



City of
Peterborough

TO: The Chairman and Members of the Committee of the Whole

FROM: John W. Hart, City Solicitor

MEETING DATE: October 16, 2006

SUBJECT: Report OCS06-007
A Report Concerning the Treatment of
Mail Addressed to City Councillors

PURPOSE

A report to advise City Council respecting the appropriate treatment of correspondence addressed to individual members of City Council.

RECOMMENDATION

That Council approve the recommendation outlined in report OCS06-007, dated October 16, 2006, of the City Solicitor, as follows:

- a) That report OCS06-007 be received for information.

BUDGET AND FINANCIAL IMPLICATIONS

There are no budget or financial implications to this report

BACKGROUND

For many years, mail received at City Hall and addressed to individual City Councillors has been directed, unopened, to the Councillors' mail slots in the mail room at City Hall.

In August 2006, the City Clerk became aware that, contrary to the practice with which she was familiar from her experience in other municipalities, such correspondence was not being opened and logged by her staff. This came to her attention as a result of complaints from Members of Council with respect to mail which they felt had gone missing, as well as having received mail which they would have preferred not to receive. As a result, and based upon her understanding that duties and obligations of her office required that such mail, as corporate records or “records of the council”, be opened and logged, she directed that this practice commence. The practice does not extend to correspondence that is marked “personal and confidential”; this mail is not opened. The Clerk advised Members of Council by email of this change in process.

Some Members of Council have challenged this practice, and this report is intended to provide relevant information so that Council may decide how it wishes to handle the matter.

The statutory duties of the Clerk, as prescribed by Section 228 of the **Municipal Act, 2001 (the “Act”)**, consist largely of creating and keeping minutes of Council and Committee meetings and keeping original documents such as by-laws, agreements and the like. It does not use the word “record” as a noun (although it speaks about “recording” the minutes).

Section 253 of the **Act** further provides that the Clerk has a duty to retain “control” of certain “records”, to facilitate their inspection by any person. In addition to by-laws, resolutions and minutes, it refers to “records considered at a meeting” and “the records of the council”. There is no other guidance provided in the **Act** as to exactly what these last two phrases might include, but it is reasonable to conclude that they are records which the council, as a whole, has considered publicly in some form or another. Regardless of whether mail addressed to individuals (whether Council members or City employees) are “records of the council” or not, the log that is created when mail is opened is, itself, a record. However, the Clerk has no control over, or responsibility for, the documents listed in the log.

Section 253 of the **Act**, as mentioned above, also specifically states that access to records is subject to the **Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”)**. **MFIPPA** requires an institution (of which the City is one) to disclose its “records” (defined in **MFIPPA** as “any record of information however recorded...”) to the public, on the principle that, subject to certain specific exceptions, the records of a public institution should be available to the public. However, this does not assist in determining the current issue, as **MFIPPA** is silent on the question of exactly how and when a document becomes a “record”.

By contrast, the **Act** defines a record as “information however recorded or stored”, which implies that some action on the part of the municipality may be required before a document becomes a “record”. The **Act** requires, in Section 254, that “records” be retained and preserved. The duty to comply with this requirement rests equally with any

person acting on behalf of the City, including Councillors. Once a record is created, the original may not be destroyed, except after the expiry of a retention period which has been established in accordance with a by-law passed under Section 255 of the **Act**. The City's current Records Retention By-law 91-55 was passed in 1991, and is slated for a complete review in 2007. While a full discussion of what is, and is not, a "record" of the City is beyond the scope of this report, it will be particularly relevant as part of the planned review. At that time, staff will provide a full analysis of this issue, so that Council may pass a new by-law that is responsive to the reality of modern business.

The current by-law makes no mention of the records of Councillors (as opposed to records of the whole Council), and accordingly, the question of what is and is not a record, and the fulfillment of the obligation to retain and preserve a record, rests with each individual Councillor. Once again, a full discussion of this issue is beyond the scope of this report, but will be presented to the next Council as part of the review of the Records Retention by-law. In the meantime, Members of Council should use their own best judgement as to how to treat pieces of correspondence which they receive in their capacity as Councillors (whether received at City Hall, at home or elsewhere). If any Member of Council has any questions about any particular document in the meantime, we would be pleased to assist in deciding whether it should be retained and preserved.

Surveys of other municipalities to date have disclosed little consistency in practices with respect to this issue. Some municipalities have the Clerk's office opening Councillors' mail, and others do not. Many Councillors have administrative support persons at City Hall (who open their mail), but many do not. Members of Peterborough City Council do not have this resource, excepting for the Mayor (whose assistant does open and log her mail).

Finally, it may or may not be the case that constituents writing to individual Councillors at City Hall would have the expectation that the mail would be opened only by the Councillor personally. If a constituent was very concerned about confidentiality, there are certainly steps that could and should be taken to ensure this, such as marking the envelope as confidential, or mailing it to the Councillor's home, or delivering it in person to the Councillor. Regardless, there is little of relevance to be gained from speculating about the motive of a sender.

SUMMARY

Based on all of the above, it was clearly appropriate for the Clerk, given both her own experience and her understanding of her duties, to take the actions she did. It is also appropriate for Council to provide direction to staff as to how it wishes Councillors' mail to be handled. Given that a comprehensive review of the issue will be forthcoming in the near future, Council may wish to direct that the practice of placing correspondence directly into Councillors' mail slots be resumed and continued, unless and until the next

Council decides otherwise. It must be clearly understood that Councillors remain solely responsible for any and all mail which they receive.

Accordingly, for clarity, any correspondence clearly addressed to an individual Councillor would be delivered unopened. Mail which is addressed to the Mayor and Members of Council, or in any other manner which is ambiguous, would continue to be presumed to be "corporate" mail, and would be opened, logged and directed appropriately.

Record keeping, and facilitating public access to those public records, are both important and time-consuming functions carried out by municipalities. The law surrounding both access and privacy is complex and evolving, and a comprehensive review of the manner in which the City retains its records is both timely and most appropriate.

All of which is respectfully submitted,

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