

FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT AND THE CITY OF CALGARY'S WHISTLE- BLOWER POLICY

EXECUTIVE SUMMARY

Currently, information collected pursuant to The City of Calgary's Whistle-Blower policy (or a similar program in another municipality) is subject to disclosure under the Freedom of Information and Protection of Privacy (FOIPP) Act. The possibility of such disclosure may deter an individual from bringing forward evidence of wrongdoing in The Corporation, undermining the purposes of the Policy.

Administration is recommending that The City of Calgary submit an emergency resolution for approval at the 2016 Alberta Urban Municipalities Association (AUMA) Convention & Alberta Municipal Services Corporation (AMSC) Trade Show calling on the provincial government to exempt municipal whistleblower programs from FOIPP legislation, an exemption already granted to provincial ministries. The resulting approvals will enable AUMA Administration to advocate to the province and Auditor General on this issue. As part of the emergency resolution approval process, The City of Calgary's Council representatives will be required to present the emergency resolution at the AUMA Mayors' Caucus beginning 15 June 2016. To meet this timeline, this report should go forward as an item of urgent business to the 2016 June 13 Combined Meeting of Council.

ADMINISTRATION RECOMMENDATIONS

That the Intergovernmental Affairs Committee recommend that Council:

1. Approve the contents of this report, directing Administration to draft an emergency resolution calling on AUMA to urge the Government of Alberta to exempt municipal whistle-blower policies from the relevant provisions of FOIPP; and
2. Forward this report as an item of urgent business to the 2016 June 13 Combined Public Hearing Council meeting.
3. That this report remain confidential pursuant to Sections 23(1)(b), 24(1)(a), 24(1)(b), and 24(1)(g) of the *Freedom of Information and Protection of Privacy Act* until the AUMA Convention on October 5, 2016.

PREVIOUS COUNCIL DIRECTION / POLICY

The City of Calgary Whistle-Blower Policy (Council Policy CC026) took effect 2007 May 28 and establishes specific program responsibilities regarding the reporting and investigation of allegations of waste and/or wrongdoing within The City of Calgary. The policy reflects The City's ongoing effort to support open, ethical, accountable and transparent local government.

In the interest of encouraging compliance, the policy states that any investigations will honour all requests for the confidentiality of whistle-blower information, but adds that those investigations will be conducted in accordance with provincial FOIPP legislation.

BACKGROUND

The provincial Public Interest Disclosure (Whistleblower Protection) Act seeks to facilitate the disclosure and investigation of wrongdoing in the provincial government. Recognizing that fear of reprisal may discourage whistle-blowers from coming forward with evidence of such wrongdoing, section 28 of the Act also exempts the information collected through an

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investigation from disclosure under FOIPP, the purpose of which is to otherwise allow right of access to the records of a public body.

While FOIPP legislation applies to The City of Calgary and all other "local government bodies," the Whistleblower Protection Act applies only to Government of Alberta Ministries and agencies, and does not extend to The City of Calgary the same ability to withhold information collected under The City's Whistle-Blower Policy from release under FOIPP. Although The City of Calgary's Whistle-Blower Policy makes "every reasonable effort" to maintain the confidentiality of the reporter, in the absence of a similar exemption, the reporter's identity and/or other information that may reveal that identity may be required to be disclosed pursuant to a FOIPP request.

While limitations on the public's right of access to information should be treated with caution, the absence of an exemption for The City undermines the goals of its Whistle-Blower Policy. Specifically, individuals may be deterred from reporting wrongdoing if they believe details of their complaint may be made public, exposing them to reprisal. Similarly, the ability to investigate the complaint may also be challenging if witnesses feel that their confidential statements may be exposed.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

AUMA seeks to develop strategic partnerships between all orders of government to meet municipal needs on behalf of its members. An AUMA resolution can be an effective way to advance an item requiring action by another order of government, including the Government of Alberta. Resolutions are put to a vote at the AUMA's annual fall convention. Approval of a resolution by the membership commits the organization to pursue the advocacy or other goals contained therein.

Because the deadline for normal submission of a resolution for a vote at the fall 2016 convention has passed, the attached resolution would have to be first approved as an emergency resolution at the AUMA Mayor's Caucus on June 17. Administration is therefore recommending that Council approve the resolution for submission to the June 17 Mayor's caucus.

Stakeholder Engagement, Research and Communication

Consultations on this matter have occurred between Intergovernmental & Corporate Strategy, City Clerk's, The City Auditor's Office, the Law Department, the Office of the Mayor, and the Office of the City Manager.

Strategic Alignment

The Whistle-Blower Policy seeks to encourage individuals to come forward with instances of the inefficient use of City of Calgary Resources, including any operation, process, or activity where taxpayer funds may be spent without due regard for value for money and/or where opportunities may exist to save money. Improving the efficacy of the Whistle-Blower Policy would contribute directly to the 2015-18 Council Priority of A Well-Run City including Strategic Actions W2 (be as efficient and effective as possible, reducing costs and focusing on value-for-money) and W3

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(continue to transform the organization to be more citizen-focused in its approach and delivery of service).

Social, Environmental, Economic (External)

The proposed resolution aims to improve The City's operational efficiency and service to citizens and support the strategic interests identified in Calgary's long-range plans.

Financial Capacity

Current and Future Operating Budget:

None with this report.

Current and Future Capital Budget:

None with this report.

Risk Assessment

There is a risk that a resolution proposing to exempt municipal whistle-blower policies from freedom of information requests could be perceived by certain stakeholders and members of the public as restricting transparency. This risk could be mitigated, however, by appropriate communications about the purposes of the change, including improving the ability to identify wrongdoing and waste within The City. The risk could be further mitigated by noting that such an exemption for municipalities is common practice in other Canadian provinces, as is an exemption for quasi-governmental bodies under federal jurisdiction (e.g. crown corporations).

There is also a risk that such a resolution may not be approved at the Mayor's Caucus or by the general membership at the AUMA convention. This risk can be mitigated by communicating to the membership of AUMA that even where a formal whistle-blower policy is not in place, all municipalities have an interest in maintaining confidentiality around allegations of fraud or wrongdoing more generally.

REASON(S) FOR RECOMMENDATION(S):

At present, an AUMA resolution is the most effective means of advocating for an important change that will improve the City's ability to identify instances of wrongdoing and waste, a need which is particularly acute in the current fiscal climate.

As part of the emergency resolution approval process, The City of Calgary's Council representatives will be required to present the emergency resolution at the AUMA Mayors' Caucus beginning 15 June 2016. To meet this timeline, this report should go forward as an item of urgent business to the 2016 June 13 Combined Meeting of Council.