



**STAFF REPORT
ACTION REQUIRED
With Confidential
Attachment**

Ontario Superior Court of Justice Decision On the Application Regarding Council Member “Read Only” Access to the Integrated Business Management System (IBMS)

Date:	March 1, 2011
To:	City Council
From:	City Solicitor
Wards:	All
Reason for Confidential Information:	<p>This report is about litigation or potential litigation that affects the City or one of its agencies, boards and commissions.</p> <p>This report contains advice or communications that are subject to solicitor-client privilege.</p>
Reference Number:	

SUMMARY

At its meeting of October 29 and 30, 2008, City Council considered item GM16.1, entitled "Opinion Regarding Council Member “Read Only” Access to the Integrated Business Management System (IBMS)." IBMS is a specialized computer database developed by the City to provide integrated cross-divisional information management for certain City Divisions, such as: City Planning, Municipal Licensing & Standards, and Toronto Building. City Council directed the City Clerk to provide each individual Councillor with "read-only" access to IBMS on matters within the individual Councillor's assigned ward. City Council's direction to the City Clerk was conditional on the City receiving a favourable decision from the Ontario Superior Court of Justice that the direction to provide individual Councillors with "read-only" access to IBMS complied with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

In addition, City Council directed the City Manager to retain the law firm of Sandler, Gordon, Barristers & Solicitors to act as the City's external counsel with respect to the legal proceedings before the Ontario Superior Court of Justice. The City's application was heard by the Ontario Superior Court of Justice on October 14, 2010. On January 14, 2011, Justice Corrick of the Ontario Superior Court of Justice released her decision, dismissing the City's application on jurisdictional grounds. On February 9, 2011, to preserve the City's right to appeal, the City filed a Notice of Appeal with the Court of Appeal for Ontario, seeking that the Judgment of Justice Corrick be set aside and that the City's application be remitted to the Ontario Superior Court of Justice for decision.

This report makes recommendations with respect to further actions to be taken with respect to the matter. Attached as an appendix to the confidential attachment is the outside legal opinion of Sandler, Gordon, Barristers & Solicitors, which addresses the decision of the Ontario Superior Court of Justice and further steps which may be taken with respect to the City's Application.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Council adopt the recommendations set out in the confidential attachment.
2. Council authorize the release of the confidential recommendations upon adoption by Council and that the balance of the confidential attachment remains confidential in its entirety due to litigation and solicitor client privilege.

FINANCIAL IMPACTS

Financial impacts are set out in the confidential attachment.

DECISION HISTORY

At its meeting on October 29 and 30, 2008, City Council considered the recommendations from the Government Management Committee, respecting Item No. GM 16.1, entitled "Opinion Regarding Council Member 'Read Only' Access to the Integrated Business Management System (IBMS)." After considering the recommendations of Government Management Committee, City Council on October 29 and 30, 2008, adopted the following motions:

1. The staff recommendations in the report (April 8, 2008) from the City Solicitor, be received.
2. The City Clerk be directed to provide Councillors with read-only access to the IBMS database on matters within their own ward for lawful uses in discharging their responsibilities as Members of Toronto City Council, based on the expert legal opinion with respect to the *Municipal Freedom of Information and*

- Protection of Privacy Act (MFIPPA)* outlined in the communication (July 8, 2008) from Mr. Martin P. Zarnett, of Sandler, Gordon, Barristers and Solicitors (communication GM16.1.8).
3. The City Clerk be directed to provide education to Councillors and their respective constituency staff on the use of IBMS and the requirements of MFIPPA with respect to disclosure of personal information.
 4. The Integrity Commissioner be requested to review the Code of Conduct for Members of Council and their staff to reconfirm that Members of Council and their staff must not disclose any information received as part of the exercise of function of head except under the provisions of MFIPPA.
 5. The City Manager be requested to establish a training program for staff on what information can be given to Members of Council.
 6. The City Manager and Deputy City Manager and Chief Financial Officer identify IT Capital projects that provide greater information to Members of Council and the public for prioritization in the 2009 budget process.
 7. Prior to the implementation of Parts 2 to 6, above, the City of Toronto apply to, and receive, a favourable decision from the Ontario Superior Court of Justice in a legal proceeding pursuant to the *Rules of Civil Procedure* and/or under the *Judicial Review Procedure Act*, for a determination that the recommendations approved by City Council or such other recommendations that counsel may advise or the Court may permit, comply with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.
 8. Such proceeding include a request of the Court that no employee or officer of the City of Toronto shall be in violation of MFIPPA by implementing these recommendations.
 9. Notice of such proceedings be served on the Information and Privacy Commissioner for the Province of Ontario and the Ministry of the Attorney General.
 10. The City Manager retain the law firm of Sandler, Gordon to commence and proceed with these recommendations.
- <http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-10-29-cc25-dd.pdf> (Item GM 16.1)

ISSUE BACKGROUND

In March 2010, the City filed an application pursuant to Rule 14.05 of the *Rules of Civil Procedure* for a declaration from the Court that providing each individual Councillor with "read-only" access to IBMS on matters within the Councillor's assigned ward

complies with the provisions of MFIPPA. After being served with the City's application, the IPC sought and obtained intervenor status, and as an intervenor, filed a motion requesting that the City's application be dismissed on jurisdictional grounds.

The City's application and the IPC's responding motion were heard together on October 14, 2010. On January 14, 2011, Justice Corrick of the Ontario Superior Court of Justice released her decision, dismissing the City's application. The Court adopted the position advanced in the IPC's motion that the October 29 and 30, 2008, resolution of City Council constituted an access request under MFIPPA. As a result, Justice Corrick dismissed the City's application as "premature" as the City had not exhausted its administrative remedies before the IPC with respect to a review of an access decision.

On February 9, 2011, to preserve the City's right to appeal, the City filed a Notice of Appeal with the Court of Appeal for Ontario, seeking that the Judgment of Justice Corrick be set aside and that the City's application be remitted to the Ontario Superior Court of Justice for a hearing on the substantive merits of the application.

A copy of the Ontario Superior Court of Justice decision is attached as Attachment 2.

COMMENTS

A communication from the City's external counsel in this matter is attached as an appendix to the confidential attachment. The confidential attachment also provides the comments of the City Solicitor with respect to the decision of the Ontario Superior Court of Justice, as well as making recommendations to Council with respect to further action in this matter.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1 – Confidential Attachment (with Confidential Appendix)
Attachment 2 – Justice Corrick's January 14, 2011, decision