



STAFF REPORT ACTION REQUIRED

STAFF REPORT ON THE MOTION REGARDING COUNCIL MEMBER 'READ ONLY' ACCESS TO THE INTEGRATED BUSINESS MANAGEMENT SYSTEM (IBMS)

Date:	May 28, 2007
To:	Government Management Committee
From:	City Manager
Wards:	All
Reference Number:	p:\2007\Cluster B\PPFA\EDoffice/gm07003

SUMMARY

This report responds to the Government Management Committee motion of April 12, 2007 that recommend; “Staff report to the next meeting of the General Government Committee on the feasibility of allowing Councillors and their staff “read-only” access to the IBMS system.”

Members of Council and their staff are provided information from IBMS in accordance with legislative requirements and the recognition of maintaining the confidentiality of the law enforcement information contained within the system.

RECOMMENDATIONS

It is recommended by the City Manager that:

1. Staff continue to provide information (e.g. memos, reports, in-person updates) to Members of Council and their staff in accordance with legislative requirements and the recognition of maintaining the confidentiality of the law enforcement information contained within the Integrated Business Management System (IBMS).

Financial Impact

There are no financial implications resulting from this report.

DECISION HISTORY

At its April 12, 2007 meeting, the Government Management Committee considered a motion from Councillor Palacio that recommended that staff report on the feasibility of allowing Members of Council and their staff “read-only” access to the IBMS system. The motion was referred to the City Manager, in consultation with appropriate staff, to report to the next meeting of the Government Management Committee on May 10, 2007.

A status report was submitted to the May 10, 2007 Government Management Committee meeting, indicating that due to the need to review the issues raised by the request a detailed report would be submitted to the June 11, 2007 Government Management Committee meeting.

ISSUE BACKGROUND

IBMS is the integral information system supporting the business processes of City Planning, Municipal Licensing and Standards (MLS) Divisions and Toronto Building. It provides integrated business process workflow and information management for such matters as building permit applications, planning applications, and is a law enforcement database for property maintenance, building permit compliance and other investigations conducted under the authority of the *Building Code Act* and the City of Toronto Municipal Code. The system includes personal/private information as well as law enforcement information pertaining to the business functions of the divisions that access the system.

It was developed initially in 1999 to address Y2K compatibility issues with legacy systems and to support the transition of the divisions’ information systems from pre-amalgamation business applications into a single integrated cross-divisional system for the amalgamated City of Toronto.

COMMENTS

Under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the public has a right of access to information in the custody or control of the City subject to certain limitations. Access to information is not an absolute right. The provisions of access and privacy legislation require the City of Toronto and other public institutions to balance access to information with the protection of privacy of individuals by restricting the collection, use and disclosure of personal information. To that end, Part II of MFIPPA establishes a set of rules that regulate the collection, use, disclosure and retention of personal information.

Section 32 of MFIPPA states that institutions shall not disclose “personal information” in its custody or control. Subsection 32 (d) states that the disclosure of personal information in the custody or under the control of an institution is permitted if made to an officer or employee of the institution.

The Office of the Information and Privacy Commissioner of Ontario (IPC) has ruled on several occasions that municipal councillors are not officers or employees of a municipality (refer to Appendix A). Similarly, jurisprudence outside of the context of MFIPPA has also suggested that members of council are not officers or employees of the municipal corporation. In the absence of a reasonable need to access the information in his or her official capacity as a member of council/committee as a whole, a Member of Council has the same status as any member of the public in relation to access to personal information.

In relation to a previous Council motion (Staff Report of May 18, 2001 from the City Clerk to City Council) put forward to request staff to provide access to certain information contained in City databases by Members of Council (relating to Privacy Report MC-980018-1), a letter dated May 2, 2000, authored by the Privacy Commission to the Mayor of the City of Toronto stated:

“As I understand the situation, if passed by Council, this motion could have serious implications for the protection of personal information held by the City and would result in contraventions of the Municipal Freedom of Information and Protection of Privacy Act...

If this motion is passed, I will be required to publicly oppose the Council’s decision, and to consider what further actions should be taken in response to the situation. To be sure, a breach of the Act is a very serious matter.”

In light of the decisions of the IPC, it would appear that if officers of the City provided such information to Members of Council, such action shall constitute a wilful contravention of MFIPPA and may place not only the City in contravention of the Act, but also City staff outside the normal protection conferred on employees by section 49(2), applicable to a person acting on behalf or under the direction of the head, from damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under MFIPPA.

Furthermore, with respect to the law enforcement information residing in IBMS, the Courts have held that police officers are entitled to independence and discretion in carrying out their investigations and other duties as they perform a public service instead of acting in the corporate interest of the City. Their duties are derived from law and they act in the interest of the public at large. The same reasoning applies to provincial offences officers, the City staff engaged in law enforcement investigations. Requests for and disclosure of information should not infringe this independence and discretion.

While Members of Council and their staff do not have direct access to IBMS, they are provided with pertinent information from IBMS to address their concerns or questions

with an appropriate level of detail that does not contravene legislation. Current practices have the City Planning, Municipal Licensing and Standards and Toronto Building Divisions routinely responding to requests from Members of Council on the status of complaints, investigations, or requests for service. These updates are provided in the form of memos, briefing notes, or in-person updates to either the Members of Council or their staff.

City Planning and Toronto Building have implemented routine disclosure plans that allow the public, including Members of Council access to information, derived from IBMS, that is allowed to be disclosed. MLS is in the process of finalizing a routine disclosure plan.

Information is proactively provided to the Members of Council and their staff through acknowledgement letters, automatically generated reports and the City's website. Please refer to Appendix B for a listing of the various ways IBMS information is made available.

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SIGNATURE

Shirley Hoy
City Manager

Appendix A

Information and Privacy Commissioner Reports

IPC Investigation Report MC-980018-1

In the decision of Investigation Report MC-980018-1, the Assistant Commissioner of the IPC decided that the information in the privacy investigation case file was “personal information” for the purposes of MFIPPA. The investigation was initiated as a result of a complaint that three cities had provided incumbent Councillors with access to citizens’ names, addresses, amounts paid for their homes, amounts of down payments and other personal information. The investigation concluded that the information related to individuals, including their names, addresses, as well as other personal information about them, would meet the requirements of the definition of personal information in section 2(1) of MFIPPA.

IPC Order MO-2030

IPC Order MO-2030, the IPC ruled on the request made by a councillor on Toronto City Council for access to information under MFIPPA with the Municipal Property Assessment Corporation (MPAC). The IPC decision found that members of the public were statutorily compelled to disclose their personal information and that they had a reasonable expectation that their privacy interests would be protected and that their personal information would not be routinely used or disclosed for purposes other than those for which it was collected. In response to the appellants position that the role of an elected official is to advocate on behalf of residents and that obtaining access to the records at issue would facilitate a Councillor’s ability to perform this important public function, the IPC states the Commissioner was not persuaded that there was a *compelling* public interest in the disclosure of the records that clearly outweighs the exemptions to disclosure of personal information of MFIPPA.

As the rulings of the IPC stand, officers and employees of the City are prohibited by law from providing routine access to records (electronic or otherwise) containing personal information to individual Councillors.

Appendix B

IBMS Information currently available to Members of Council

City Planning Division

- Sends acknowledgment letters to Councillors advising when development applications (other than a consent and minor variance application) have been submitted in their ward. These letters include the type of application, address, a proposal description, the name of the planner handling the application and a contact phone number;
- Circulates Public Notices and site plans along with Committee of Adjustment Agendas to Councillors for consent and minor variance applications that will be considered by the Committee of Adjustment. The Public Notice includes a description of the proposal and the name of the planner handling the application and a contact phone number. The Agenda may also include a staff report;
- Publishes a monthly report on the internet site that provides a list of new major development applications that have been filed during that month. This report contains information such as the type of application, application status, address, proposed use, ward, proposed use, proposal description, gross floor area, number of units, the name of the planner handling the file along with a contact phone number;
- Publishes an annual report on the internet site that provides a general overview of major development activity for the year by type of development and by planning district mapped by ward and application status; and
- Planning staff responsible for development applications work closely with councillor offices to keep them apprised of development applications in their wards.

Municipal Licensing & Standards

- Receives requests from individual councillors and their staff through a variety of means, including e-mails, phone calls, or an invitation to a meeting. Responses to these requests are handled on a case by case basis.
- Currently planning on implementing an automatically generated report entitled "ML&S Summary of District Investigations", which is expected to be completed by mid-June. It will be emailed to each councillor as an Acrobat file attachment, and will contain statistics regarding investigations and complaints of current, carry-over and new files for the previous month.
- In December of 2005, the Municipal Licensing & Standards Apartment Standards website (<http://www.toronto.ca/apartmentstandards/home.htm>) was launched. It

extracts information from IBMS which provides information related to by-law enforcement activity within the City of Toronto. The details of property standards orders issued against rental apartment buildings within the last two years are posted and available for everyone to access. Currently, the information pertains only to multi-residential buildings containing four or more self-contained dwelling units.

Toronto Building Division

- Receives requests from individual councillors and their staff through a variety of means, including e-mails, phone calls, or an invitation to a meeting. Responses to these requests are handled on a case by case basis.
- In April of 2006, the Toronto Building Division Application Status website (http://www.toronto.ca/building_app/home.htm) was launched. This site provides information from IBMS on information relating to the status of active building permit applications in the City of Toronto.
- Future plans include disclosing the following information which we would anticipate satisfying requests for information from both the councillors and the public;
 - plan review deficiency including outstanding applicable laws and fees
 - inspection clearances
 - outstanding inspection stages
 - last inspection result
 - the existence of an outstanding order on a property including construction without a permit.
- An automatically generated report entitled "Applications Received" and "Permits Issued" is e-mailed to each councillor in the first week of the month. The two reports contain information such as the type of permit or application, construction value, units created or lost, gross floor area, site address, roll number, and date of application or issuance for the previous month in each ward.
- Annual construction activity reports are also provided to Council. This report provides statistics, comparators, permit analysis etc.