



Staff Report for Council Meeting

Date of Meeting: December 18, 2019

Report Number: SRCFS.19.058

Department: Corporate and Financial Services

Division: Office of the Clerk

Subject: SRCFS.19.058 – Closed Meeting Investigation
Services and Technical Amendments to the
Procedure By-law Closed Session Rules

Purpose:

To recommend that Council approve changing the City's closed meeting investigator to the Ontario Ombudsman as a result of changes to the Local Authority Services Ltd. closed meeting investigation program, and to recommend technical amendments to the closed meeting rules in the Procedure By-law.

Recommendation(s):

- a) That staff report SRCFS.19.058 be received.
- b) That staff be directed not to renew the Closed Meeting Investigator Service agreement with Local Authority Services Ltd. ("LAS") beginning in 2020, and notify both LAS and the Ontario Ombudsman of this decision.
- c) That Section 5.3.1 of the Procedure By-law # 74-12, as amended, pertaining to Closed Session Meetings be further amended as described in staff report SRCFS.19.058.

Contact Person:

Stephen M.A. Huycke, Director, Legislative Services/City Clerk, ext. 2529.

Report Approval:

Submitted by: Mary-Anne Dempster, Commissioner of Corporate and Financial Services

Approved by: Neil Garbe, City Manager

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), City Solicitor (as required), Commissioner and City Manager. Details of the reports approval are attached.

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Background:

Section 239(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, (the “Act”) requires all meetings of Council and its Committees to be open to the public except where a closed meeting is specifically authorized by Sections 239(2), 239(3) and 239(3.1) of the Act. Under Section 239.1 of the Act, any person may request an investigation as to whether or not a municipality complied with the open meeting rules. Under the Act, a municipality may appoint its own closed meeting investigator. If a municipality does not appoint a closed meeting investigator, the Ontario Ombudsman is automatically the investigator for that municipality. A closed meeting investigator is responsible for investigating whether or not Council or a committee complied with Section 239 of the Act. Upon completion of an investigation, the investigator is required to report his or her findings and may only make recommendations.

Richmond Hill’s Closed Meeting Investigator

In 2007, Council authorized the appointment of Local Authority Services Ltd. (“LAS”) as the City’s closed meeting investigator. Pursuant to Section 239.2(6) of the Act, LAS delegated authority to conduct closed meeting investigations to Amberley Gavel Ltd. The City currently pays LAS an annual administration fee of \$330 (plus tax). The cost of any actual closed meeting investigations are billed at an hourly rate of \$225 plus tax. The City has not received any applications for closed meeting investigations in several years.

On December 3, 2019 staff were notified that LAS is changing their delegated service provider to the law firm of Aird & Berlis LLP effective January 1, 2020. As part of this change, LAS is reducing its annual administrative fee to \$200 (plus tax). However, the range for investigation fees will be \$325 to \$725 per hour (plus tax). This is a potential increase of between \$100 and \$625 per hour for any closed meeting investigation. The actual hourly rate charged will depend on which Aird & Berlis LLP staff conduct a particular closed meeting investigation.

Staff are concerned that this change could result in significant future costs for the City if any closed meeting investigation applications are received. As a result, it is recommended that the contract with LAS not be renewed and the City default to the Ontario Ombudsman as its closed meeting investigator. The Ombudsman is the closed meeting investigator for 225 of the 444 municipalities in Ontario (51%). The Ombudsman has completed hundreds of closed meeting investigations since 2008. The Ombudsman’s decisions have generally informed the approach to and understanding of the closed meeting rules as set out in the Act and are routinely used as informative references by municipalities. The Ombudsman does not currently charge any fees for providing this service. The City would save the annual \$200 administration fee and any other hourly fees charged for investigations.

Alternatively, Council could direct staff to continue the Closed Meeting Investigator Service Contract with LAS, by adopting the following resolution:

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“That staff be authorized to renew the Closed Meeting Investigator Service agreement with Local Authority Services Ltd.”

Technical Amendments to the Procedure By-law

Section 5.3.1 of the Procedure By-Law sets out the reasons why Council can hold a closed session meeting. These reasons (personal information, solicitor client privilege, etc.) copy the wording from Section 239(2) of the Act. Section 239(2) of the Act was amended in 2017. These amendments added four additional reasons why Council can hold a closed session meeting, as follows:

- “(h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (j) a trade secret or scientific, technical, commercial or financial information that belongs to the municipality or local board and has monetary value or potential monetary value; or
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.”

To simplify the procedural by-law and to ensure alignment to any future changes to the closed session meeting rules in the Act, staff recommend that Section 5.3.1(b) and Section 5.3.1(c) of the Procedure By-law be deleted and replaced by the following:

- “(b) A Meeting or part of a Meeting may be closed to the public for any of the discretionary reasons set out in Section 239(2) of the Act, or any other discretionary reason permitted in other Applicable Law.
- (c) A Meeting or part of a Meeting shall be closed to the public for any of the mandatory reasons set out in Section 239(3) of the Act, or any other mandatory reason permitted in other Applicable Law.”

Financial/Staffing/Other Implications:

Not renewing the Closed Meeting Investigation services agreement with LAS will result in very modest annual savings of \$200 plus tax. It will also prevent the City from incurring any potential future expenses related to any closed meeting investigations.

Relationship to the Strategic Plan:

The recommendation to change closed meeting investigators to the Ontario Ombudsman is related to the strategic plan goal of Wise Management of Resources.

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Conclusion:

Every municipality is required to have a closed meeting investigator to investigate compliance with the open meeting rules in Section 239 of the Act. As a result of changes to the closed meeting investigation services provided by LAS, staff recommend that the City not renew the agreement with LAS. This change will result in the Ontario Ombudsman being the City's closed meeting investigator. Staff also recommend that Council approve technical amendments to the closed session meeting rules in the Procedure By-law.

Attachments:

The following attached documents may include scanned images of appendixes, maps and photographs. If you require an alternative format please call the contact person listed in this document.

None

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Report Approval Details

Document Title:	SRCFS.19.058 - Closed Meeting Investigator Services and Procedure By-law amendments.docx
Attachments:	
Final Approval Date:	Dec 4, 2019

This report and all of its attachments were approved and signed as outlined below:

MaryAnne Dempster - Dec 3, 2019 - 4:53 PM

Neil Garbe - Dec 4, 2019 - 10:29 AM