

Type of Decision									
Meeting Date	Friday, March 23, 2012				Report Date	Friday, March 16, 2012			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE									
Release of Delfi Reports #23/03/12/1104									

Subject: To recommend a final format for release of Delfi Reports.

RECOMMENDATION: That Council adopt the following resolution releasing to the public modified versions of the Delfi reports with the sole intent of protecting personal information as per legislation.

WHEREAS the Delfi Group has provided two reports which contain some identifying personal information concerning complainants and respondents which on the advice of our municipal solicitor should be protected;

AND WHEREAS it must be noted that this Council has agreed at its meeting of Friday, March 9, 2012 to not accept the conclusions in the report as they are less than accurate;

THEREFORE BE IT RESOLVED THAT the Council of the United Townships of Head, Clara & Maria does hereby direct staff to release the edited and summary versions of Mr. Bonenberg's reports to the public including a disclaimer indicating Council's concern with the content and conclusions contained within.

AND FURTHER THAT the release of any other content or information contained within the reports would constitute a breach of confidentiality and a violation of the Municipal Code of Conduct which applies to both staff and Council members and will warrant sanctions or disciplinary actions to be imposed immediately by Council.

Background/Executive Summary: Council needs to determine when and in what format the reports are to be released to the public; keeping in mind that the harassment complaints and personnel issues are bound by confidentiality as per the Municipal Act. The Code of Conduct Complaints are not and as per the Municipal Act should be shared with the public.

After considering the January 26, 2012 response of the municipal solicitor the Clerk has amended the current drafts for council consideration at this meeting. Upon Council's adoption of the above resolution, the reports will be released in this form only; except for the harassment complaint which will also be released to our H&S worker representative.

The reports have been amended to remove personal information about identifiable individuals.

Council needs to determine if the sections that are inaccurate and beyond the authority of the investigator are to be removed.

If the conclusions are in error and are in any way defamatory or libellous, printing them or sharing them with the public could be opening the municipality to liability.

Keep in mind that defamation is defined as:

“Defamation, meanwhile, has been defined by one leading author as the communication of words to others that have the “tendency to do harm, injure, disparage or adversely affect the reputation” of an individual, or to diminish the opinion of that person that is held by others. The test is an objective one, assessed through the eyes of a reasonable person.

Defamation includes two sub-sets: libel and slander. Libel refers to written words that are defamatory, while slander refers to spoken words. In Ontario, the *Libel and Slander Act* is provincial legislation that governs legal actions based on words that are published in a newspaper or on a television or radio broadcast.

In order to recover in an action for defamation, a plaintiff must establish that:

- (a) the words about which the plaintiff complains were defamatory;
- (b) the words referred to the plaintiff; and
- (c) the words were published or spoken to a third person.

Financial Considerations/Budget Impact: None

Policy Impact: None – as per policy and direction of the municipal solicitor.

Others Consulted/Resources/References: Mr. Conroy, Municipal Solicitor; the Municipal Act; MFIPPA; Information and Privacy Commissioner investigation reports; Ombudsman’s Office investigation reports.

1. From the Bennett and Jones article at <http://www.bennettjones.com/Images/News/event8964.pdf>. “Yet, for harassment investigations under the Ontario Human Rights Code (the “Code”), protection of the privacy of the complainant, **and until a finding is made**, the person complained against, is paramount.”
 - a. **Now that findings have been made, although questioned, privacy is no longer an issue.**
2. This article also addresses the issue of the Ontario Health and Safety Act and the requirements for reporting to the JHSC or worker representative...” *statutory sections require the employer to provide a copy of all reports in writing to the JHSC or representative (or a worker upon request) if the report is in respect of occupational health and safety matters at the workplace.*
 - a. **A full copy of the harassment complaint reports are to be released to our worker representative.**
3. The following is from <http://www.ipc.on.ca/images/Findings/MO-2594.pdf>... “A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347 and P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564]. The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984].”
4. From <http://www.ipc.on.ca/images/Findings/MO-2573-I.pdf> and http://online.cle.bc.ca/CourseMaterial/pdfs/2006/732_4_3.pdf... “Generally, **disclosure to outsiders of privileged information constitutes waiver of privilege** [J. Sopinka et al., *The Law of Evidence in Canada* at p. 669; see also *Wellman v. General Crane Industries Ltd.* (1986), 20 O.A.C. 384 (C.A.); *R. v. Kotapski* (1981), 66 C.C.C. (2d) 78 (Que. S.C.)].”

- a. As McKechnie and Clouthier brought the harassment complaints to the NRT, they have waived any claim to privileged information.

Approved and Recommended by the Clerk

Melinda Reith,
Municipal Clerk

Melinda Reith