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Item No. 11.1.3
Halifax Regional Council
December 2, 2014

TO: Mayor Savage and Members of Halifax Regional Council
Original signed by 

SUBMITTED BY:
Richard Butts, Chief Administrative Officer
Original Signed by 
Mike Labrecque, Deputy Chief Administrative Officer

DATE: June 14, 2014

SUBJECT: Public Sector Compensation Disclosure Act

ORIGIN

February 21, 2012 Council motion that “the Access & Privacy Officer and Legal Services investigate the possibility of requiring that the salaries for all Halifax Regional Municipality Executive Team and Senior Management Team be posted yearly.”

August 14, 2012 Council motion that “Halifax Regional Council request that the provincial government designate HRM, including all agencies, boards and commissions, as a public sector body for the purposes of the Public Sector Compensation Disclosure Act. This would mean that HRM would be required to disclose the compensation it pays to any employee whose yearly income exceeds \$100,000.”

LEGISLATIVE AUTHORITY

Part XX of the Municipal Government Act, Freedom of Information and Protection of Privacy.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Ask the Province of Nova Scotia to include compensation disclosure provisions similar to the Public Sector Compensation Disclosure Act in the new HRM Charter; and
2. Ask the Province for the authority in the HRM Charter to designate Agencies, Boards & Commissions that will report annually on compensation disclosure.

BACKGROUND

In 2010, the Province of Nova Scotia passed the *Public Sector Compensation Disclosure (PSCD) Act*. This Act requires public bodies to disclose compensation it pays to any person if the amount exceeds \$100,000. Public sector bodies include government reporting entities such as school boards, district health authorities and crown corporations. Other organizations may be designated in the Regulations. To date only universities have been designated in this manner.

Municipalities, including HRM, are not currently subject to the *PSCD Act*. It has been HRM's standard practice to release, when requested, salary ranges for non-union employees and the hourly wage for unionized employees as published in collective agreements. In February 2012, as a way of increasing transparency and accountability, Council asked staff to research options which would allow the salaries of HRM's Executive Management Team and Senior Management Team to be released yearly. In doing so HRM staff considered the various pieces of legislation related to compensation disclosure, including the *PSCD Act* and the *Municipal Government Act/HRM Charter* FOIPOP provisions.

In August 2012 an information report went to Council outlining three possible ways that the salaries of Executive and Senior Management could be released:

- Council could request that members of the Executive Team and Senior Management Team consent to the disclosure of their salaries, as per the FOIPOP provisions in the *HRM Charter*.
- Council could direct staff to immediately publish on the HRM web site, as part of routine disclosure, the salary bands for all non-union positions and hourly rates of pay for all union positions.
- Council could, by motion, request that the provincial government designate HRM as a public sector body for the purposes of the *PSCD Act*. This would mean that HRM would be required to disclose compensation it pays to any person if the amount exceeds \$100,000. This change may be done by regulation and does not require a legislative amendment. This would result in broader disclosure than what Council first requested, and would place long-term disclosure obligations on HRM.

Council chose to proceed with the third option, requesting that HRM be designated a public sector body and therefore subject to the *PSCD Act* reporting requirements. An official request went to the Province in August 2013. Staff from HRM and the NS Department of Finance have been working on implementation, and have identified a number of considerations which led HRM staff to consider an alternate approach: including salary disclosure provisions in the *HRM Charter* rather than HRM being designated under the *PSCD Act*.

DISCUSSION

Considerations:

Compensation under the *PSCD Act* is defined broadly and includes, among other things in addition to salary: overtime payments, retirement or severance payments, lump-sum payments, vacation payments, the value or benefit derived from vehicles or allowances with respect to vehicles and payments for memberships in recreational clubs or organizations including professional association dues. Staff has estimated that close to 300 individuals will meet the disclosure threshold of \$100,000. The consolidation, validation and audit of this information will require administrative resources to meet deadlines.

The motion of Council of August 14, 2012 requests that the government designate "HRM, including all agencies, boards and commissions" as a public sector body. The Province requested additional detail as to which organizations are included within this request. One criterion that could be applied to determine whether a group was captured in this list is to include all organizations whose financial statements are consolidated with HRM's. These entities include the following:

- Recreation facilities – Canada Games Centre, Centennial Pool Association, Community Builders Inc. (Cole Harbour Place), Dartmouth Sportsplex Community Association, Eastern Shore Recreation Commission, Halifax Forum Community Association, Halifax Metro Centre, Halifax Regional Municipality Centennial Arena Commission, St. Margaret's Centre Association
- Commissions, cultural and other facilities – Alderney Landing Association, Downtown Dartmouth Business Commission, Downtown Halifax Business Commission, Main Street Dartmouth and Area Business Improvement Association, MetroPark Parkade Facility, North End Business Association, Quinpool Road Mainstreet District Association Ltd, Sackville Business Association, Spring Garden Area Business Association, Spryfield & District Business Association
- Halifax Regional Library
- Halifax Regional Water Commission

The organizations are all distinct societies or corporations from the Municipality, and have not been consulted by municipal staff regarding their position on being included in these reporting requirements or the work associated with reporting. Those organizations that do not have any compensation payments over \$100,000 annually will still be required to generate a report to that effect. This list is equivalent to the provincial requirement in the *PSCD Act* to include all "government reporting entities" as defined in the *Finance Act*, which includes all organizations that are part of, or controlled, for accounting purposes by the Province.

If disclosure provisions were added to the *HRM Charter*, Council would have more authority to designate which ABCs to include for disclosure. Under the *PSCD Act*, all of HRM's agencies, boards and commissions would be required, despite few of them meeting the \$100,000 disclosure level. All would still be required to submit a report, creating undue administrative burdens.

Timing

Public sector bodies that are members of the government reporting entity, or are designated by regulation, are required to submit audited Compensation Reports directly to the Department of Finance and Treasury Board (DOFTB) annually by June 30th. Public sector bodies may disclose compensation either in a stand-alone report separate and apart from their audited financial statements or in a separate schedule which forms part of the body's audited financial statements. However, if a public sector body wishes to release their audited financial statements prior to the date determined by the Minister of Finance and Treasury Board for the release of Compensation reports (typically mid-summer), then the body should disclose its compensation via a stand-alone report.

HRM currently submits its Year End Financial Statements to the Audit and Finance Standing Committee for review near the end of June each year. Because this date is in advance of the DOFTB mid-summer release date, the municipality would be required to produce a stand-alone report in order to avoid publically disclosing compensation information in advance of the release date.

The June 30th date for the municipality's submission of its Compensation Report to DOFTB fits in well with the existing year end audit timing. HRM's external auditors are generally on-site from mid-May to mid-June, and could accommodate the audit of HRM's Compensation Report within that timeframe.

Implementation

No municipalities are currently designated as public sector bodies under the *PSCD Act* regulations. When HRM is added as a designated organization, it will be the only municipality in Nova Scotia to disclose annual compensation above \$100,000 to individuals. This may create pressure on other municipalities, which have not requested disclosure, to meet the same standard as HRM. It is unlikely that many other Nova Scotian municipalities would have a significant number of employees that meet the \$100,000 threshold, thus creating a situation similar to HRM's agencies, boards and commissions whereby municipalities that do not meet the threshold still face the administrative burden of generating a

report to that effect. Including salary disclosure in the HRM Charter addresses the unique situation of Halifax.

With the review of the *HRM Charter* occurring, there is an opportunity to include this reporting requirement in the new Charter, rather than adding HRM under the *PSCD Act*. The *PSCD Act* is drafted to apply to provincial government entities, and as such has a number of provisions that would, if applied to the municipality, give the Province additional supervision of the municipality. These include: section 5, which allows the Minister of Finance to direct an officer, director or employees of a designated body to provide any information that the Minister may require for any purpose related to the administration of the Act; and section 6, which allows the Minister of Finance to withhold up to fifteen percent of the amount of funding payable by the Province to the designated body where the disclosure has not been made as required by the Act. Therefore, it is recommended that HRM include disclosure provisions in the updated *HRM Charter*.

FINANCIAL IMPLICATIONS

None

COMMUNITY ENGAGEMENT

There has been no community consultation on this request. Approving the recommendations in the report will increase community awareness and enhance HRM's public transparency.

ENVIRONMENTAL IMPLICATIONS

Not applicable.

ALTERNATIVES

1. Council could elect to proceed with the request to the Province to be added to the *PSCD Act*.
2. Council could proceed with one of the two alternative options outlined in the original July 10, 2012 information report, neither of which require changes to legislation or regulations:
 - Council could request that members of the Executive Team and Senior Management Team consent to the disclosure of their salaries.
 - Council could direct staff to immediately publish on the HRM web site, as part of routine disclosure, the salary bands for all non-union positions and hourly rates of pay for all union positions.

ATTACHMENTS

I) July 10, 2012 information report "Public Reporting of Senior Employees' Salaries"

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

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Item No. 2
Halifax Regional Council
July 10, 2012

TO: Mayor Kelly and Members of Halifax Regional Council

Original Signed by

SUBMITTED BY:

Mike Labrecque, Acting Chief Administrative Officer

DATE: June 28, 2012

SUBJECT: Public Reporting of Senior Employees' Salaries

INFORMATION REPORT

ORIGIN

The motion of Regional Council of February 21, 2012 stating:

That Regional Council requests that the Access & Privacy Officer and Legal Services investigate the possibility of requiring that the salaries for all Halifax Regional Municipality Executive Team, and Senior Management Team be posted yearly - similar to the provincial government employee's salary reporting through the public accounts.

BACKGROUND

It is HRM's standard practice to release, when requested, salary ranges for non-union employees, as approved through the Non-Union Salary compensation bands, and the hourly wage for unionized employees, as published in collective agreements.

As the motion acknowledges, other jurisdictions have specific legislation that mandates the release of exact salary information, essentially superseding any privacy protections that may exist in the relevant access and privacy legislation.

The Provincial *Finance Act* for the Province of Nova Scotia requires an annual reporting of all sums paid from the Province's General Revenue Fund during the fiscal year. Payments to individuals and suppliers within the fiscal year are reported as: Salaries – \$25,000 and over; Travel – \$3,500 and over; and all other payments – \$5,000 and over. This statement is then filed with the House of Assembly and subsequently posted on-line.

The *Education Act* of Nova Scotia requires that School Boards report “all payments made by the school board to or on behalf of each employee, including the total for each employee, of all (i) salary, stipends, allowances and any other remuneration, (ii) payments for expenses, including expenses related to travel, conferences, meetings and professional development seminars, and (iii) payments made to a third party on behalf of an employee conferring a benefit on the employee that is not conferred on other employees.” This report is available for viewing in person or may be purchased.

In 2010, the Province of Nova Scotia passed the *Public Sector Compensation Disclosure Act* which requires public bodies to disclose compensation it pays to any person if the amount exceeds \$100,000. Public sector bodies include government reporting entities such as school boards, district health authorities and crown corporations, and may also be designated in the Regulations; to date, only universities have been designated in the Regulations. Compensation is defined broadly and includes, among other things in addition to salary: overtime payments, retirement or severance payments, vacation pay-outs, lump-sum payments, recreational club memberships.

HRM, and municipalities in general, are not currently subject to any of these Acts.

HRM is, however, subject to the statutory regime established by Part XX of the *Municipal Government Act* (FOIPOP provisions). The previously mentioned legislation mandates that other government entities release salary information: Part XX of the *MGA* does not. Part XX establishes the framework for a municipality to respond to a FOIPOP application, as well as criteria for the use and disclosure of personal information. There are many circumstances outside of a FOIPOP application in which a municipality may disclose personal information. In relation to Council's request to post salaries on a yearly basis, those circumstances include where it is required by another piece of legislation (s. 482(2)(a)) and where the affected individual has identified the information and consented in writing to its disclosure (s. 485(2)(b)).

DISCUSSION

Upon review of the Access and Privacy Office and HRM Legal Services there are several options available to assist in balancing an interest in disclosure of public sector salaries and the protection of individual privacy required under the current legislation to which HRM is subject:

1. Council could request that members of the Executive Team and Senior Management Team consent to the disclosure of their salaries.
2. Council could direct staff to immediately publish on the HRM web site, as part of routine disclosure, the salary bands for all non-union positions and hourly rates of pay for all union positions.
3. Council could, by motion, request that the provincial government designate HRM as a public sector body for the purposes of the *Public Sector Compensation Disclosure Act*. This would mean that HRM would be required to disclose compensation it pays to any person if the amount exceeds \$100,000. This change may be done by regulation and does not require a legislative amendment. This would result in broader disclosure than what Council is currently exploring, and would place long-term disclosure obligations on the municipality.
4. Council could, by motion, direct any or all of the above actions be taken.

BUDGET IMPLICATIONS

There are no budget implications associated with this information report.

FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

COMMUNITY ENGAGEMENT

N/A

ATTACHMENTS

None

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.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: Nancy Dempsey, Access & Privacy Officer/Sara Knight, Solicitor, HRM Legal Services

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