

Type of Decision									
Meeting Date	Friday, Nov. 18, 2011				Report Date	Thursday, November 10, 2011			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Answers to Questions Report 18/11/11/1201									

Subject: The following are the answers to questions received at the municipal office from Reeve Stewart on Thursday, November 10, 2011. With a goal of accountability and transparency the information is included in this public report to Council as opposed to email so that everyone is apprised of the responses.

1. Who prepared the resolution reference the Harassment Complaint Report 04/11/11/1102?

- a. As stated on the bottom of the report, the resolution was prepared by the Clerk based on the information included in Mr. Instance's letter dated October 21, 2011 and the instructions contained in the Municipal Policy on Harassment and Workplace Violence.
- b. Upon advice of independent legal counsel and prior to including the report in open session of Council due diligence was completed and the exemptions under the *Municipal Freedom and Information and Protection of Privacy Act* were reviewed. The following are the legislated reasons for keeping information confidential as per MFIPPA.
 - c. Under that Act ***"personal information" means recorded information about an identifiable individual, including,***
 - (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,***
 - (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,***
 - (c) any identifying number, symbol or other particular assigned to the individual,***
 - (d) the address, telephone number, fingerprints or blood type of the individual,***
 - (e) the personal opinions or views of the individual except if they relate to another individual,***
 - (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,***
 - (g) the views or opinions of another individual about the individual, and***
 - (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;***

d. The Act further goes on to list information that may be shared in section 7 (2) so long as it is...

(a) factual material;

(i) a report of a committee or similar body within an institution, which has been established for the purpose of preparing a report on a particular topic;

(j) a report of a body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;

(k) the reasons for a final decision, order or ruling of an officer or an employee of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution;

e. From a decision of the Privacy Commissioner Order M-183 found at http://www.ipc.on.ca/images/Findings/Attached_PDF/M-183.pdf *"I would also note that the records contain the names of several individuals associated with the Village and the affected parties. As they appear in the context of these individuals' employment responsibilities or professional capacities, they do not constitute personal information for the purposes of the Act (Orders P-257, P-326 and P-369)."*

f. From a second decision #MO-1176, Township of Delhi found at http://www.ipc.on.ca/images/Findings/Attached_PDF/MO-1176.pdf *"I find that the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not **about** these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.*

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of personal information contained in section 2(1)(e) of the Act. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message."

g. As explained to Council by the Clerk and by Ruth Morin acting as Deputy Clerk, the exceptions for open meetings under the *Municipal Act* are discretionary and are not mandatory. Section 239 of the *Municipal Act* states that the matter **may** be discussed in closed session. There is no legal obligation to do so.

*“239. (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1). Exceptions (2) A meeting or part of a meeting **may be closed to the public** if the subject matter being considered is...”*

- h. The information contained in the report is based on the facts confirmed by Mr. Instance (who was hired by the municipality to investigate a Harassment policy complaint and not as solicitor) in his report and does not contain personal information under MFIPPA.
- i. The information is not subject to solicitor-client privilege as it does not relate to “legal advice” or information “for use in litigation”. The document was one resulting from findings of an investigation and contained factual information not advice. The sections/claims which were “alleged” by the Clerk but not “proven” by the solicitor were not made public. For this reason, the solicitor’s entire letter was kept confidential.
- j. The municipal policy allows that the Clerk determines which actions should be taken in a harassment complaint. The Municipal Solicitor has been asked on numerous occasions to provide advice on the resolution of this problem. You have received his responses to date. Since staff’s word would not be considered as “fair or equitable” as the Clerk was the complainant the decision had to be made by Council (excluding the Reeve). All decisions of Council **shall be made in open session**. As indicated in the report #04/11/11/1102 the resolution was required to be read and voted on in open session. Debate and discussion should also have occurred in open session.
- k. As the actions of its Council and a Head of Council undertaken while completing their duties would be of interest to members of the public and may even be defined as being of “compelling public interest”, there was no legal reason to keep this information or debate confidential. Neither was there any reason to go into closed session at the meetings of November 4, 2011 or October 27, 2011 to discuss the referral of investigations to an independent consultant. Complaints are normally kept confidential to protect the complainant against reprisal and the defendant from unsubstantiated allegations.
 - i. The originating events concerning the October 7th incident occurred in open session and were witnessed by a large number of people. There was nothing that was ever confidential. The Clerk as complainant did not wish to remain anonymous; therefore there was no reason for any discussion concerning the October 7 meeting to have occurred in closed session.
 - ii. The incidents/claims involving the May 2011 harassment complaint have been confirmed in a report to Council by an investigation of the solicitor acting as an investigator and are no longer merely allegations but deemed factual. For this reason, there was no longer any legislated reason to keep them confidential.

2. Who posted it on the township website?

- a. As usual, all reports to Council, minutes, agenda, etc. are posted on-line prior to the Council meeting. It is the Clerk's responsibility, following Municipal policy to post this information on the Township website.

3. Where are the pages 1, 2, and 3 of Bill Instances Fax of October 21, 2011 at 14:10h?

- a. Page 1 was a simple cover page. Pages 2 and 3 are in correspondence for the November 18th meeting as they were missed in the package of November 4, 2011. The pages do not contain information relevant to the question at hand at the November 4th meeting but were answers to the three questions emailed to Bill Instance and all members of Council immediately following the October 7, 2011 meeting. These pages are in the correspondence for your information as they require no follow up.

4. There is now almost \$11,000.00 in Legal Expenses, can we be provided a breakdown of this?

Numbers to date and exclusive of HST; some of which is rebated. We actually have **\$4,511.95** remaining of the \$6,000 budgeted for 2011 for "routine" legal matters.

- a. Report from Bob Young – Salary Grid Review 2010 – **\$9,500** (as explained previously, with Bob's session finishing at the end of December 2010, his invoice was received too late to be included in 2010 financial statements.)
- b. Form 4 advice – **\$936.73**
- c. Ongoing questions concerning Harassment and Code of Conduct– **\$180**
- d. Routine Legal advice – land issues – Landfill site transfers, Old Mackey Park, Chapman Park, question about real estate fees - **\$371.32**.

5. In reference to mail, I would like to know the process for mail that is addressed to me that is received at the township office. I have been told that it goes to the Clerk, but where does it go next? I have not received one piece of mail from the office since the switch to the boxes.

- a. As always, Noella and/or Ruth open the mail box and all the mail. If the information is deemed to be inconsequential/ junk mail, they will discard it. If it requires the attention of Council, it is forwarded to me and goes in the correspondence packages.
- b. As explained previously, if mail has the Reeve's name on it, it is either given to her **OR** if for Council's attention is put in the correspondence package for the next meeting.

Policy Impact: The above report is as per municipal policy and applicable legislation.

OTHERS CONSULTED: Christopher Rootham, Nelligan, O'Brien and Payne; Ruth Morin, Treasurer-Deputy Clerk; Noella Lebreton, Deputy Treasurer; *the Municipal Freedom of Information and Protection of Privacy Act*; *the Municipal Act*; Office of the Information and Privacy Commissioner website;

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

Melinda Reith