
MEMORANDUM

CL-C 11-2020

Subject: Options for Investigation into Leaks of Confidential Information

Date: March 26, 2020

To: Regional Council

From: Ann-Marie Norio, Regional Clerk

In early March a request was made for a Special meeting of Regional Council to be called to deal with leaks of confidential information. At that time the Regional Chair advised that staff would provide information at the regular Council meeting being held on March 26, 2020 to address the concerns raised by members and provide information on options to investigate the leaks of confidential information.

Staff have undertaken research on the matter and offer the following for Council's information.

Investigation Options

Niagara Region's Integrity Commissioner

On July 6, 2017, Regional Council appointed Edward T. McDermott of ADR Chambers Inc., as the Integrity Commissioner for The Regional Municipality of Niagara. Section 223.3(1) of the Municipal Act, 2001, provides that an Integrity Commissioner is responsible for performing in an independent matter the functions assigned by the municipality, one of which is the application of the code of conduct for members.

Staff have reached out to the Integrity Commissioner to receive his preliminary thoughts on such an investigation. Mr. McDermott has indicated that any complaint received respecting all of Regional Council would need to be carefully considered to ensure it is within his mandate. He noted serious concerns on how vague and broad such a request would be and advised that without specific allegations against named Councillors, Council would really be contemplating an inquisition, not an investigation, which could be a mammoth undertaking and very costly.

Appoint a Municipal Ombudsman

Section 223.13(1) authorizes a municipality to appoint an Ombudsman who reports to council and whose function is to investigate in an independent manner any decision or recommendation made or act done or omitted in the course of the administration of the municipality, its local boards and such municipally-controlled corporations as the

municipality may specify and affecting any such person or body of persons in his, her or its personal capacity.

The appointment of a Municipal Ombudsman to investigate leaks of confidential information is one avenue Council could consider. Council would need to be mindful of the Ontario Ombudsman recommendations with respect to the appointment of a Municipal Ombudsman. Recommendation 14 of the Ontario Ombudsman report "Inside Job" states:

The Regional Municipality of Niagara should ensure that it establishes comprehensive terms of reference when appointing a municipal ombudsman, including reference to requirements for:

Scope of issues to be investigated;

Evidence collection;

Confidentiality, including of witnesses; and

Preliminary reporting.

In his report, the Ontario Ombudsman further points out (para 283) that in order to ensure focused, fair, thorough, legal, and effective municipal Ombudsman investigations in future, Niagara Region should ensure that before appointing a municipal ombudsman, that a terms of reference or procedure be adopted that would govern all aspects of the investigative process. Prior to appointing a municipal ombudsman, Council would need to give serious consideration to the requirements noted by the Ontario Ombudsman and be specific in what it would be requesting the Ombudsman investigate.

Requesting an Investigation by the Ontario Ombudsman

Council has the ability to pass a resolution requesting the Ontario Ombudsman investigate the leaks of confidential information. Prior to considering such a motion it is helpful to review the comments made in the Ontario Ombudsman report "Inside Job" as they can offer some insight into the Ombudsman's role.

Para 17 of the report "Inside Job" confirms the role of the Ombudsman Office as an office of last resort and it is noted that issues are best addressed and resolved at the local level wherever possible and further notes that a complaint will only be reviewed if the matter is not resolved by local processes. The Ombudsman Office focus is on administrative conduct and their intent is never to "name, blame and shame" specific individuals (para 30). Council should consider its expectations for the outcome of an investigation based on the above. If it is the hope of Council to be able to find "a source" of the leaks (i.e. identify one person) then the Ombudsman's Office is unlikely to proceed with an investigation.

In addition in para 36 of the report, a specific reference is made to leaks of confidential information as follows:

My Office does not condone leaks of confidential information, however, such allegations were outside the scope of my investigation. As I explained to those who raised the issue, concerns about leaked confidential information can be raised through a complaint to the regional municipality. If the allegations involve a member of Regional Council or a local board, complaints can be directed to the region's Integrity Commissioner. Complaints about the improper disclosure of personal information can also be made to Ontario's Information and Privacy Commissioner.

Staff have confirmed with staff from the Ombudsman's Office that any request for an investigation must include precisely what Regional Council wants the Ombudsman to investigate and any relevant background to the request. Should Regional Council make a request, the Ombudsman will determine whether to conduct an investigation.

As a practical matter, it is unknown whether any investigation would result in a successful outcome given that leaks can occur without leaving an electronic trace that could be reasonably uncovered given the scope and nature of the investigation (e.g in person communications). In other words, given all the methods that can be utilized to share information and the number of individuals involved it would be challenging for an investigator to undertake an exhaustive investigation to make a conclusive determination.

Cost Implications

Council will recall that the cost for the municipal ombudsman's investigation in 2018 was \$104,352.68. An investigation by the Integrity Commissioner, depending on how detailed can also become quite costly. Past investigations by the Integrity Commissioner have usually dealt with an investigation of one Councillor contravening the Code of Conduct and are typically in excess of \$8,000.00. Given that any investigation of leaks of confidential information could include all members of Council, the cost would be much higher. Although the Ontario Ombudsman does not charge for investigations there are specific costs related to the time for staff to respond to requests for information.

Respectfully submitted and signed by

Ann-Marie Norio
Regional Clerk