

Claim to Recover Damages - TPS Data Centre

Date: January 30, 2023

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

The attachment to this report contains advice or communications that are subject to solicitor-client privilege and litigation privilege.

SUMMARY

Background

The Toronto Police Service ("TPS") operates a data centre ("the "Data Centre") that is located in a building owned by the City. Responsibilities for the Data Centre are shared; the TPS is responsible for the data room and related systems and the City (through its Corporate Real Estate Division, "CREM") is responsible for building operations including the mechanical and electrical systems, life safety equipment, overall building envelope, and general management of the building.

The Data Centre houses computer hardware, software, and related equipment and technology to support network and information technology services for the TPS. The location of the Data Centre and its functionality is confidential.

Construction of the Data Centre commenced in August 2017. It was substantially complete by November, 2018 and turned over to the City to operate and maintain. Fit up of the Data Centre by TPS with computer and network equipment was completed in September 2019.

In early 2021, TPS staff observed significant unexpected corrosion on computer hardware components and certain metal surfaces in the Data Centre.

In order to mitigate against potentially catastrophic system failures, TPS locked down the building while it explored options to relocate the data systems.

By mid-2021, TPS had moved all operations from the Data Centre to other locations and taken all of the computer equipment offline. TPS determined that corrosion observed on some of the computer systems compromised the equipment's integrity and, therefore, created operational risks. Accordingly, TPS determined that it was necessary to relocate staff and operations to another facility, pending the completion of its

investigation into the causes of the corrosion, the implementation of appropriate measures to prevent future damage to its computer systems, and the replacement of the computer systems in the Data Centre.

The Construction of the Data Centre

In 2014, the TPS Board recognized that its current disaster recovery data centre was at its maximum capacity and located too close to the main site to meet industry standards for business continuity purposes. For these reasons TPS received approval as part of its 2015-2024 capital program to replace the existing data centre with a new facility that would meet its operational requirements. Following the approval of this construction project, the TPS Board awarded MMM Group Limited ("MMM Group") with the architectural design and consulting services contract for the Data Centre. As part of its contractual work, MMM Group developed site selection criteria and reviewed suitable sites with the City of Toronto Real Estate Division. In 2016, the City acquired the property on which the Data Centre would ultimately be constructed.

In July of 2016 the TPS Board entered into a contract with Eastern Construction Company Limited for construction management and construction services for the Data Centre project based on the designs and specifications prepared by MMM Group.

The Data Centre was designed to include, among other things, HVAC systems that were capable of maintaining a consistent level of temperature and humidity within the Data Centre. These key HVAC systems were manufactured by KyotoCooling North America LLC and Stulz Air Technology Systems Inc. and commissioned by Jones Lang LaSalle Real Estate Services, Inc.

The Data Centre was substantially completed in November 2018 and the City contracted with Bouygues Energies and Services Canada Limited and Plan Group Inc. for the general maintenance of the Data Centre and ongoing maintenance of the mechanical and HVAC systems.

The TPS Board entered into contracts with DP Environmental Service Inc. for specialized cleaning of the Data Centre computer equipment, preparing environmental assessments, and concrete sealing of the Data Centre subfloor.

Confidential Attachment 1 contains legal advice from the City Solicitor with respect to ongoing investigation of the issues and legal action against the parties contracted to design and construct the building, to install heating and cooling and building management systems, and to clean and maintain the Data Centre. A statement of claim was issued on December 21, 2022 in order to recover the losses incurred as a result of the property damage, the anticipated costs to address the existing deficiencies that led to the damage, and associated costs to relocate staff and equipment while the investigation, design and construction work is undertaken.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the confidential instructions in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor and that the balance of Confidential Attachment 1 remain confidential in its entirety as it pertains to litigation and contains advice that is subject to litigation and solicitor-client privilege.

FINANCIAL IMPACT

The financial implications are discussed in Confidential Attachment 1.

DECISION HISTORY

A Confidential Report from the City Solicitor was considered by the Toronto Police Services Board at its meeting on October 11, 2022.

COMMENTS

Further comment on this matter is discussed in Confidential Attachment 1.

The Executive Director, Toronto Police Services Board, the Executive Director, Corporate Real Estate Management, and the Manager, Claims, Insurance & Risk Management have been consulted in the preparation of this report and agree with these recommendations.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Legal Advice and Confidential Instructions to Staff