision, whereupon the inquirer shall be granted the right to make a formal presentation either orally or in writing and by a two-thirds majority vote of the Council members, Council may direct the release of the information.


The practice has been, since the administrative order was adopted, to treat all *in camera* reports and discussions as confidential unless expressly determined otherwise by Council.

ATTACHMENTS

April 2000 Staff Report.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:

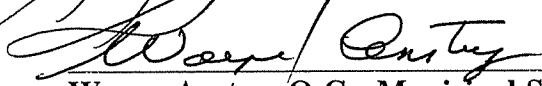

M.E. Donovan, A/Director, Legal Services, 490-4226

Halifax Regional Council
May 2, 2000
6:00 p.m.

To: Mayor Fitzgerald and Members of Regional Council

Submitted By:


K. R. Meech, Chief Administrative Officer


Wayne Anstey, Q.C., Municipal Solicitor

Date: 26 April 2000

Subject: Release Of In Camera Reports

Origin

At the March 28, 2000 meeting of Halifax Regional Council, Councillor Kelly requested staff to develop a policy and appropriate Administrative Order to allow for the release of in camera reports after the issue has been dealt with by Council unless otherwise voted on, by majority of council, as to why they cannot be made public.

Recommendation:

It is recommended

- 1) That Council amend Administrative Order Number One by substituting for the present subsection (8) of Section 9 thereof the following subsection:

 (8) Staff reports submitted to In Camera Meetings of Council and details of the matters discussed at and the minutes kept of such meetings, except background information, shall be maintained by the Clerk as confidential information for a period of five years following the date of the In Camera Meeting unless Council earlier determines that the information or any part thereof be made available to the public pursuant to subsection (10).
- 2) That staff be directed to include in all In Camera reports that may be released to the public a recommendation to that effect.

Background:

The current legislative provisions respecting in camera meetings of Regional Council are set out in Section 22 of the *Municipal Government Act* as follows:

22 (1) Except as otherwise provided in this Section, council meetings are open to the public.

(2) The council or any committee appointed by the council may meet in closed session to discuss matters relating to

- (a) acquisition, sale, lease and security of municipal property;
- (b) setting a minimum price to be accepted by the municipality at a tax sale;
- (c) personnel matters;
- (d) labour relations;
- (e) contract negotiations;
- (f) litigation or potential litigation;
- (a) legal advice eligible for solicitor-client privilege;
- (b) public security.

(3) No decision shall be made at a private council meeting except a decision concerning procedural matters or to give direction to staff of, or solicitors for, the municipality.

(4) A record which is open to the public shall be made, noting the fact that council met in private, the type of matter that was discussed, as set out in subsection (2) and the date, but no other information.

(5) Subsections (3) and (4) apply to committee meetings or parts of them that the council has determined are not public.

This provision is similar to Section 18 of the former *Halifax Regional Municipality Act* as far as the types of items that may be discussed at in camera meetings, with the exception that the latter provisions contained a general provision “and other similar matters”. Accordingly, the types of matters which are now permitted to be discussed in private are restricted to the specific items enumerated in Section 22.

Pursuant to subsection 4 of Section 22, Council is only required to make public the information specified in that subsection, namely, “that council met in private, the type of matter that was discussed, ... and the date, but no other information”.

The rules respecting the further disclosure of matters discussed or reports submitted in camera were prescribed by the Regional Council in subsections (8) through (13) of Section 9 of Administrative Order Number 1 as follows:

(8) In the event that details of the matters discussed during In Camera meetings of Council, and the minutes of the In Camera meetings, are determined by Council, or by the Chief Administrative Officer with the concurrence of Council, to warrant restricted public access, such records will be maintained by the Clerk as confidential information for a period of up to five years following the date of the In Camera meeting.

(9) If it is determined by Council, following a recommendation of staff, that the release of minutes and other information identified as confidential, has the potential to unduly damage or embarrass or in other ways be detrimental to an individual or individuals, Council may decide to maintain the confidentiality of the information for a further specified or unspecified period of time. This clause will not, however, be used to protect an elected official from potential embarrassment or damage arising from a position taken, or remarks made, during In Camera meetings.

(10) Minutes of meetings, reports and other information arising out of In Camera meetings, for which Council determines no legitimate reason exists to maintain such records for any period of time as confidential information, will be made available to the public upon request in writing to the Clerk.

(11) When any member of the public requests access to In Camera discussion information, which is classified as confidential, the Municipality, under the signature of the Chief Administrative Officer, shall provide reasons in writing addressed to the inquirer why such information is so classified.

(12) For the purposes of subsection (11), merely identifying the requested information as being access restricted because it is considered to be of a confidential nature will not constitute a satisfactory response to a request for information.

(13) Where a request for information from an In Camera meeting has been denied on the grounds of it being confidential, or where such information is considered by the inquirer to have been withheld for an unreasonable period of time, the inquirer may in writing request Council to review the decision, whereupon the inquirer shall be granted the right to make a formal presentation either orally or in writing and by a two-thirds majority vote of the Council members, Council may direct the release of the information.

The practice has been, since the administrative order was adopted, to treat all in camera reports and discussions as confidential unless expressly determined otherwise by Council. Staff is not completely satisfied with the wording used in these provisions, particularly the wording in subsection (8); however, when read in concert with subsection (10), staff is satisfied that this was the intent.

Furthermore in November of 1966, Council was given an alternative recommendation for consideration in respect of real estate and legal reports as follows:

Notwithstanding subsection (6), (8), (9) and (10), the minutes of meetings, reports and other information respecting the acquisition, sale, lease and security of property and legal actions shall not be treated as confidential and will be available to the public upon request in writing to the Clerk once the matter has been finally disposed of by Council, unless Council determines that the minutes, reports and other information warrant public access, in which case the provisions of Section 8 shall apply to such minutes, reports and other information.

If this Section had been adopted by Council, reports with respect to real estate and legal matter would have treated as open once finally dealt with by Council unless Council determined otherwise. This Section however was not adopted. This fact lends further support as to the intent of Council with respect to the meaning of subsection (8).

Discussion:

Discussion of Councillor Kelly's request will be dealt with under the specific items listed in Section 22 of the MGA .

Acquisition, Sale, Lease and Security Of Real Estate:

In the case of individual real estate transactions, the public's right to know is offset by staff's requirement to provide Council with pertinent and relevant financial and valuation information.

In private enterprise, it is not unusual for the buyer or the seller to keep information to themselves which would be perceived as being advantageous to the other party to the negotiation. When the Municipality is negotiating the acquisition or disposition of real estate, it is under a duty to maximize the benefit to the public purse. If the same information that staff provided to Council in camera were made public and therefore available to the buyer or seller or other perspective buyers or sellers, the Municipality could be at a distinct competitive disadvantage.

As an example, when the Municipality sets prices for advertised real estate sales, it adds a premium over appraised value. While this is not an uncommon practice in the real estate business, if the amount of the margin were known to the general public or could reasonably be deduced from information provided to Council, it would encourage lower prices than what we normally might receive. It is therefore likely if staff knew that all real estate reports were likely to be released to the public, staff would probably put less information in the in camera reports and would deliver more sensitive and critical information orally at the meetings themselves.

Rather than real estate reports being released automatically unless Council specifically decides otherwise, staff feel that the current situation is more advantageous to the business interests of the Municipality and would prefer that the status quo continue. Staff could indicate in its reports when a report is appropriate for release.

As for security of the municipality's real estate, it is difficult to imagine a situation in which it is in the public interest that such information be made public in the short term.

Maximum Prices To Be Accepted At A Tax Sale.

This provision is rarely utilized. It would probably be primarily used in the case of valuable and perhaps unique real estate where fairly substantial taxes are owed to the municipality and at the same time, where the municipality does not want to end up as the owner of the property. Because the provision is rarely used, it can no doubt be adequately handled on a case by case basis.

Personnel Matters

Generally speaking the very issues that cause a personnel matter to be discussed in private in the first instance constitute sufficient reason why the information should not be divulged to the public after the fact. Certainly, it is staff's opinion that release of such information would be the exception rather than the rule and therefore should be dealt with on a case by case basis.

Labour Relations

It is staff's opinion that it is important that Council can receive frank and unfettered information and advice from its staff in respect its dealings with the Municipality's labour force, whether union or non-union. Such would not be the case if senior management felt that the information and advice it was providing would be discussed in a public forum. Furthermore, the disclosure of such information could have damaging consequences on future staff relations.

Contract Negotiations.

The same considerations apply to this item as to real estate matters.

Litigation and Potential Litigation

While the basic information about a legal settlement may be information that the public has every right to know, on the other hand, it may not be to the economic advantage of the Municipality to disclose all the details of the legal advice and debate which lead to the decision to settle. If for example we settled for \$5,000 because there was a small risk of liability and going to trial would cost \$10,000 that knowledge might encourage other marginal claims.

In cases which tend to repeat themselves, publicity may encourage additional claims. A topical illustration would be people claiming to be injured on buses. A few of these claims have been settled recently and we have already noticed an increase in these types of claims coming from particular geographic areas.

The problem with having a presumption of release is that the information that goes into the report will be tailored to the audience that is expected to read it, i.e. the public. Crucial information in the long term best interests of the taxpayer will be left out. This may leave Council with less information or may make the reports less convincing to the public.

It is staff's opinion that, as with real estate items, the release of reports dealing with settlements would better be left on a case by case basis and subject to a recommendation from staff.

With respect to litigation in progress or being contemplated, it is difficult to conceive of any situation in which the premature release of the information would not be advantageous to the other side of the dispute and therefore no such information should be released without a considered recommendation in the particular case under debate.

Legal Advice

Legal advice is the property of the client, ie the Municipality. While there may be instances in which the Municipality may wish to release the advice, it is staff's opinion that this should be considered in each individual instance and not risk the inadvertent release without consideration of the consequences.

Public Security

As with security of property, public security is not always advanced by public knowledge. In staff's opinion, this is a matter that should be given due consideration by Council in each instance.

General

In looking at the list contained in Section 22 many of the items ought never to be released except possibly after the passage of time, i.e. for historical reasons. It would be rare in staff's view to have full public disclosure of matters addressed under the headings, personnel matters, labour relations, contract negotiations, litigation, legal advice and public security. Some real estate matters may be released but in staff's view, only after recommendation. The minimum price to be accepted at a tax sale would be released in due course in most events.

Therefore, it is staff's opinion that, in most cases, it would not be staff's recommendation that the In Camera report be released. In those instances in which release may be appropriate, the recommendation would be arrived at on a case by case basis and would not lend itself to a general policy. Therefore staff are of the opinion that those reports which are appropriate for immediate release should be the subject of a considered recommendation in each instance.

Council may wish to consider the clarification of the wording of subsection (8) by substituting the following:

- (8) Staff reports submitted to In Camera Meetings of Council and details of the matters discussed at and the minutes kept of such meetings, except background information, shall be maintained by the Clerk as confidential information for a period of five years following the date of the In Camera Meeting unless Council earlier determines that the information or any part thereof be made available to the public pursuant to subsection (10).

Budget Implications:

There are no direct budget implications to this decision. However, in particular situations, the premature release of otherwise confidential information could have a significant financial effect on the Municipality.

Alternatives:

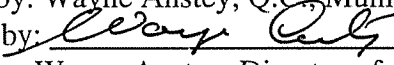
Council could determine to require staff to justify the non-release of information in each instance. Given the foregoing discussion, it is staff's opinion that this would cause needless work, since in most instances the information would not be made public in any event. This is not recommended.

Multi-Year Financial Strategy

There are no direct long term budget implications to this decision. However, in particular situation, the premature release of otherwise confidential information could have a significant financial effect on the Municipality.

Additional copies of this report and information on its status can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report prepared by: Wayne Anstey, Q.C., Municipal Solicitor 490-4229.

Report approved by:  _____,

Wayne Anstey, Director of Administrative Services 490-4229
