



## **MEMORANDUM**

**CHR 1-2020**

**Subject: The Importance of Maintaining Confidentiality in Closed Session**

**Date: March 26, 2020**

**To: All Regional Councillors**

**From: Jim Bradley, Regional Chair**

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Members of Council,

I wanted to take this opportunity to directly restate our responsibilities as members of Council under the *Municipal Act, 2001* and our *Code of Conduct* regarding the importance of maintaining confidentiality of items disclosed in closed session. I take the leaking of in-camera information extremely seriously and I want to go on the record, yet again, to express my expectation that information disclosed or discussed in-camera stays confidential.

Recent media articles have cited “multiple sources” that have disclosed information that was discussed during the confidential in-camera portion of our recent meetings. As you know, this is not the first time a breach of the confidentiality of Council’s in-camera sessions has occurred and it continues to be a practice that is deeply troubling to many Councillors, the public and myself.

The rules regarding confidentiality in Council’s *Code of Conduct* and the *Municipal Act, 2001* are intended to ensure Council’s discussions and staff direction provided while in closed session *remains* in closed session. These rules are designed to protect both us as Councillors and the entire organization. Specifically, when dealing with human resources, personnel and/or legal matters it is critical that any information provided in closed session remains confidential and that the privacy of any individuals discussed is protected.

### **Personal Liability**

Any breach of in-camera confidentiality may result in additional litigation for the corporation, as well as personal legal and financial consequences. The Region has no obligation to defend a member of Council who willfully discloses information discussed in-camera.

Any member of Council who has broken the confidentiality of closed session would be personally responsible for the financial impact of any legal proceedings as they relate to the breach.

## **Inability to Correct the Public Record**

In the event of a breach of confidentiality to the media, the corporation has no ability to correct the “facts” as they have been presented to a journalist.

If a leak incorrectly states a Councillor’s position, or misstates information that has been discussed while in-camera, Niagara Region cannot engage with the media to confirm, deny or correct what has been provided. Councillors should be aware that breaches of confidentiality bring with them potential reputational impacts and the corporation cannot intervene.

## **Council’s Code of Conduct**

As a reminder, our Code of Conduct clearly states that:

*“Members of Council have a duty to hold in strict confidence all information concerning matters dealt with at meetings closed to the public. A Member of Council shall not, either directly or indirectly, release, make public or in any way divulge any such information or any aspect of the meeting closed to the public deliberations to anyone, unless expressly authorized by Council or required by law to do so.*

*Members of Council shall not release information in contravention of the provisions of the Municipal Freedom of Information and Protection of Privacy Act and shall comply with the provisions of the Information Access and Privacy Protection Policy for Niagara Region.*

*Members of Council shall not release information subject to solicitor-client privilege, unless expressly authorized by Council or required by law to do so.*

*Members of Council shall not misuse confidential information (information that they may have knowledge of by virtue of their position as Councillor that is not in the public domain, including e-mails and correspondence from other Members of Council or third parties) such that it may cause detriment to the Corporation, Council or others, or benefit or detriment to themselves or others.”*

## **Potential to Amend the Code of Conduct**

In consultation with our Integrity Commissioner, he has made a series of suggestions for potential amendments that Council could contemplate should they wish to strengthen the Code’s language regarding leaks. These suggestions include:

- Adoption of a “statement of compliance” regarding confidentiality to be attached to the Code and signed by each Councillor annually

- An educational seminar for all of Council with each Councillor signing off they have received and understood the content
- Create mandatory penalties (as allowed by the *Municipal Act*) applicable for every violation of confidentiality (i.e. 90-day suspension of pay per violation)
- Impose other deterrents for violation; this could include removal from committees and boards
- Formal public denunciation upon a finding of a contravention by the Integrity Commissioner
- A formal, public request for the offending Councillor to resign his/her seat (if Council so resolves)

While some of these measures may appear to be extreme, I want to assure Councillors that I take this issue extremely seriously. I believe that should the trend of leaks continue, I would suggest that Council consider adopting some or all of our Integrity Commissioner's suggestions.

I want to thank you for your attention to this important matter.

Sincerely,

Original signed by:

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Jim Bradley, Chair  
Niagara Region