



City of
Peterborough

TO: Members of the Committee of the Whole

FROM: Linda H. Reed, Chief Administrative Officer

MEETING DATE: April 28, 2008

SUBJECT: Report CAO08-002
Release of information Policy

PURPOSE

A report to recommend that Council adopt a policy respecting the release of third party information.

RECOMMENDATION

That Council approve the recommendation outlined in Report CAO08-002 dated April 28, 2008, of the Chief Administrative Officer as follows:

That Council adopt the policy respecting the release of third party information, as set out in Appendix A to Report CAO08-002.

BUDGET AND FINANCIAL IMPLICATIONS

There are no direct budget and financial implications arising from the adoption of this recommendation.

BACKGROUND

Introduction

At its meeting held April 14, 2008, Committee of the Whole referred the following motion raised under new business to staff for a report:

"That Council direct staff that it is the policy of the City of Peterborough to release information that is submitted to the City for comment, revision or decision and no exception will be made if it is in draft, correspondence and/or final version."

Staff have considered the scope of the proposed wording of this policy, and are unable to recommend its adoption, for the reasons set out in this Report. However, recognizing Council's desire to formalize a policy on the release of information received from third parties, and based on the scenario which gave rise to the motion, Staff have prepared two alternate draft policies which are more specific and focussed in scope. This Report discusses the advantages and disadvantages of the two alternate policies and the referred motion.

Draft Policy #1 (recommended by Staff) (Appendix A)

"Subject to the requirements of the Municipal Freedom of Information and Protection of Privacy Act, the City of Peterborough will release any information received by City staff from a third party, pursuant to a contract with the City for the provision of such information, by making it available to City Council prior to, or concurrent with, the public release of any staff report which contains a recommendation based on such information, whether or not the information is in complete or final form. "

Advantages:

1. The policy applies specifically to information in the possession of Staff, which has been provided by a third party contractor, and places the onus on Staff to provide to Council any information which forms the basis of a recommendation to Council in a public report. In this way, Council is assured that it is not asked to make, and will not be seen to be making, a decision on any such matter without the consultant's recommendation forming part of the public record.

2. The policy acknowledges the requirement that the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") be complied with, which is important from the point of view of the legitimate protection of privacy.
3. The policy is in accordance with accepted business practice in the municipal sector, and will not inhibit the production of consultant's reports, nor the ability of the City to obtain qualified consulting services.
4. The policy permits the Chief Administrative Officer to carry out her duties and responsibilities consistent with the *Municipal Act, 2001*; City By-Law 06-174; and accepted business practice in the municipal sector.

Disadvantages:

1. The policy may create timing difficulties in certain circumstances, in which there are valid reasons why it is in the public interest to take a particular action prior to the consultant being prepared to release a professional report.

Draft Policy #2

"The City of Peterborough will release any information received by the City from a third party, pursuant to a contract with the City for the provision of such information, by making it available to City Council, upon request by resolution of Council, regardless of whether or not the information is in complete or final form."

Advantages:

1. The policy applies specifically to information received as a product of a third party contract, and provides an avenue through which Council, if it sees fit, may request that information be made available to it at any time, either in public or closed session, at Council's discretion.

Disadvantages:

1. The policy does not specifically address the requirements of MFIPPA, thereby potentially creating conflicts with those requirements.
2. The policy places the onus on Council to request the information.

3. The policy may inhibit the usual flow of information and exchange of knowledge between consultants and Staff, and would represent a marked departure from usual business practice. In this respect, it might also inhibit the ability of the City to retain qualified consultants in the future.

4. It does not address timing and as a result may have an impact on the ability of the Chief Administrative Officer to carry out her duties and responsibilities, pursuant to Section 229 of the *Municipal Act, 2001*, and City By-Law 06-174.

Draft Policy #3 (based on wording of April 14, 2008 Committee Motion as Referred):

“The City of Peterborough will release all information that is submitted to the City for comment, revision or decision and no exception will be made if it is in draft, correspondence and/or final version.”

Advantages:

1. The policy is comprehensive, covering all information of any nature, received by the City under any circumstances.

Disadvantages:

1. The policy language is so broad and vague as to make it practically unworkable. For example, the policy does not explain what the word “release” means, and as such would be difficult to implement. It also does not define the scope of “information” to which it is intended to apply, and could therefore have unintended implications for information received from third parties other than contractors.

2. The policy would be in conflict with the requirements of *MFIPPA*, and likely could not be implemented on a consistent basis.

3. The policy potentially limits the ability of the Chief Administrative Officer and Staff to manage contracts to ensure compliance with the scope and mandate of the contract. While third party consultants are hired to provide “expert” advice on a project, standard business practice is to supplement that expert knowledge by incorporating “local” knowledge provided by Staff. These two perspectives allow the consultant to bring insight to the exercise and credibility to the product. However, for timing, clarity and professional reasons it may not be advantageous

to Council members or the taxpayer to complete all of the discussion/analysis process during a standing committee meeting. This consultation phase on working documents is a well-established business practice in the municipal sector, and such a marked departure from it may inhibit the ability of the City to attract qualified consultants in the future.

4. The policy potentially infringes on the ability of the Chief Administrative Officer to comply with the requirements of the *Municipal Act, 2001* and By-Law 06-174.

SUMMARY

Staff has, through a variety of ways, demonstrated its support for openness and transparency in local government, which is at the root of the referred motion. The recommended policy, in the opinion of Staff, addresses the particular concern that gave rise to the referred motion, and provides a workable framework within which consultant's reports (either complete or otherwise) will be available to Council prior to Council having to make any decision which is based upon such reports.

Submitted by,

Linda H. Reed
Chief Administrative Officer

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Appendix A - Policy # 7: Release of Information to Council



DRAFT POLICY

Release of Information to Council

Policy Type:	Governance	Effective Date:	2008-05-05
Department:	CAO's Office	Approval Level:	Council
Division:		Policy #:	7
Section/Facility:			

1.0 PURPOSE

- 1.1 This policy is intended to ensure that information or recommendations received by City staff from third party contractors are publicly provided to Council prior to any decision or action of Council which is based upon such information or recommendations.

2.0 APPLICATION

- 2.1 This policy applies to Council, its committees, and City staff.

3.0 DEFINITIONS/ACRONYMS (As Required)

4.0 THE POLICY

- 4.1 Subject to the requirements of the Municipal Freedom of Information and Protection of Privacy Act, the City of Peterborough will release any information received by City staff from a third party, pursuant to a contract with the City for the provision of such information, by making it available to City Council prior to, or concurrent with, the public release of any staff report which contains a recommendation based on such information, whether or not the information is in complete or final form.



DRAFT POLICY

Release of Information to Council

5.0 APPENDIX, RELATED POLICIES, PROCEDURES & LINKS

5.1 Link (hyperlink) this policy to other pertinent documents

i.e. Legislation, Council reports and minutes, By-Laws.

Description

URL or File

.1 Municipal Freedom of Information and Protection of Privacy Act

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90m56_e.htm

5.2 Identify and link to related procedures.

.1 Accountability and Transparency Policy

http://intranet.city.peterborough.on.ca/ePeterborough/corporatepolici_/administration_/corporateservic_/clerksoffice_/accountability/accountabilityt.pdf

5.3 Identify and link to related forms.

5.4 Miscellaneous

6.0 AMENDMENTS / REVIEWS

Date (yyyy-mm-dd)	Section # Amended	Comments
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