GM16.1.8

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PLEASE REPLY TO
MARTIN P. ZARNETT
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July 8, 2008

DELIVERED BY FAX (416)-395-6439 AND EMAIL - councillor_jenkins@toronto.ca

Councillors Cliff Jenkins, Howard Moscoe and
Cesar Palacio
City of Toronto
100 Queen Street West
Toronto, Ontario
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FAX TRANSMISSION
FROM (416) 971-5305
TOTAL PAGES 2
OUR TELEPHONE
NUMBER IS (416) 971-5102

Dear Councillors Jenkins, Moscoe and Palacio:

RE: Municipal Freedom of Information and Protection of Privacy Act
Our File No. TBA

You have requested that I provide to you a letter with respect to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

In preparation of this report I reviewed the opinions from outside counsel dated April 4, 2008 and July 2, 2008, City of Toronto By-law No. 3-1998 and MFIPPA.

Designation of Head under MFIPPA

In accordance with subsection 3(1) of MFIPPA, the members of the council of a Municipality may by by-law designate from among themselves an individual or a committee of the council to act as head of the Municipality for the purposes of MFIPPA.

Paragraph 3 of By-Law No. 3-1998 delegates powers set out in section 17, 18, 25, 26 and 34 if MFIPPA. There is no designation of the head function pursuant to section 3 of MFIPPA in By-Law No. 3-1998. This By-law delegates routine and administrative functions and powers to the Clerk but not designate the Clerk as head.

A plain reading of subsection 3(1) requires such a designation as head to an individual or a committee of the council to act as head of the Municipality for the purposes of MFIPPA.

The function of head of the municipality cannot be designated to any other person other than a member of council or a committee of the council. Any such designation would be ultra vires the powers of the City of Toronto.

By-law No. 3-1998 does not designate as its "Head" the City Clerk.

Councillors' Access to Information as Head

In the absence of a designation of head, the head shall be the council in accordance with Section 3 of MFIPPA.

As head, council members have the full right of access to all City information for the proper purpose of functioning as the head under MFIPPA. Having said that, a head or any member of council functioning as the head under MFIPPA would only be entitled to disclose the information received as part of the head in accordance with the provisions of MFIPPA.

MFIPPA is legislation that governs the disclosure of information by the head to individuals requesting information. It is not legislation that restricts the right of the head to full access to all Municipal information. It assumes that the head has the information that is subject to the rules of disclosure.

Based on the reports provided to councillors, there is no case law or statutory reference presented to support the proposition restricting the right of a councillor functioning as part of the head to full access to information held by the City.

As such, I would suggest a review of the Members' Code of Conduct to re-confirm that City council members should not disclose any information received as a part of the exercise of function of head except in accordance with the provisions of MFIPPA.

In conclusion, I am unaware of any provision of MFIPPA that restricts any City information from being disclosed to the head. The head, including each member of Council as set forth above, is entitled to full access to City information subject to the provisions of MFIPPA.

Yours truly,

Martin P. Zarnett
MPZ/sb