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Town of Aurora
Information Report
No. CS20-024

Subject: Public Disclosure of Previous Closed Session Items

Prepared by: Michael de Rond, Town Clerk

Department: Corporate Services

Date: December 1, 2020

In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming General Committee or Council meeting agenda for discussion.

Executive Summary

This report provides information to Council regarding the Procedure By-law section requiring staff to release closed session items to the public, should it be determined that the item no longer requires confidentiality. The following are important considerations of the report;

- The Procedure By-law requires that 'items' be identified to be released publicly.
- There have not been any items from this Council term identified by staff that meet the criteria to be released through the routine disclosure process
- Staff currently do release decisions from closed session through more informal means
- Staff have identified various ways to solve the issue of the narrow scope of the Procedure By-Law section

Background

Section 21(g) of the Town's Procedure By-law states the following;

The Clerk shall maintain an annual log of all reports and Resolutions considered in Closed Session, conduct an annual review with the CAO and staff to determine which items are no longer sensitive and/or confidential. The Clerk shall prepare an Annual Report of all Closed Session items approved for public release, and shall post the report

on the Town website. Items identified for release shall qualify for 'routine disclosure' in accordance with the Town's freedom of information practices.

Analysis

The Procedure By-law requires that 'items' be identified to be released publicly.

Staff's interpretation of the above section of the Procedure By-law is that a closed session item only qualifies to be released publicly if the entire item, including the report and extract from the minutes, is able to be released publicly. Further to this, being available for routine disclosure means that no redactions would be applied to either the report or the minutes extract. Generally, when a document requires redactions to be released publicly, the document goes through the Freedom of Information process so that staff's preparation time can be recuperated.

There have not been any items from this Council term identified by staff that meet the criteria to be released through the routine disclosure process

The restrictiveness of the clause has left staff with no items to publicly disclose since the clause was included in the Procedure By-law in 2016. Even items such as appointments to Committees do not meet the criteria due to the personal information contained in the application form.

Staff currently do release decisions from closed session through more informal means

When a new committee is appointed, and staff have confirmed with the appointed members that they are still interested in being on the Committee, the Mayor announces the members at a meeting and the Communications Division issues a press release and/or posts on social media.

When staff seek closed session direction from Council regarding a Planning appeal, these directions are often made public during the appeal hearing. As residents interested in a particular appeal often attend the hearing, this is an effective way of making them aware of Council's position with respect to an appeal.

The Town also has a page on the website where any acquisition or disposition of property is made public.

Staff have identified various ways to solve the issue of the narrow scope of the Procedure By-Law section

Remove the section from the By-law

The only other municipality staff are aware of with this type of clause in their Procedure By-law is the Town of Ajax. In speaking with their Clerk's staff, they note the same issues with having no items to disclose. At last check, their staff were planning to recommend to Council that the section be removed from the Procedure By-law.

If this report is not placed on an upcoming General Committee agenda, or a Notice of Motion is not submitted to remove this section, staff would recommend this path forward the next time the Procedure By-law is reviewed. In the meantime, staff will continue to review all closed session items to see if they could be released publicly.

Amend the Procedure By-law

For various reasons, staff reports going to closed session will be the reason why items can not be released under the current section. The extracts from items are far more likely to be able to be released. The following could be brought forward as a Notice of Motion, or moved as amendment to this report if it is requested to be on the January 2021 General Committee Meeting agenda;

That section 21(g) of the Procedure By-law be amended to require the Clerk to complete an annual review of the minutes of each closed session item to see which, if any, can be released publicly and posted to the Town's website; and

That a by-law be enacted as a future Council meeting to confirm this change.

This would allow for minutes such as committee appointments, or planning appeals to be released, in full and when deemed appropriate by staff, to the public. Importantly, the minutes do not contain note or comment, and only speak to discussion topics.

Advisory Committee Review

None

Legal Considerations

In accordance with the *Municipal Act, 2001*, Council may hold meetings closed to the public for select reasons. Reports are typically presented at those meetings and therefore, as a record of the municipality, the release of closed session reports, whether in whole or in part, are subject to disclosure in accordance with the *Municipal Freedom*

of Information and Protection of Privacy Act. Routine disclosure of the full report is not permitted due to redactions which would be required for all closed session reports.

In addition, closed session reports that are subject to solicitor-client privilege should not be released, except upon Council, as a whole, waiving the privilege. The Town Clerk does not have any authority to release these reports.

Financial Implications

Routine disclosure is a simple way for staff to provide public access to documents at no cost. When documents require redactions, this can be a costly process depending on the nature of the redactions. Documents requiring redactions are put through the Freedom of Information process to ensure staff preparation time is passed on to the requestor.

Communications Considerations

None

Link to Strategic Plan

Identifying items from closed session meetings that could be released publicly promotes **progressive corporate excellence and continuous improvement** by implementing policy and processes that reflect sound and accountable governance.

Alternative(s) to the Recommendation

Council options identified in the report

Conclusions

The current clause regarding the public release of closed session items is restrictive due to the entire item needing to be released, without redactions. Staff have proposed options that Council may want to consider to rectify the situation.

Attachments

None

Previous Reports

None

Pre-submission Review

Agenda Management Team review on November 12, 2020

Approvals

Approved by Techa van Leeuwen, Director, Corporate Services

Approved by Doug Nadorozny, Chief Administrative Officer