



STAFF REPORT ACTION REQUIRED

Retention of Outside Counsel for Members of Council for Freedom of Information Appeals

| | |
|-----------------|-------------------------------|
| Date: | April 4, 2014 |
| To: | Executive Committee |
| From: | City Clerk and City Solicitor |
| Ward(s): | All |

SUMMARY

Due to the recent unexpected closing of the firm of Heenan Blaikie LLP, it is necessary to quickly make new arrangements for continued legal representation for individual Members of Council before the Information and Privacy Commissioner of Ontario ("IPC") respecting access requests for records held by them. After reviewing potential options, it is recommended that the firm of Borden Ladner Gervais LLP, being the firm which Ms. Priscilla Platt has now joined, be retained for the purpose of allowing individual Members of Council legal advice and representation with respect to any IPC appeal of their records.

RECOMMENDATIONS

The City Clerk and the City Solicitor recommend that:

1. City Council authorize the retention of Ms. Priscilla Platt's new firm, Borden Ladner Gervais LLP, to provide independent advice and representation from time to time to Members of Council in relation to any proceedings before the IPC concerning access to records held by a Member of Council.

FINANCIAL IMPACT

The recommended external counsel has competitive rates in keeping with the previous proposal accepted by the City.

The actual expenditure on outside counsel for Members of Council since 2012 is \$66,663.84 and is reported annually by the City Clerk. Expenditures are paid from the Council General Expense Budget.

DECISION HISTORY

At its meeting of October 24 and 25, 2011, City Council authorized the retention of the firm of Heenan Blaikie LLP with services to be provided primarily by Priscilla Platt, to represent individual Members of Council before the IPC.

Appeals of Access Decisions in Relation to Councillor Records and Retention of Outside Counsel

<http://www.toronto.ca/legdocs/mmis/2011/cc/bgrd/backgroundfile-41903.pdf>

ISSUE BACKGROUND

Starting in 2010, the City has seen an increase in the number of access requests for Members of Council's records. With the increase in freedom of information requests is the increase in the number of appeals.

| Year | # Requests for Councillor Records | Number of appeals |
|------|-----------------------------------|--|
| 2010 | 12 | 1 |
| 2011 | 56 | 5 |
| 2012 | 72 | 9 |
| 2013 | 91 | 13 |
| 2014 | 20 as of March 7 th | 17 (including appeals carried over from previous years) |

There are 17 outstanding appeals of Members of Council's records at the IPC, so there is an urgent need to fill the void left by Heenan Blaikie LLP. Proposals were previously solicited from those lawyers known to have the requisite expertise in the area of freedom of information law. The City received an updated proposal for the services of Borden Ladner Gervais LLP and it provided a level of expertise, availability, and competitive rates to meet City Council's needs.

COMMENTS

Generally, Members of Council's records of a "personal", "constituency-related" or "political" nature are not considered within the City's custody or control, and not subject to MFIPPA. As a result, there is a need to provide separate legal and advice and representation by outside counsel if the City's access decisions are appealed to the IPC. Heenan Blaikie LLP, led by Priscilla Platt, has to date has successfully represented individual Members of Council in these proceedings before the IPC. Between 2010 and the date of the report, the City has received 10 orders from the IPC concerning the issue of public access to the personal records of individual Members of Council which have upheld the City's approach to the issues of custody or control and the application of *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") to individual Members of Council.

Without outside counsel, Members of Council will have to pay for legal advice and representation personally because the Councillors' Indemnification Policy does not apply to the appeal process associated with access requests. The City Clerk and the City Solicitor will only be able to co-ordinate general assistance for Members of Council in relation to appeals of FOI requests for respecting their records, and individual Members of Council (or their own legal counsel) will be responsible for the preparation of any representations requested by the IPC.

CONTACT

Daphne Gaby Donaldson
Executive Director,
Corporate Information Management
Services, City Clerk's Office
Tel: 416-392-9673
E-mail: ddonald@toronto.ca

Ian Duke
Solicitor, Legal Services
Tel: (416) 338-2305
Email: Iduke@toronto.ca

SIGNATURE

Ulli S. Watkiss
City Clerk

Anna Kinastowski
City Solicitor