

Type of Decision									
Meeting Date	Tuesday, February 13, 2018				Report Date	Thursday, February 8, 2018			
Decision Required	X	Yes		No	Priority	X	High		Low
Direction	x	Information Only			Type of Meeting	X	Open		Closed
REPORT TITLE - Harassment Complaint - Investigator's Report									
Report #13/02/18 - 1201									

Subject:

A resolution provided by Councillor Foote concerning the investigator's report as a result of Harassment Complaints.

RECOMMENDATION:

That Council defeats the attached resolution as it is contrary to Council's Municipal Harassment, Bullying and Workplace Violence policy, is contrary to the requirements of MFIPPA and is contrary to the requirements of the *Occupational Health & Safety Act*.

WHEREAS allegations have been made by the Clerk against some members of Council and some members of the public;

AND WHEREAS Council authorized the Clerk to commence an investigation;

AND WHEREAS Council was not made aware of the number and type of the allegations;

AND WHEREAS Council was not made aware of the number or names of all the people being accused;

AND WHEREAS Council was not given any type of cost estimate for this investigation;

AND WHEREAS the Municipality's legal firm, Cunningham Swan, did contract out the investigation to John Curtis;

AND WHEREAS the presentation of the report to the Municipality's legal firm is imminent;

AND WHEREAS the Municipality's legal firm has completed a previous code of conduct investigation concerning staff and Council members;

AND WHEREAS that investigation could potentially influence someone reading the John Curtis report;

AND WHEREAS Council has previous legal advice about a different report in 17/02/12/501, item two, that "the report should be made available to the public";

AND WHEREAS the ratepayers of the Corporation of the United Townships of Head Clara and Maria have paid for this report;

THEREFORE BE IT RESOLVED THAT in the interests of complete transparency, the United Townships of Head Clara and Maria instruct its legal firm, Cunningham Swan, by way of this

resolution, that the original report from John Curtis be presented to the public in an open meeting of Council and said report is not to be altered, changed, discussed, modified or presented to any person prior to its disclosure at a public meeting;

AND FURTHER THAT its legal firm, Cunningham Swan, make electronic copies for the Clerk, each member of Council and each of those people who have had accusations made against them;

AND FURTHER THAT the Municipality's legal counsel present the report at that public meeting;

AND FURTHER THAT a copy for public access be made available on the Municipal website.

BACKGROUND/EXECUTIVE SUMMARY:

The following are excerpts from the corresponding legislation for your information. As usual, Council can always change its own policy but does not have the ability or authority to disregard provincial legislation. As usual, staff will perform proper due diligence and will provide advice to council on how to proceed at the time the report is made available.

The Municipal Harassment, Bullying and Workplace Violence policy has been created based on a sample provided by the Ministry of Labour under OHSA.

As explained to Councillor Foote previously, staff will consult with the municipal solicitor and share information according to legislation and policy. Legislation is enacted to protect personal information about identifiable individuals. A policy exists to process harassment complaints and the corresponding reports and will be followed as per direction from the municipal solicitor.

This resolution should be defeated for any number of reasons. Parts of it have no factual basis and should be removed. Specifically:

1. Council has an obligation to have a harassment policy and to conduct investigations into harassment complaints. The number and names of persons complained about is irrelevant. The costs are irrelevant.
2. There is no obligation for Council to approve the complaints being forwarded for investigation. In fact, the process is to remain as private and confidential as possible.
3. There is no way of predicting how much an investigation will cost as it begins as each is inherently different and depends on the specifics of each case. When making its decision, Council was made aware of the fact that the cost per hour was the going rate.
4. The suggestion that professionals hired to complete this process might be biased is dangerous. For your information however; the individual completing the report to Council and complainants for the harassment complaint is a different individual than the one who completed the Code of Conduct complaints. Even if it were the same person, they are professionals who are capable of doing their jobs objectively. To suggest otherwise is dangerous.

Supporting passages from the applicable policy or legislation...

1. The Municipal Harassment, Bullying and Workplace Violence policy requires:
 - a. Part B, Section 1 commits council to investigating complaints of harassment.
 - b. Part C, Section 2 – states that *“Once we receive your complaint, we will initiate a formal investigation if it is necessary and appropriate to do so.”*
 - c. Section 3 – states *“Once the investigation is complete, the investigator(s) in conjunction with the Municipal Solicitor will prepare a detailed report of the findings*

to the Clerk or Council. A summary of the findings will also be provided to the complainant and respondent.”

- d. Section 3 – further states *“If the complaint of harassment, bullying or workplace violence is made by the Clerk against a member of Council or a member of the public, the issue will be referred to the Municipal Solicitor for investigation and resolution in conjunction with a member of the Municipal administration. Any recommendations made by the investigator and Municipal Solicitor will be presented to Council for resolution and decision based on this policy and the Councillor Code of Conduct.”*
- e. Section 4 – states *“In the case of a complaint against a member of Council the appropriate corrective measures and sanctions which may be imposed will be those which exist in the Councillor Code of Conduct. Obviously, harassment, bullying or workplace violence would constitute a breach of the Councillor Code of Conduct.”*
- f. Section 4 – further states *“If the decision to be made concerns a member of Council or the Clerk/CAO, the incident would be considered a “Code of Conduct” breach and the debate and decision would need to be made in open session of Council.”* And *“If the decision concerns a member of the public the issue may be discussed in closed session at the discretion of Council using the exemption to open meetings concerning “personal information about an identifiable individual.”*
- g. Part F - states specifically to confidentiality *“We recognize the sensitive nature of harassment, discrimination and violence complaints and we will keep all complaints confidential, to the extent that we are able to do so. We will only release as much information as is necessary to investigate and respond to the complaint or situation or if required to do so by law.”*

And “The Corporation, through its management and legal staff, must ensure that complaints are investigated and handled in a manner so that the identities of the persons involved are kept confidential. It must be recognized that, to the extent that the complainant chooses to initiate proceedings or make comments outside the Corporation’s internal harassment complaint procedures, confidentiality cannot be guaranteed. It must also be recognized that information collected and retained is subject to release under the Municipal Freedom of Information and Protection of Individual Privacy Act, the Ontario Human Rights Code or the rules governing court proceedings.”

- h. And finally *“Out of respect for the relevant individuals, it is essential that the complainant, respondent, witnesses and anyone else involved in the formal investigation of a complaint maintain confidentiality throughout the investigation and afterwards.”*

2. The Municipal Freedom of Information and Protection of Privacy Act requires:

Use of personal information

31 An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or

- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. M.56, s. 31.

Where disclosure permitted

32 An institution shall not disclose personal information in its custody or under its control except,

- (a) in accordance with Part I;
- (b) if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- (c) for the purpose for which it was obtained or compiled or for a consistent purpose;
- (d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions;
- (e) for the purpose of complying with an Act of the Legislature or an Act of Parliament, an agreement or arrangement under such an Act or a treaty;
- (f) if disclosure is by a law enforcement institution,
 - (i) to a law enforcement agency in a foreign country under an arrangement, a written agreement or treaty or legislative authority, or
 - (ii) to another law enforcement agency in Canada;

3. The Occupational Health and Safety Act requires:

- a. (b) the worker who has allegedly experienced workplace harassment and the alleged harasser, if he or she is a worker of the employer, are informed in writing of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation;

Options/Discussion:

As in the case of the Employee Code of Conduct situation; individuals who have been named in the Harassment complaints could sign a waiver authorizing Council to release personal information about them. Without that, the Municipality has a legal obligation to protect personal information.

Council cannot simply vote to not follow provincial legislation.

Financial Considerations/Budget Impact: - none at this time

Others Consulted:

Municipal Workplace Violence and Harassment Policy
The Municipal Act
Municipal Legal Counsel

Approved and Recommended by the Clerk

Melinda Reith,

Municipal Clerk

Melinda Reith