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December 14, 2015

CORPORATE SERVICES INFORMATION REPORT- LEGISLATIVE SERVICES #2015-18

TO: Mayor Van Bynen and Members of Council

SUBJECT: Public Sector & MPP Accountability & Transparency Act, 2014 Implementation ("Bill 8")

ORIGIN: Legislative Services

COMMENTS

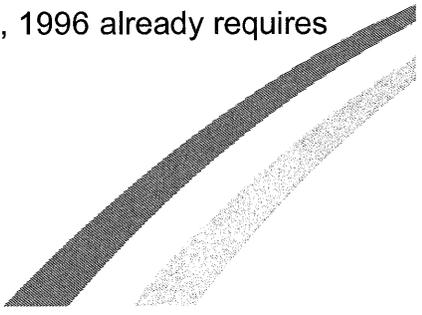
This Information Report outlines the implications of the Public Sector and MPP Accountability and Transparency Act, 2014 ("Bill 8") for the Town and activities staff have been undertaking to support the introduction of this legislation. A report will come forward in early 2016 to address the option of appointing a municipal ombudsman and a corporate policy and/or protocols related to managing customer complaints (subject to approval by senior leadership).

In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming Committee of the Whole or Council agenda for discussion.

Background

In July, 2014 Bill 8 was introduced to the Legislature and in December, 2014 the legislation received Royal Assent. The legislation amends several existing statutes, including the Municipal Act, the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA) and the Ombudsman Act.

Two aspects of Bill 8 are most relevant to the Town, both of which come into effect on January 1, 2016:

- Preservation and retention of corporate records. Bill 8 amends MFIPPA to require that the Clerk take reasonable measures to ensure records are preserved in accordance with records retention requirements, rules or policies. The Municipal Act, 1996 already requires that the Town establish a records retention by-law.
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In addition, Bill 8 establishes an offence should the Town alter, conceal or destroy a record, or cause any other person to do so with the intention of denying a right under MFIPPA to access the record or the information contained in the record (maximum fine of \$5,000). There is a two-year limitation period to pursue prosecution of this offence.

The intent of the Bill 8 MFIPPA amendments is to reinforce transparency and to establish a high standard of accountability for municipal records preservation, retention and access responsibilities.

- Ombudsman. Prior to Bill 8, the Municipal Act, 1996 established that a municipality may appoint a municipal ombudsman, a lobbyist registrar, an auditor general and an integrity commissioner and shall either appoint a closed meeting investigator of its own or default to the having the Provincial Ombudsman fulfil this role. These accountability officers were introduced through Bill 130 amendments to the Municipal Act, 1996 in 2001 to balance new municipal authority (including natural persons' powers) with a public accountability framework. In addition to the required closed meeting investigator, the Town has appointed an integrity commissioner.

Effective January 1, 2016 Bill 8 expands the Provincial Ombudsman's jurisdiction to the municipal sector (and includes municipalities, local boards and municipally-controlled corporations). The Provincial Ombudsman's jurisdiction to the municipal sector exists by default, unless a municipality appoints its own ombudsman. A municipality may appoint a municipal ombudsman even after the default jurisdiction of the Provincial Ombudsman comes into effect on January 1, 2016. Bill 8 does not affect the Town's appointment of its closed meeting investigator.

The Provincial Ombudsman (and similarly, a municipal ombudsman) have a broad mandate to **“investigate any decision, recommendation, act or omission in the course of administration of (the Town) and affecting any person or body of persons in his/her or its personal capacity”**.

The Provincial Ombudsman or a municipal ombudsman may not investigate any decision, recommendation, act or omission (1) where there is already a right of appeal or objection; (2) where there is a right to apply for a hearing or a review by any tribunal or court until such rights has been exercised; and (3) of any legal advisor or person acting as legal counsel to the Town.

Where a municipal ombudsman is appointed, the Provincial Ombudsman may only intervene if a municipal ombudsman has refused to investigate or conducted and concluded an investigation or an applicable time limit has concluded. Similarly, the Provincial Ombudsman may only investigate the actions of an integrity commissioner (and other municipally-appointed accountability officers) if an integrity commissioner has refused to investigate or conducted and concluded an investigation or an applicable time limit has concluded. The Provincial Ombudsman may investigate systemic issues and on his or her own motion.

Prior to conducting an investigation, the Provincial Ombudsman must inform the Mayor and give the Town an opportunity to make representations if the Provincial Ombudsman has grounds to make a report or recommendations that may adversely affect the Town.

Council is required to close a meeting to the public if the matter relates to an ongoing investigation by a municipal or the Provincial Ombudsman. The outcome of the Provincial or municipal ombudsman's investigations and any recommendations will be outlined in a public report. The recommendations of a municipal or the Provincial Ombudsman are not binding on a municipality.

Not all complaints brought to the attention of the Provincial or a municipal ombudsman result in an investigation. Many complaints are dealt with through an early resolutions process.

Town activities in support of Bill 8

The Town has established policies in support of records management and MFIPPA best practices, including a Protection of Personal Information Policy, Records Retention Policy and most recently, a Routine Disclosure of Records Policy. Ongoing staff training and education support compliance with policies and best practices.

Legislative Services has recently launched a web site where select records requested under MFIPPA can be accessed.

To ensure the Town's protocols for managing customer complaints are transparent and applied consistently throughout the Town, a staff working group was formed to develop a complaints management policy and/or protocols.

Next Steps

York Region recently issued a request for proposals for municipal ombudsman services, which the Town could also take advantage of through a "piggy back" clause. Public reporting to York Region Council will not occur until late December, 2015. Once public, staff will assess the Region's approach and make a recommendation on appointing a municipal ombudsman or defaulting to the Provincial Ombudsman through a report to Council in early 2016. The report will also address a corporate policy and/or protocols related to managing customer complaints.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

The initiative relates to the Well-equipped and managed link of the Town's Community Vision-implementing policy and processes that reflect sound and accountable governance.

CONSULTATION

The Legal Services Department was consulted in the preparation of this report.

BUDGET IMPACT (CURRENT AND FUTURE)

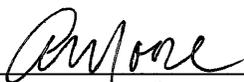
There are no budget impacts associated with this Information Report.

CONTACT

For more information on this report, please contact Andrew Brouwer, Director of Legislative Services/Town Clerk at abrouwer@newmarket.ca or at 905-953-5300, ext. 2211.



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Anita Moore, Commissioner of Corporate
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