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MEMORANDUM

To: Council

From: Guy Giorno
Integrity Commissioner

Date: June 13, 2019

Re: Special Report: Process for providing advice to Members

This special report deals with an issue that has arisen in several municipalities as a result of one of the Bill 68 amendments to the *Municipal Act*. It is being provided simultaneously to all municipalities that have appointed me as Integrity Commissioner (except those where this issue does not arise or has already been addressed).

Context

Since March 1, the responsibilities of an Integrity Commissioner under subsection 223.4 (1) of the *Municipal Act* have included:

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.

Subject to Part V.1 of the Act, in carrying out the above responsibilities, the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.¹

The Act states that a request for advice under the above provisions must be made in writing.² If the Integrity Commissioner provides advice in response to a request then the advice must also be in writing.³

The giving of written advice is subject to section 223.5 of the Act, which provides, in part, as follows:

¹ Subsection 223.3 (2).

² Subsection 223.3 (2.1).

³ Subsection 223.3 (2.2).

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- (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under [Part V.1 of the Act].
- ...
- (2.1) Advice provided by the Commissioner to a member under paragraph 4, 5 or 6 of subsection 223.3 (1) may be released with the member's written consent.
- (2.2) If a member releases only part of the advice provided to the member by the Commissioner under paragraph 4, 5 or 6 of subsection 223.3 (1), the Commissioner may release part or all of the advice without obtaining the member's consent.
- (2.3) The Commissioner may disclose such information as in the Commissioner's opinion is necessary, (a) for the purposes of a public meeting under subsection 223.4.1 (8); (b) in an application to a judge referred to in subsection 223.4.1 (15); or (c) in the written reasons given by the Commissioner under subsection 223.4.1 (17). [These subsections are part of the process for an Integrity Commissioner inquiry into whether a member has contravened the *Municipal Conflict of Interest Act*.]

In summary, the Integrity Commissioner cannot, except in specific, narrow circumstances, disclose the advice that has been given to a Member.

The same restriction does not apply to a Member. The written advice is for use in the Member's discretion. The Member is not required to share the advice with the municipality or with anyone else. On the other hand, the Member may choose to share the advice with anyone and even to make it public.

Issue

As Integrity Commissioner, I supply the municipality with statements of account that list the dates on which Integrity Commissioner services were provided and, without breaching confidentiality, briefly describe the nature of services.

It is my practice to assign a file number to each request for advice (RFA), based on the year and the order in which requests are received. For example: RFA-2019-02 (Name of Municipality). These file numbers are mentioned in the statements of account.

The statement of account reports the amount of time spent considering and responding to each request for advice (for example, 0.4 hours). In order to respect confidentiality, the statement of account does not identify the topic or nature of the request for advice, name the Member, or disclose the advice.

The obvious challenge is that a municipality must (for reasons of accountability) be able to confirm that the services described on a statement of account were provided, and the Integrity Commissioner should enable this accountability without breaching the confidentiality demanded by the *Municipal Act*.

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In my view, one solution is for Council to direct the Integrity Commissioner to include in the statement of account the name of the Member who requested advice, provided that no information about the request or the advice is disclosed.

I believe that this solution balances the statutory imperative of confidentiality with Council's authority, under subsection 223.3 (2), to assign duties that the Integrity Commissioner must perform while carrying out the responsibilities for requests for advice under paragraphs 4, 5 and 6 of subsection 223.3 (1).

This solution would permit a municipality to ask a Member to confirm that services were performed (*i.e.*, that a request for advice was considered and addressed). A municipality could not, of course, ask a Member what the request or the advice was about. Confirmation that advice was requested and provided would suffice.

Some municipalities publish all invoices as public documents. Whether the name of the Member could or should be redacted before the statement of account is published is beyond the scope of this special report. A municipality may wish to consult its solicitor.

Recommendation

If Council wishes then it should direct the Integrity Commissioner to include in the relevant statement of account the surname⁴ of the Member who made a request for advice under paragraph 4, 5 or 6 of subsection 223.3 (1) of the *Municipal Act*, provided that confidentiality is maintained and the Integrity Commissioner reveals no information about the nature of the request or the content of the advice.

Respectfully submitted,



Guy Giorno
Integrity Commissioner

⁴ Where a surname is insufficient to identify a Member the full name would be used.