

Section 6.8.1 of the City Staff Report notes several comments regarding WT's FOI processes and suggests that "WT should strengthen its FOI policies and oversight to more closely reflect those of the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA").

Having discussed the City's comments with the Waterfront Secretariat, Management understands that the primary concern of the City is that there is no appeal mechanism for dealing with FOI requests.

Recommendation

Management recommends that the Corporation formally request the Province to make the Corporation subject to the *Freedom of Information and Protection of Privacy Act* ("FIPPA") in order that a statutory right of appeal and an established appeal process are available to applicants who submit FOI requests. Under FIPPA (as well as MFIPPA), appeals of FOI decisions may be made to the Information & Privacy Commissioner of Ontario (the "IPC"). The IPC is appointed by and reports to the Legislative Assembly of Ontario, and has been responsible for mediating and adjudicating FOI disputes since FIPPA was enacted in 1988.

The implementation of this request would involve:

- An amendment to the Schedule to Ontario Regulation 460 to add the Corporation as one of the institutions listed in Column 1 of the Schedule and to add the CEO as the designated head of the institution for FIPPA purposes;
- An amendment to FIPPA which provides an additional disclosure exemption for records that reveal the substance of deliberations of closed meetings of the Board, where such meetings are permitted by Section 190 of the *City of Toronto Act, 2006* and Section 6(4) of the *Toronto Waterfront Revitalization Corporation Act, 2002*; and
- Revisions to the Corporation's FOI Policy to ensure full consistency with FIPPA.

Background

The Corporation's FOI Policy was approved by the Board in December 2012 and was based on the requirements of the federal Access to Information Act ("AIA"), FIPPA and MFIPPA. Because WT is not an agency, board or commission of any order of government, neither the AIA, FIPPA nor MFIPPA apply to the Corporation although, through its FOI Policy, the Corporation has sought to act in a manner consistent with FOI legislation. However, there is no appeal process under the Corporation's FOI Policy. Management has considered two options for providing an FOI appeal process: (i) requesting that the Corporation be made formally subject to FOI legislation, in which case, an appeal would be available to the Information and Privacy Commissioner ("IPC") or (ii) establishing an appeal procedure under the Corporation's FOI Policy. For reasons of public confidence, procedural certainty and cost, Management recommends that being made subject to FOI legislation is the preferred option. The IPC is a specialized office with proven expertise and public confidence, with an appeal process that is clearly set out in FIPPA/MFIPPA and, apart from the \$25 appeal filing fee, there is no cost to use the system (although each party would bear their own legal and staff costs). It is not clear that the Corporation could ever establish a process under its FOI Policy with similar benefits or attributes and, if that were the option chosen, the cost to establish and maintain such a process would be very expensive.

Management recommends that FIPPA, as opposed to MFIPPA, be the freedom of information legislation that is made applicable to the Corporation for two reasons:

1. Although WT is unique in that it is a partnership between three orders of government, it is a corporation created by provincial statute in a similar manner as other corporations which are already subject to FIPPA (such as Metrolinx, the Ontario Place Corporation and the Ontario Lottery and Gaming Corporation, for example); and
2. The exemptions of FIPPA are better suited to the work of the Corporation than those of MFIPPA which are designed for municipal governments and local boards (provided that FIPPA must also be amended to incorporate an exemption for closed meeting records as noted above). For example, Sections 12 (Cabinet or Ministerial briefings) and 15 (relations with governments) of FIPPA are better suited to protect the confidentiality of conversations with governments which the Corporation must have to carry out its work than are Sections 6 (municipal by-laws) and 9 (relations with governments) of MFIPPA. As the ability to have confidential discussions with governments is vital to securing government commitments to projects and project funding, and because premature disclosure of such confidential discussions can undermine such commitments, Management believes FIPPA offers significant advantages over MFIPPA.

There are certain statutory obligations and implications that would result from the Corporation being subject to FIPPA:

- The CEO would be designated as the head of the organization for FIPPA purposes with the ability to delegate its responsibilities to another officer;
- The head is responsible for responding to FIPPA requests and is responsible for making an annual report to the IPC on FIPPA requests;
- Commencing in January, 2016, the head will be responsible for ensuring that there are reasonable measures in place to preserve records; and
- Persons who contravene FIPPA may be prosecuted for offences with fines not exceeding \$5,000.

It is not clear what the operational impact will be of the Corporation being made subject to FIPPA. Only two requests have been made under the Corporation's FOI Policy (both by the Toronto Star earlier this year). The processing of FOI requests can require considerable staff time. The amount of staff time and resources required will depend on the volume of FOI requests that are received in the future.