

Type of Decision									
Meeting Date	Friday, February 17, 2012				Report Date	Thursday, February 9, 2012			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	X	Information Only			Type of Meeting	X	Open		Closed

## REPORT TITLE

Code of Conduct and Closed Meetings Report #17/02/12/501

Subject: The Clerk's recommendation on holding a closed session to receive the reports of Mr. Bonenberg considering the Code of Conduct Complaints filed by a member of the public.

RECOMMENDATION: That Council adopt the following resolution agreeing to receive the information from Mr. Bonenberg as it relates to the Code of Conduct Complaints in open session.

**WHEREAS** the conduct of a municipal "official" including employees and members of Council during the course of completing their employment or official duties does not fall under the definition of "personal information" as determined under the *Municipal Act*;

**AND WHEREAS** Mr. Conroy in his letter of January 25, 2012 states "I advise that it is unlikely that an inquiry into the conduct of council members would be considered "personal matters", and as a consequence, a closed meeting would not be permitted under the *Municipal Act*."

**THEREFORE BE IT RESOLVED THAT** the Council of the United Townships of Head, Clara & Maria does hereby agree to receive the report of Mr. Bonenberg as it relates to the results of the Code of Conduct complaints filed against Council, Councillor Foote, Councillor Gibson and the Municipal Clerk, Melinda Reith in open session as per the Municipal Act and direction from the Municipal Solicitor.

## Background/Executive Summary:

1. Mr. Conroy's letter is pretty self explanatory. Code of conduct complaints and reports are not to be considered under personal matters.
2. Further Mr. Conroy explains "As for "personal matters", that section in the Municipal Act refers to whether a meeting can be closed to the public, and not whether the investigator's report should be disclosed." "The report should be made available to the public."
3. Various Information of the Privacy Commissioner's reports may be referenced as well.
4. In Order MO-2188 found at [http://www.ipc.on.ca/images/Findings/up-mo\\_2188.pdf](http://www.ipc.on.ca/images/Findings/up-mo_2188.pdf) the investigator is quoted as saying that just because the information revealed may cause some embarrassment for the individual, if there is compelling public interest the information should be shared.
5. Further "In my view, disclosure of the personal information in the Supplementary Report is clearly desirable for the purpose of subjecting the activities of the County to public scrutiny. Given that public funds were expended on commissioning a report that the Mayor believes is "inherently flawed," the County's taxpayers should be able to review the

**report for themselves in order to assess whether the County Council's decision to commission the report was a good use of public funds.**

In short, I find that the factor in section 14(2)(a) has significant relevance in determining whether disclosure of the Mayor's personal information in the Supplementary Report would constitute an unjustified invasion of her personal privacy.

***Weighing of factors***

In my view, the factor in section 14(2)(a) (public scrutiny) that favours disclosure significantly outweighs the two factors in sections 14(2)(g) (highly sensitive) and 14(2)(i) (unfair damage to reputation) that favour privacy protection.

In *Dagg v. Canada (Minister of Finance)* [1997], 2 S.C.R. 403, former Justice La Forest of the Supreme Court of Canada considered the purpose of the federal *Access to Information Act* (the *ATIA*) but also commented on the important role that freedom-of-information legislation plays more generally in Canada:

**The overarching purpose of access to information legislation ... is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process and secondly, that politicians and bureaucrats remain accountable to the citizenry ...**

**Parliament and the public cannot hope to call the government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view. Access laws operate on the premise that politically relevant information should be distributed as widely as possible ...**

**Rights to state-held information are designed to improve the workings of government; to make it more effective, responsive and accountable.** Consequently, while the *ATIA* recognizes a broad right of access ... it is important to have regard to the overarching purposes of the Act in determining whether an exemption to that general right should be granted.

Others Consulted/Resources: Municipal Solicitor, Mr. Conroy

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

*Melinda Reith*