

Consolidated Clause in Administration Committee Report 8, which was considered by City Council on November 24, 2005.

1a

**Union Station - Status Report on Station Lease
With The Union Pearson Group
(Ward 28 - Toronto Centre-Rosedale)**

City Council on November 24, 2005, adopted the following:

“That City Council:

- (1) endorse the Negotiating Team’s position on the outstanding issues outlined in Appendix A to the report (September 27, 2005) from the Deputy City Manager and Chief Financial Officer;*
- (2) concur with Union Pearson Group to set a due diligence date of December 15, 2005, and a closing deadline of May 31, 2006;*
- (3) instruct the Deputy City Manager and Chief Financial Officer to advise Union Pearson Group that, in the event the parties fail to meet either of these deadlines, the transaction is to be terminated immediately without further instruction from City Council; and*
- (4) authorize and direct the appropriate City staff to take all necessary actions to give effect thereto.”*

This Clause, as amended, was adopted by City Council.

Council also considered additional material, which is noted at the end of this Clause.

City Council on October 26, 27, 28 and 31, 2005, postponed consideration of this Clause to its special meeting on November 24, 2005.

Council also considered additional material, which is noted at the end of this Clause.

The Administration Committee submits this matter to City Council without recommendation because all motions failed to carry on tie votes.

Advice to Council:

The following motions lost on tie votes:

(A) Moved by Councillor Li Preti:

“That the staff recommendations in the Recommendations Section of the report (September 27, 2005) from the Deputy City Manager and Chief Financial Officer, be adopted. [Option A].”

(B) Moved by Councillor Watson:

“(1) That City Council choose Option B and that the City negotiating team be instructed to terminate the transaction with UPG.

In doing so, the Administration Committee relies on the following:

- (a) notwithstanding the passage of two deadlines, the station lease has not been finalized;
 - (b) UPG has advised the City that it is UPG’s position that it will require as a closing condition that the City commit prior to closing that it will be implementing initiatives to effect the Bold Moves contemplated in the Master Plan; and
 - (c) UPG has indicated that it intends to rely on the terms of section 6.1 of the Master Agreement and will not confirm that the City has operated Union Station as would a prudent owner of comparable property notwithstanding the provisions of the Master Agreement that pertain to the manner in which ongoing repair and capital maintenance items will be undertaken and the process, provided in clause 6.4, that has been followed to date and to which UPG was a party; and
- (2) that City Council also reject UPG’s position on the Letter of Credit and maintain the requirement agreed in the Master Agreement.

The Administration Committee submits the report (September 27, 2005) from the Deputy City Manager and Chief Financial Officer.

Purpose:

To report on the status of negotiations with The Union Pearson Group and seek instructions from City Council.

Financial Implications and Impact Statement:

If the City enters into a Lease with The Union Pearson Group the City agrees to lease Union Station to The Union Pearson Group (“UPG”) for 35 years with one 15-year renewal and the possibility of a further 50 years if the lower level access route is constructed. On closing of the transaction, the City will receive a minimum guaranteed annual rental income stream of \$500,000 with the opportunity to share in increased net rental revenues plus a participation component. UPG will invest up to \$150 million in the restoration and renovation of the Union Station building if it includes a hotel in the West Wing (\$115 million if offices) to revitalize this underperforming asset for the City and then maintain and operate the building to be self-sustaining. On closing the City is then responsible for two lump sum payments of \$1.3 million each as identified in the Master Agreement previously authorized by City Council and executed on November 30, 2004. In light of the delay in completing the Station Lease UPG has agreed to delay these payments accordingly.

If Council approves the settlement negotiated with GO Transit and UPG, the City will be responsible for the initial capital costs to repair the waterproofing as detailed in the companion report from the Chief Corporate Officer up to \$1.4 million over a three year period commencing in 2007.

In addition to the financial return to the City, it is anticipated that this transaction will provide public benefits in both transportation improvements and heritage preservation, the creation of a tourist destination and a renewed civic pride in this treasured building.

This transaction does not include any right of UPG to create or build out any additional development in the air space above the building or the tracks. UPG will have no exclusive rights in respect of additional density. All right to create, market and develop any additional density available above Union Station and the rail corridor between York and Bay Streets rests with the City, subject to a defined “moratorium” period to allow UPG to fulfill the restoration and redevelopment obligations without interruption or interference.

All transaction costs, including legal or other consultants, are to be funded from the revenues currently earned at Union Station.

If the transaction with UPG does not close, the City will be responsible for all capital and operating costs associated with Union Station and must also reimburse UPG for the cost of the Historic Structures Report and a Pedestrian Study totalling \$168,375. The 2006 capital budget submission identifies \$3.7 million in 2006 and a total of \$26 million over the 5 year period of 2006 – 2010 for immediate repairs just to return Union Station to a basic state of good repair. To revitalize the station in the manner envisioned by UPG will require an additional infusion of capital dollars and a dedicated management strategy. This report identifies various options available to the City to revitalize the Station if the transaction with UPG fails. If City Council decides to terminate the transaction with the Union Pearson Group, a more detailed analysis of the financial implications of these options and a recommended strategy will be provided to the January Administration Committee meeting.

Recommendations:

It is recommended that:

- (1) the Administration Committee direct the City negotiating team to advise The Union Pearson Group that the Committee supports the negotiating team positions on the outstanding issues as detailed on Attachment 2 and that The Union Pearson Group advise staff on or before October 19, 2005 whether it accepts the City positions;
- (2) City staff report directly to City Council on The Union Pearson Group's response;
- (3) if The Union Pearson Group concurs with the City negotiating team's positions on the outstanding issues, City Council agree to a closing schedule whereby The Union Pearson Group must submit an executed Station Lease by November 30, 2005 for City Council's approval with a closing deadline of February 28, 2006; and
- (4) appropriate City staff be authorized and directed to take all necessary actions to give effect thereto.

Background:

The City purchased Union Station in June 2000. In doing so it identified three public policy objectives:

- (a) promotion of Union Station as a multi-modal transportation hub first and foremost;
- (b) preservation of Union Station as a heritage building; and
- (c) revitalization of Union Station as a destination in order to ensure its ongoing financial stability.

The station requires both major capital repairs and an experienced operator/manager to achieve these public objectives. In July 2002 City Council selected UPG to restore, develop and operate Union Station. In May 2004 City Council approved terms of a Master Agreement (similar in nature to an agreement to lease) with UPG. The principal business terms in the Master Agreement are set out in Appendix A to this report.

Following City Council's approval of the terms of the Master Agreement, the parties finalized the Master Agreement concurrently with the Master Plan Review process. This culminated in the execution of the Master Agreement between UPG and the City on November 30, 2004 and approval by City Council of the Union Station Master Plan at its meeting held November 30, December 1 and 2, 2004. The parties then began negotiation of the Station Lease and completion of the necessary documentation and other closing requirements. The parties were unable to complete the transaction by March 31, 2005, the closing deadline provided in the Master Agreement. This report provides a status update on the negotiations with UPG and seeks instructions from City Council on how to proceed.

Comments:

This is a complex real estate transaction coupled with ongoing planning, operating and capital responsibilities involving a variety of stakeholders and approving authorities. A further complication has been the pending sale of O and Y Properties Corporation (“O and Y”). O and Y is the developer in the UPG consortium and has been providing the day to day leadership and project management role for the transaction. The announcement in February of this year that O and Y was to be sold has been a source of uncertainty for UPG and one of the reasons negotiations have slowed. While an offer has been accepted by O and Y’s Board of Directors pending shareholder confirmation, the transaction will not close until later in the Fall. UPG has requested an extension to the closing deadline to allow the sale transaction to be completed. It is noted that under the Master Agreement the City retains a right of approval over any changes to the UPG consortium that might impact the financial stability of the consortium.

The Master Agreement lists a number of pre-closing obligations on each party as set out in Appendix A and also requires the parties to settle a Station Lease (including obtaining City Council approval) at least 30 days prior to the March 31, 2005 closing deadline. This deadline was not met. The City negotiating team continued to work to complete the City’s closing obligations and to attempt to settle terms of the Station Lease with UPG on the understanding that only City Council can approve an extension to the closing deadline.

Although staff have resolved or significantly advanced the completion of the City’s obligations certain of these obligations remain outstanding. A number of UPG’s obligations are also outstanding. In addition, there are still issues unresolved between the parties that must be addressed.

Closing Obligations - City

The City has met its obligations to rezone the property and approve the Master Plan.

The City is also required to resolve an outstanding issue between GO Transit and the City with respect to ownership of a layer of waterproofing material located on the dividing line between the GO Transit envelope and the City’s ownership in a manner satisfactory to UPG. Both GO Transit and the City claimed that the waterproofing belonged to the other. GO Transit and City staff have agreed to recommend an amendment to the Reciprocal Rights Agreement outlining the rights and responsibilities of both parties at Union Station to provide for joint responsibility for all capital and operating costs of the waterproofing layer. A separate report on the terms of this settlement is being submitted to the Administration Committee for approval. UPG did not include the cost of maintaining the waterproofing in its proposal. The City negotiating team and UPG have agreed that the City would be responsible for the initial capital repairs, following which UPG will assume the City’s future responsibilities up to a maximum annual reserve amount of \$40,000.

The lease with VIA is nearing completion. The lease with GO Transit is not as far advanced. UPG representatives have been involved in the negotiations and there should be no issues as between UPG and the City with respect to these leases. UPG requires sufficient time to provide these leases to its lender as part of its due diligence in advance of closing.

Closing Obligations - UPG

UPG has completed the Historic Structures Report. Its revised concept design must still be approved in principle by GO, VIA and Parks Canada. It must also execute a Heritage Easement Agreement with the City, deliver an updated development schedule, budget, financial commitments and a Completion Assurance Agreement providing sufficient comfort to the City that once started, construction will be completed.

Station Lease

The basic form of the Station Lease and most of the substantive clauses are now finalized. However several areas remain incomplete either because a response is outstanding from UPG or the parties have been unable to reach agreement. In those cases where a UPG response is outstanding, we believe that if additional time is made available those issues can be resolved. However, where an impasse has been reached between staff and UPG, instructions are required.

Outstanding Issues

(1) Implementation of the Master Plan's "Bold Moves"

The Master Agreement provides as a closing condition that both parties "must be satisfied with the outcome of the Master Plan". This condition was inserted to ensure that the outcome of the Master Plan did not negatively impact UPG's development concept or business plan. The Master Plan envisions four "Bold Moves" encompassing public infrastructure elements surrounding Union Station (i.e. the trainshed roof, the Northwest path, south access route and the two plazas – on Front Street and to the South).

UPG is now requiring as a closing condition that: "the City has developed (and indicated its commitment to implementing) initiatives to effect the "Bold Moves" contemplated by the Master Plan, all in a manner/on terms acceptable to UPG".

The City negotiating team disagree with UPG's interpretation of this closing requirement. While staff will be working with UPG and the Union Station Revitalization Public Advisory Group to bring forward an implementation strategy for the Master Plan shortly, there is no such positive requirement in the Master Agreement and the Station Lease should not be conditional on City actions in this regard. The requirement is merely that both parties be satisfied with the outcome of the Master Plan.

(2) Governance

The RFP indicated that a distinct City owned corporation would oversee the revitalization of Union Station. This was based on a Memorandum of Understanding between former Mayor Lastman and the former Minister of Transport dated June 2001 whereby the federal government would contribute \$25 million to the revitalization project via a corporation to be used to achieve federal transportation and heritage objectives for Union Station in return for an opportunity to nominate two of the directors of the corporation. Due to the difficulties encountered in implementing such a corporation, City staff have been re-considering various options for a governance model (if any) for the Station addressing its role, its powers and its membership. To

date Transport Canada staff has been adamant that the federal contribution cannot be made available to the City except through a separate entity.

The Master Agreement contemplates that the City would head lease the Station to a special purpose corporation to administer the Station Lease, with UPG having the ability to approve any material terms of that Head Lease, which could have a material adverse impact on its rights and obligations under the Station Lease. UPG has stated it will not close the transaction until it is satisfied with the nature of the governing entity approved by City Council and wants assurance by closing that an independent corporation or other similar entity, such as a board, is in place to administer the Lease that will be responsive and focused on Union Station.

The City negotiating team understand the reasons for UPG's position. However, the ultimate decision on governance rests with City Council. Once Council selects the governance structure UPG should be given a specific period of time to accept or reject the structure.

(3) Indemnities

The RFP required that UPG take Union Station "As Is". UPG has raised two issues in this regard.

- (a) As part of its due diligence, UPG has raised a concern that historically salt has been used on the train platforms, which together with water infiltration may have affected the station structure below. The platforms are within GO Transit's envelope. GO Transit has advised that it is now using an alternative de-icing product. While UPG has no specific evidence of structural damage it is insisting that the City indemnify UPG for any pre-existing damage to the station structure. Responsibility for any such damage would likely be allocated against the owner / users of the train platforms but it is difficult to predict the extent of the potential risk. The City negotiating team does not support any indemnification of UPG on this issue.
- (b) The Master Agreement provides \$5,900,000 in compensation to UPG for immediate capital maintenance state of good repair costs. The City will be required to pay \$2,600,000 directly to UPG over two years coinciding with the first two years of construction. The remainder will be resolved by a delay or revisions to the scope of the Phase 4 renovations. UPG continues to take the position that there is continuing deterioration to the Union Station building and that the City, as a prudent owner, should have taken better measures to stop it. In particular, UPG believes that over this past year the costs of repairs to the façade of the building have increased. UPG has requested that the City indemnify UPG for any increased costs of repairing the façade over and above the costs identified in a building condition audit prepared for UPG by Yolles.

The City negotiating team take the position that this issue was resolved in the Master Agreement and no further concessions should be made. As part of the last round of negotiations leading to the finalization of the Master Agreement, the City already agreed to take responsibility for cost increases for items not identified by the City in its RFP or for continued deterioration from the time of the RFP to the date of the Yolles building condition audit. The City negotiating team do not recommend any further concessions in this regard. The Master Agreement also specified a process for the City to proceed with

capital repairs at the station with UPG's approval until closing, at which time UPG will take over the repair projects and reimburse the City for its costs. A UPG representative has participated in all decisions made as part of the City's capital repair program. It cannot now complain about decisions made.

(4) Letter of Credit

The original RFP required the successful proponent to provide a \$5,000,000 Letter of Credit within five days of formal acceptance of its proposal by the City "to secure the proponents duties and obligations for the first 66 months of the agreement following occupancy". The Master Agreement clarified this to require the Letter of Credit within five days of Council approval of the Station Lease as occupancy could not occur until the Station Lease was executed. UPG now asks that it be postponed until closing. The purpose of the Letter of Credit is to secure UPG's obligations through the initial construction period. Delaying the submission of the letter of credit will ensure that it remains available for the whole construction schedule. As such, the City negotiating team have no objection to this amendment.

To summarize, the City negotiating team are recommending the following response to UPG's position:

- (1) Implementation of the Master Plan's Bold Moves: Reject UPG position.
- (2) Governance: Once City Council has approved the governance structure, require UPG to accept or reject that entity by the earlier of 15 days prior to the closing date or 30 days after the Council approval.
- (3) Indemnities:
 - (a) Station Structure: Reject UPG position
 - (b) Façade Repairs: Reject UPG position
- (4) Letter of Credit: Accept UPG position

Next Steps:

The City has two options:

- Option A: Agree with UPG to a short extension to allow both parties to complete their closing obligations with a new closing deadline of February 28, 2006; or
- Option B: Rely on passage of the closing deadline in the Master Agreement and the parties' inability to resolve material issues within a reasonable time and terminate the transaction.

A separate in camera report has also been submitted to the Administration Committee addressing the legal and financial implications of these two options.

Option A.

If City Council chooses Option A to extend the closing deadline, it should only do so under a set of strict parameters as follows:

- (1) before agreeing to a closing deadline extension, Council should have UPG's response to the City's final position on the outstanding issues. Hence this report recommends that the Administration Committee endorse the negotiating team's positions and instruct staff to request UPG to confirm its position with respect to the issues summarized above by October 19, 2005 and City staff report UPG's response directly to City Council;
- (2) City Council require UPG to submit an executed Station Lease by November 30, 2005 and no further material amendments will be considered after that date; and
- (3) agree to a new closing deadline of February 28, 2006 and no further extensions will be granted.

Option B.

If Council chooses Option B and the City negotiating team is instructed to terminate the transaction the following options are available to City Council:

- (1) commence a new process to transfer the whole station by sale or long term lease to another entity;
- (2) retain the whole station and manage it to fund the revitalization;
- (3) a hybrid model whereby the City leases portion(s) of the station to others and/or hires an operator/ manager for all or portions of the station; and
- (4) maintain the status quo.

If City Council chooses to terminate this process, a working group will be struck and the Deputy City Manager and Chief Financial Officer will report to the January Administration Committee on a new strategy to revitalize Union Station, including a full financial analysis of the options.

Conclusions:

The parties have made every effort to reach agreement but have been unable to do so. If City Council agrees to a further extension to the Closing Deadline, it should do so under very strict parameters. If UPG does not agree to these parameters the RFP process should be terminated.

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Appendix A

Principle Terms of Master Agreement with the Union Pearson Group

- Premises:** Union Station – land and building
excluding air rights and GO Transit trainshed (tracks and platforms)
- Term:** 35 years plus one 15-year renewal with a 50-year extension if the lower concourse is constructed.
- Rent:** Net Lease to City
- Minimum Guaranteed Rent: \$500,000 adjusted every 5 years by CPI
- Stabilization Adjustment: further adjustment to Minimum Guaranteed Rent three years after the completion of whole project (or on interim basis if later phases delayed) to capture 25 percent of increased net rental income over projections in Union Pearson Group's proposal
- Participation Rent: 5 percent of Net Rental Income commencing Year 11
- City to have all the usual rights to obtain statements and audit to confirm net revenues.
- Closing Date:** October 31, 2004 or as extended by the parties up to March 31, 2005
- Pre-closing Obligations:**
- City:**
- secure zoning bylaw amendment to permit revitalization
 - finalize and obtain UPG approval of leases with VIA Rail and GO Transit
 - approve a Master Plan for Union Station
 - settle the dispute with GO Transit over responsibility for the waterproofing layer between the station building and the GO Transit envelope (the rail corridor) and amend the Reciprocal Rights Agreement with GO Transit
- UPG:**
- finalize the concept design
 - obtain all necessary approvals to restore, develop and operate station
 - complete a Historic Structures Report
 - settle a Heritage Easement Agreement with the City
 - provide updated financing confirmation, development schedule and budget
 - deliver a Completion Assurance Agreement
 - deliver letter of credit 5 days following City Council approval of Station Lease terms
- Mutual**
- settle terms of the Station Lease and all other material agreements
 - both parties must be satisfied with the outcome of Master Plan

UPG Concept: Total investment of up to \$150,000,000 if hotel in west wing and \$115,000,000 if office in west wing
Five-year restoration and renovation program to the existing building (no new development) completed in four discrete and sequential phases:
Phase 1 – North and South ends of GO East Concourse
Phase 2 – Great Hall, West Wing, Central and West Concourse
Phase 3 – GO West Concourse, Moats and Teamways, VIA Concourse and the South Central Concourse below
Phase 4 – GO East Concourse

Key components include: creation of a hotel or office in the west wing; glass covered moat and enhanced teamways; creation of an opening in the VIA concourse to a south central concourse below; and central stairwells accessing all levels of the station from the Great Hall.

Key Terms: Completion Assurance
UPG will be required to maintain the Project Team and UPG organization in place to carry out UPG's obligations
Changes require City approval to ensure replacement participants have the requisite qualifications to complete UPG's obligations.
Lease cannot be transferred or assigned without the City's approval.
"Completion Assurance Agreement" will commit PCL (the constructor) to complete construction notwithstanding any default by UPG or failure by UPG to provide funding to be provided on a phase by phase basis as a precondition to proceeding with the phase in question.

City Security
\$5 million Letter of Credit to be provided within five days of Council approval of Station Lease plus appropriate performance bonds, labour and material bonds, payment bonds and insurance
The City will also obtain and register a mortgage, charge and security interest against UPG's leasehold interest
UPG may only mortgage its leasehold interest to lenders to secure construction financing, permanent refinancing and capital improvement financing for this project up to specified debt service and loan to value ratios unless approved by the City.

Additional Development (Upper Area Agreement)
City will commit not to pursue any development over either the station or the rail corridor during a specified period of time necessary to allow UPG to fulfill its restoration and redevelopment obligations for the station within the applicable timelines (the "Moratorium").
UPG will provide easements for access and support to allow the City to accommodate such development. UPG's consent will be required where there is a material disruption of its activities and the costs of the disruption will be reimbursed.
There will be the usual reciprocal arrangements for joint initiatives, cross indemnities and equitable allocation of shared costs.

Additional Costs

City will work with UPG to obtain at least \$5,900,000 (without interest) in additional funding for certain identified additional costs plus an enhanced design for the moat covering

If not received by construction commencement date, City will make 2 lump sum payments to UPG of \$1,300,000 on November 30, 2006 and 2007 and Phase 4 work may be delayed or reduced to the extent of \$3,300,000.

(UPG has agreed in the Station Lease to postpone these payments to 2007 and 2008 in accordance with a revised closing deadline)

Appendix B

Proposed City Position

(1) Implementation of the Master Plan's Bold Moves:

Reject UPG position.

(2) Governance:

- Once City Council has approved the governance structure, require UPG to accept or reject that entity by the earlier of 15 days prior to the closing date or 30 days after the Council approval.

(3) Indemnities:

- (a) Station Structure: Reject UPG position
- (b) Façade Repairs: Reject UPG position

(4) Letter of Credit:

Accept UPG position

The Administration Committee also considered a confidential report (September 30, 2005) from the City Solicitor and Deputy City Manager and Chief Financial Officer, a copy of which has been distributed to Members of Council under confidential cover because the subject relates to the security of the property of the municipality or local board and litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.

The Administration Committee also considered the following communications:

- (i) (undated) from Helen Riley, Co-Chair, Toronto Pedestrian Committee;
- (ii) (October 4, 2005) from Ron Taylor, Project Director, Union Pearson Group Inc.; and
- (iii) (October 6, 2005) from Janice Etter, Chair, Union Station Revitalization Group.

The following persons addressed the Administration Committee:

- Helen Riley, Co-Chair, Toronto Pedestrian Committee;
- Ron Taylor, Project Director, Union Pearson Group;
- Paul Kennedy, Torys LLP; and
- Janice Etter, Chair, Union Station Revitalization Group.

City Council – October 26, 27, 28 and 31, 2005

Council also considered the following:

Communications:

- *(October 24, 2005) from Janice Etter, Chair, Union Station Revitalization Public Advisory Group [Communication 15(a)];*
- *(October 24, 2005) from Ron Taylor, Project Director, Union Pearson Group Inc. [Communication 15(b)]; and*
- *(August 23, 2005) from Patricia H. Simpson, Project Co-ordinator, Union Station RFP, addressed to the Union Pearson Group, submitted by Councillor Sylvia Watson, Ward 14, Parkdale - High Park [Communication 15(c)].*

Council also considered the following:

- *Confidential report (September 30, 2005) from the City Solicitor and the Deputy City Manager and Chief Financial Officer [Confidential Communication C.1(a)]. This report remains confidential in its entirety, in accordance with the provisions of the Municipal Act, 2001, as it contains information pertaining to the security of the property of the municipality or local board and litigation or potential litigation.*

City Council – November 24, 2005

Council also considered the following:

Communications:

- *(October 24, 2005) from Janice Etter, Chair, Union Station Revitalization Public Advisory Group [Communication 5(a)];*
- *(October 24, 2005) from Ron Taylor, Project Director, Union Pearson Group Inc. [Communication 5(b)];*

- *(August 23, 2005) from Patricia H. Simpson, Project Co-ordinator, Union Station RFP, addressed to the Union Pearson Group, submitted by Councillor Sylvia Watson, Ward 14, Parkdale - High Park [Communication 5(c)];*
- *(November 23, 2005) from Ron Taylor, Project Director, Union Pearson Group Inc. [Communication 5(d)];*
- *(November 21, 2005) from John Levitt, Partner, EDEV Inc., addressed to Councillor Sylvia Watson, submitted by Councillor Sylvia Watson, Ward 14, Parkdale - High Park [Communication 5(e)]; and*
- *(October 19, 2005) from John Sewell for Save Union Station, addressed to Councillor Sylvia Watson, submitted by Councillor Sylvia Watson, Ward 14, Parkdale - High Park [Communication 5(f)].*

Council also considered the following:

- *Confidential report (September 30, 2005) from the City Solicitor and the Deputy City Manager and Chief Financial Officer [Confidential Communication C.3(a)]. This report remains confidential in its entirety, in accordance with the provisions of the Municipal Act, 2001, as it contains information pertaining to the security of the property of the municipality or local board and litigation or potential litigation.*