



**STAFF REPORT  
ACTION REQUIRED**

**Information Sharing Practices between the City of Toronto, Toronto Police Service and Toronto Community Housing Corporation**

<b>Date:</b>	July 5, 2016
<b>To:</b>	City Council
<b>From:</b>	City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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City Council, at its meeting of June 7, 8 and 9, 2016, dealt with Item MM19.37, entitled "Develop a Strategic Plan to Address Gun Violence across the City for the Summer Months" directed that an interdivisional group with representatives of the City, Toronto Police Service ("TPS"), and Toronto Community Housing Corporation ("TCHC") be formed to develop a strategy to consider how to best address the potential for gun violence within the City. As part of this item, City Council also directed the City Solicitor to report on potential information sharing impediments and methods to overcome any impediments identified.

As directed, Legal Services has consulted with the City, TPS and TCHC staff and reviewed each organization's legislative obligations. While information sharing between the City, TPS and TCHC is generally free of significant legislative impediments, it appears that certain "operational impediments" may exist which could be addressed to make information sharing more effective. Staff have already commenced efforts to improve the effectiveness of information sharing through eliminating these operational impediments. For example, TCHC and TPS are currently in discussions concerning the development and implementation of an information sharing Memorandum of Understanding ("MOU") in accordance with previously issued comments of the Office of the Information and Privacy Commissioner of Ontario ("IPC") on the subject of police-public housing provider information sharing.

## **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. Council receive this report for information.

### **Financial Impacts**

There is no financial impact beyond what has already been approved in the current year's budget.

### **DECISION HISTORY**

At its meeting on June 7, 8 and 9, 2016, City Council considered Item No. MM19.37, entitled "Develop a Strategic Plan to Address Gun Violence across the City for the Summer Months" and adopted the following motions:

1. City Council direct the City Manager to immediately establish an inter-divisional table with membership that includes staff from Social Development, Finance and Administration and other divisions as appropriate, the Toronto Police Service and the Toronto Community Housing Corporation, to develop a strategy to address gun violence across the City for the summer months.
2. City Council direct the City Solicitor to report to the July Council meeting on any impediments to information sharing between the City, the Toronto Police Service and the Toronto Community Housing Corporation, and how they could be overcome.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.MM19.37>

### **ISSUE BACKGROUND**

Concerns have been raised with respect to a perceived rise in the number of gun-related incidents within Toronto's communities. In particular, residents of TCHC properties are worried that the response to a number of these gun-related incidents does not adequately address their concerns with respect to safety. There are a variety of operations of the City, TCHC and TPS which may address the safety concerns of TCHC residents. Improved co-ordination of these various operations may require the sharing of strategic information, and development of a strategic plan. Concerns have been raised that impediments exist with respect to information sharing between the City, TPS, and TCHC, that could hamper co-ordination and the efficiency of these operations.

## COMMENTS

### Overview:

While the information management regime imposed on the City, TPS and TCHC is somewhat complicated, it appears that impediments to information sharing do not arise directly from specific legislated obligations, but rather from operational issues resulting from the various organizational practices and policies of the City, TPS, and TCHC.

The *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") establishes information management obligations for the City, TPS and TCHC. MFIPPA establishes specific regulations that deal with the collection and use of information for law enforcement purposes, including allowing for the disclosure of information held by an institution for use by another institution for law enforcement purposes. MFIPPA regulations concerning collection, use and disclosure of information differ as between law enforcement and non-law enforcement purposes. However, while a somewhat complicated information management regime is created by these regulations, it should not impede the sharing, and disclosure of information between the City, TPS and TCHC in appropriate circumstances.

For example, s.32 of MFIPPA provides for specific permissions to disclose information to a law enforcement agency to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. Section 29 of MFIPPA allows institutions to indirectly collect personal information for use in in potential proceedings before court or administrative tribunals, and there are existing processes for parties to obtain access to "law enforcement" information where relevant to a civil or administrative matter.

The TPS is not only subject to MFIPPA obligations, but due to its role as a police service, providing assistance to the Ministry of the Attorney General in the prosecution of criminal charges, TPS has additional specialized information management obligations concerning information held by the TPS arising from the *Police Services Act* ("PSA"), and associated regulations, as well as common-law requirements related to assisting the Ministry of the Attorney General in prosecution of criminal activity. O.Reg. 265/98, allows for the TPS to share information identifying individuals and their relationship to criminal activities in appropriate circumstances, such as where the TPS reasonably believes the disclosure would reduce the risk posed by the individual.

The existing information management regime ensures that information is managed in a fashion that does not unduly interfere with individual's rights or jeopardize the investigation and prosecution of criminal activities, while allowing for sharing between institutions in appropriate circumstances. The existing protocols and policies, of the City, TCHC and TPS establish a generally efficient method to address these requirements and allow for information sharing between the organizations. Any information sharing

impediments which do exist appear not to arise directly from the specific legislated obligations, but rather from operational issues resulting from a lack of co-ordination of the various information management practices and policies implemented by the City, TPS, and TCHC. The need to better co-ordinate the relevant practices and policies to avoid such operational impediments had previously been identified by the staff of City, TPS, and TCHC directly involved in these matters. Efforts to improve the effectiveness of information sharing to co-ordinate practices and eliminate these operational issues, are already underway.

### Sharing of TPS Information with the TCHC

There have been some operational difficulties in co-ordinating TPS' activities in relation to the investigation and the prosecution of gun related incidents, with use of TPS' information in relation to TCHC's eviction proceedings. Access to "law enforcement" information is subject to a variety of legislative controls, to ensure that such access does not interfere with TPS' involvement in investigation and prosecution of criminal activities. TCHC's use of information in pursuing eviction of tenants does not constitute a law enforcement purpose, and so the MFIPPA provisions dealing with law enforcement activities do not assist TCHC in obtaining access to TPS information. As a result of TPS's responsibility to protect the integrity of the investigation and prosecution of potential criminal activities, the TPS may deny access to certain law enforcement information pending the outcome of an investigation or prosecution to reflect the public interest in ensuring the effective resolution of the investigation of criminal activity, or related court proceedings. O.Reg. 265/98, allows for the TPS to share certain information, including identifies individuals and their relationship to criminal activities, where the TPS believes it is appropriate to address matters of public interest, such as where the TPS reasonably believes the disclosure would reduce the risk posed by the individual.

Currently, TCHC may obtain information concerning potential criminal activity relevant to its landlord responsibilities by the examination of public records, such as dockets of court proceedings or disclosures provided by TPS as permitted by O.Reg. 265/98. Where review of the publicly available information indicates that access to information held by TPS in relation to these prosecutions, such as a "Crown brief" is sought, the competing interests (TCHC's desire to proceed with eviction proceedings, and the need to safeguard TPS' efforts regarding the investigation/prosecution of criminal activity) in access to this information can be mediated by TCHC requesting an order from the appropriate tribunal upon notice to the Ministry of the Attorney General (referred to as a "Wagg Order") for the production of the relevant TPS materials.

TCHC have identified that certain operational issues exist with the current process as outlined above. Due to the differing standards of proof, and tests to be established in the two processes, TCHC may have an interest in eviction proceedings where the law enforcement information held by the TPS in an investigation of criminal activity would be insufficient to support the commencement or continuation of legal proceedings. As the available public records primarily only indicate matters where prosecutions have been

commenced, the TCHC may not be aware of incidents of potential criminal activity investigated by TPS where a prosecution was not commenced. The current process may therefore limit the TCHC's knowledge of potential matters of concern to a landlord. Also, the current method for co-ordinating the TPS' involvement in the TCHC's eviction proceedings and the prosecution of criminal offences is relatively resource intensive, and may not provide for the most efficient method of co-ordinating these two processes. These impediments are operational complications which may be addressed through TCHC and TPS developing and implementing an MOU in accordance with previously issued comments of the IPC on the subject of police-public housing provider information sharing.

The IPC has previously addressed the parameters of information sharing MOUs, and the related documentation and policies of a municipal housing provider to allow for the distribution of law enforcement information held by a police service to a municipal housing provider for landlord related purposes, including eviction proceedings. The IPC has previously indicated that where appropriate conditions are met, such as the provision of appropriate notice to tenants, the disclosure of certain law enforcement information to a municipal housing provider for use for landlord obligations (including eviction proceedings in furtherance of providing safe housing for tenants) may be permitted as a "consistent purpose" as permitted by s.32(b) of MFIPPA. Therefore, the current operational impediments may be addressed by the TCHC and the TPS establishing an information sharing MOU that accords with the IPC's commentary in this regard and addresses the current operational concerns of the TPS and TCHC. TCHC has reported that discussions with TPS staff concerning the particulars of such an MOU have commenced. Implementation of this MOU would assist in better co-ordination of TPS law enforcement activities and TCHC activities as a landlord providing residential tenancies to members of the public, without jeopardizing the TPS's law enforcement activities or unduly impacting individuals' personal privacy interests.

#### Sharing of TPS Information with the City

There were no indications of impediments where the City is requesting information from the TPS for use in relation to either the City's use in law enforcement matters (e.g. municipal by-law enforcement) or other City options that do not constitute law enforcement activities. Additionally, due to the high level of information sharing between TPS and staff in Municipal Licensing & Standards, City staff are currently in conversations with TPS concerning developing an information sharing Memorandum of Understanding ("MOU") to implement even more efficient information sharing processes.

### Sharing of TCHC Information with the TPS

It does not appear that there are any notable impediments for TPS to obtain information from TCHC. The City has developed policies, processes, and specialized documents which allow for the exchange of information between the City and law enforcement agencies, such as the TPS, and the TCHC has established similar protocols. There does not appear to be any notable impediments to the TPS obtaining information from TCHC for law enforcement purposes.

### Sharing of TCHC Information with the City

The TCHC has in the past indicated a resistance to sharing information in response to City requests due to concerns on whether the requested disclosure of information was restricted under MFIPPA. A resolution to the TCHC's concerns was obtained through the application of existing long-standing processes for the sharing of information between the City and TCHC. Also it appears that existing City processes have allowed TCHC to coordinate TCHC access to City records for purposes of its landlord related functions.

### Sharing of City Information with the TPS

The City's existing policies and protocols for information sharing have apparently also established an effective method for the exchange of information between the City and TPS. As noted above, s.32 of MFIPPA allows for the sharing of information for potential use to a law enforcement agency for the intended use in law enforcement investigations or prosecutions; and s.29 of MFIPPA allows for the indirect collection of information collected for law enforcement. In light of these specialized permissions, the City has developed policies, processes, and specialized documents which allow for the exchange of information between the City and law enforcement agencies, such as the TPS. These processes appear to have been effective in permitting the ready exchange of information while ensuring compliance with the institutions' information management obligations.

To the extent that there are any impediments in the City's information sharing relationships with TPS or TCHC, the impediments reflect minor operational issues related to ensuring that the requested information sharing complies with the various policies and procedures of the various organizations. As staff at the City, TCHC, and TPS become more familiar with the existing protocols and policies of these organizations, these concerns should diminish. Also, staff involved in information sharing advise that efforts to improve efficiency in the sharing of information and foster co-operation in information sharing are currently underway.

### Conclusion:

Information sharing between the City, TPS, and TCHC is generally free of purely legislative impediments arising directly from the institutions' specific information management obligations. On the whole, the existing protocols and policies of the City, TPS, and TCHC, establish an efficient method for information sharing, which protects

the privacy interests of members of the public, while ensuring that information required for municipal purposes is able to be shared. To the extent that there are any impediments in the various information sharing relationships, the impediments reflect operational issues that can be readily addressed through the staff efforts currently underway.

## **CONTACT**

Ian A.G. Duke, Solicitor  
Legal Services  
Tel: (416) 338-2305  
Fax: (416) 397-5624  
Email: iduke@toronto.ca

## **SIGNATURE**

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Brian Haley  
Interim City Solicitor