

Type of Decision									
Meeting Date	Friday, March 23, 2012				Report Date	Thursday, March 15, 2012			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Delfi Invoice Report #23/03/12/1103									

Subject: To recommend a request for reconsideration of the invoice from the Delfi Group.

RECOMMENDATION: That Council adopt the following resolution requesting a refund of fees from the Delfi group as a result of breach of contract during their investigation and reporting.

WHEREAS the Council of the United Townships of Head, Clara & Maria has contracted with the Delfi Group to conduct investigations into harassment and code of conduct complaints;

AND WHEREAS the Delfi Group has provided two documents which leave this municipality with unanswered questions and inconclusive reports;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby direct staff to pay the final invoice of the Delfi Group in the amount of \$3,056.65 and further request from the Delfi Group a refund of fees based on their breach of contract.

Background/Executive Summary: In each of the meetings of January 26, 2012 and February 17, 2012 Mr. Bonenberg presented reports to Council and explained that staff and council would require at least one hour of time to absorb each ½ hour of material presented. Upon the conclusion of each of these meetings Mr. Bonenberg stated that council and staff should absorb the material and that he would come back to answer any questions that we had. This was to be included in the original price of the investigation.

Neither of these Q & A sessions has occurred contrary to Mr. Bonenberg's instructions to Council and staff.

In the closed meeting of January 26, 2012, Council agreed with Mr. Bonenberg to arrange a "facilitation" session to be held on February 17, 2012 to determine how best to move on the recommendations within the reports. This was arranged without the input of the Clerk who later advised that since the Q& A had not yet occurred and Council had not accepted the reports that perhaps facilitation was premature.

Reeve Stewart read the facilitation agenda item at the closed meeting of February 17, 2012 where Mr. Bonenberg stated that he was not prepared to move forward; contrary to the statements in the March 2, 2012 letter from the Delfi Group. In fact, earlier, upon leaving the public meeting of February 17, 2012 where the code of conduct report was reviewed, Mr. Bonenberg again stated that Council would have to absorb the material and he would return to answer any questions.

After the closed session of February 17, 2012, Mr. Bonenberg sent the attached email offering one on one sessions with no further expense to Council with anyone who so chose to be held on February 28, 2012. This meeting has not happened; this offer has since been withdrawn.

On March 2, 2012, this municipality received a letter from the Delfi Group stating that they had concluded their relationship with and obligations to this municipality.

Yet, Mr. Bonenberg in his report submitted on February 17, 2012 states **“The investigation could not determine if the... Oct 21, 2011 complaint was or was not based on fact... This was not the role of the investigator.”**

It is staff opinion and position that the Delfi Group has not met their obligations and as such; this municipality is entitled to a partial refund of fees due to this breach of contract and inconclusive end product or that the investigation be readdressed interviewing those parties who were not interviewed and amended, substantiated reports be presented to Council for approval.

The Delfi Group, in their letter dated March 2, 2012 speak to Council not honouring their agreement to hold meetings in camera. As per *the Municipal Act*, Council did not have the authority to hold the code of conduct report meeting in camera; doing so would be a contravention of the legislation.

The Media release promising to hold discussion in closed session was created for and applied to the harassment complaints. The municipal policy explicitly states that confidentiality is to be maintained in a harassment complaint process to protect normally, the victim and the accused from unfounded allegations.

Although it may be argued that Council did breach this section of the agreement as it related to the code of conduct complaints as stated in the March 2, 2012 Delfi letter, there was no promise of confidentiality made either in the code of conduct policy or the agreement with Delfi to conduct that investigation.

In fact, Mr. Bonenberg was provided with a letter from the municipal solicitor on January 26, 2012 stating that any code of conduct discussion would not fall under the *Municipal Act* closed meeting exemptions and would have to be in open session. To use this now as an excuse to not meet contractual obligations is unwarranted and unfounded.

If Council agreed to and held the code of conduct meeting in closed session it would have been a violation of provincial legislation and not something that the majority of this council wanted to do. Therefore any mention of this in the original agreement (which the Clerk cannot find evidence of) was “ultra vires” or outside the authority of the municipality and not legally binding.

It could be argued that the investigation was conducted with a lack of proper investigative procedures or supporting evidence as it is obvious that some people who were directly involved in some of the incidents were not even interviewed. Contrary to the March 2, 2012 Delfi Group letter, others who were recommended were not interviewed. A further list of errors with corroborating evidence was provided in the Delfi Group Investigations Report #09/03/12/1103 prepared for the last meeting.

In contract law it must be proved that there was a contract, that there was a breach and that a loss was suffered. All of these conditions have been met as the final product did not make definitive findings or provide suggestions as to compliance with the municipal policies. In order to have a substantiated product with suggestions for compliance with existing municipal policies would require additional costs to the municipality to have another firm complete the same investigation.

Financial Considerations/Budget Impact: This municipality has spent over \$18,000 on two reports which make conclusions which are unsubstantiated and remain undefended.

Policy Impact: None

Others Consulted/Resources/References:

"Melinda, I can be there at 10:00. No one else has contacted me.

Sincerely,

Ray Bonenberg
Phone (613) 735-2366
Email ray.bonenberg@thedelfigroup.com
Website: www.thedelfigroup.com

"Helping people and organizations become the best they can be."

From: twpshcm@explornet.com [mailto:twpshcm@explornet.com]
Sent: Saturday, February 25, 2012 8:19 PM
To: ray.bonenberg@thedelfigroup.com
Subject: Feb. 28

Mr. Bonenberg

I am uncertain whether or not anyone else has taken you up on your offer however; if your offer is still open, and will not incur additional expenses for this municipality, I would welcome the opportunity for you to answer the questions that I have posed in my documents provided after the meeting of February 17, 2012. I will be in the office all day.

Melinda Reith "

From Mr. Ray Bonenberg – sent February 20, 2012

"...I appreciate the sensitivity of the findings in the report and respect how difficult this is. I am prepared to come up to the Township office on Feb 28/12 to meet with anyone who wishes to discuss any aspect of the report with the intent of receiving further clarification on aspects that may not be clear. This does not mean that I am abdicating the responsibilities as the investigator, but providing everyone some one-on-one time to talk if they wish.

Please let me know via E-mail if you are interested and we can set a time. If I don't hear from anyone, then consider this report the final.

I am away from Tuesday Feb 21 to Sat Feb 25 on other business and will not be accessing E-mail. I will check on Sunday the 26th and respond to you.

Sincerely,

Ray Bonenberg
Phone (613) 735-2366
Email ray.bonenberg@thedelfigroup.com
Website: www.thedelfigroup.com

"Helping people and organizations become the best they can be.""

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

Melinda Reith