

Date: 2021-02-11

Subject: Closed Session Meeting Access for Council Office Staff

Contact: Peter Fay, City Clerk, Legislative Services

Report Number: Legislative Services-2021-017

Recommendations:

1. That the report titled: **Closed Session Meeting Access for Council Office Staff**, to the Committee of Council meeting of March 10, 2021, be received.

Overview:

- Committee of Council requested staff report back on permitting the distribution of closed session agenda materials to select Council Office staff and/or allowing appropriate Council Office staff to attend closed session deliberations during meetings.
- The City Clerk's Office has established a Closed Session Meeting Protocol, previously reported to Council, to guide the preparation, distribution, attendance at, and management of closed session meeting materials. The Protocol has been updated as Council has updated its closed session processes.
- Staff benchmarked other municipal practices for access to closed session materials and meeting by Council Office staff elsewhere.
- If Council wishes to expand access to closed session agendas to designated Council Office staff, provisions are included in the report for Council's consideration. Staff do not recommend allowing Council Office staff attendance at closed session meetings.

Background:

In November 2020, Committee of Council discussed expanding access to closed session of Council and Committee meetings by the distribution of closed session agenda materials to appropriate Council Office staff and/or allowing appropriate Council Office staff to attend closed session deliberations during meetings.

CW327-2020

That staff be directed to report back on potential process revisions to permit access to closed sessions for Councillor Executive Assistants.

Closed Session Meeting Protocol:

During the last term of Council (2014-2018), in response to closed session information breaches and allegations of breaches, restrictions were put into effect for closed session meetings including, restricting access from Mayor's Office staff and restricting access to computers and mobile devices by Members during closed session.

At the start of the current term of Council, staff reported on a Closed Session Meeting Protocol (Appendix 1) to govern closed session processes. Council amended the protocol this term a number of times to suit Council's needs for closed session meetings, including:

- Allowance for Mayor's Chief of Staff to attend closed session meetings.
- Provision of closed session meeting materials digitally to Members and appropriate staff, with discretion provided to staff to determine if hard copy distribution is warranted depending on the sensitivity of the closed session agenda item.
- Allowing Members to print closed session agenda materials.
- Allowing phone use within closed session for communication only.

City Council – February 6, 2019

C038-2019

That the position of Chief of Staff of the Mayor's Office be provided access to the Closed Sessions of City Council and its Committees; and

That the protocol with regard to Closed Session be amended accordingly.

GC006-2019

1. That the report from P. Fay, City Clerk, Office of the Chief Administrative Officer, to the Governance and Council Operations Committee Meeting of February 12, 2019, re: **Secure Access to Closed Session Material**, be received;

2. That the City Clerk be requested to investigate and implement as expeditiously as possible a secure means of electronic provision of

closed session material to Members of Council and appropriate staff; and

3. That the Closed Session Protocol be revised to accommodate the electronic provision of confidential closed session material, by means and at the discretion and satisfaction of the City Clerk and City Solicitor; and

4. That, until such time as an adequate electronic method of distributing closed session materials is instituted, the CAO, in consultation with the City Clerk and City Solicitor, be authorized to determine appropriate timing and method of distribution of specific hard-copy closed session agenda items depending on their deemed level of sensitivity and/or complexity.

City Council - April 10, 2019

GC023-2019

That the Members of Council be permitted access to print Closed Session materials.

GC025-2019

That the provision with regard to limiting use of phones and other electronic devices by Members of Council be rescinded; and,

That phone use for communications only within Closed Session be approved.

This report addresses Council's recent request to expand access to closed session meetings by Council Office staff.

Current Situation:

Closed Session Agenda Distribution:

Closed session agenda materials are currently provided by the City Clerk's Office, through individually watermarked digital files, to approximately 23 individuals, including:

- 12 – Mayor, Mayor's Chief of Staff, and 10 Members of Council
- 9 – CAO, 7 Department/Service Heads and City Solicitor
- 2 – City Clerk and Deputy City Clerk

Note – For the Audit Committee, the closed session agenda is also provided to the Director, Internal Audit

On occasion, and depending on circumstances and the Committee, items are occasionally dealt with in closed session and confidential agenda materials may be provided to citizen-based advisory committees (e.g., Brampton Heritage Board; Sports Hall of Fame Committee).

Closed Session Meeting Attendance:

Attendance at closed session meetings is limited to the following persons:

- Chief Administrative Officer and Department Commissioners/Heads (or designates);
- City Clerk and Deputy Clerk (or designates);
- City Solicitor and Deputy City Solicitor (or designates);
- Appropriate City staff and guests with subject-matter expertise, as identified by the CAO and/or Department Commissioners/Heads
- Chief of Staff, Mayor's Office

On occasion, and depending on the subject matter, external experts retained by the City (e.g., legal counsel, consultants) may attend closed session for specific agenda items.

In accordance with the Procedure By-law, for any closed session agenda item regarding an individual employee, the CAO will designate which staff may be present.

Depending on the circumstances and subject of a closed session meeting, Council or Committee may designate (through a public session motion and vote) another person to serve as the Clerk for that portion of the closed session.

The current rules and procedures for closed session agenda distribution and meeting access have served Council well. To-date, there has never been a closed meeting investigation request since that provision of the *Municipal Act, 2001*.

Council is now considering expanding access to closed session by Council Office staff to allow, in a similar manner as the Mayor's Chief of Staff, access to closed session agenda information and the meeting itself. The rationale is to ensure at least one Member staff is prepared to brief the Member, as well as attend and follow confidential business important to the Member in order to support the Member.

Municipal Benchmarking re. Closed Session Agenda Distribution and Attendance:

City staff undertook a survey of Peel Region and comparable Ontario municipalities to identify if they allow access to closed session agendas and meetings by the Mayor/Chair's chief of staff and Councillor staff. Appendix 2 lists the information supplied by responding municipalities.

For those municipalities with a chief of staff position supporting the Mayor/Chair, almost all provide closed session agendas and meeting access to the chief of staff position, similar to Brampton.

For those municipalities with Councillor staff, many do not provide closed session agendas separately to the Councillor staff, and only copy the Councillor staff who then may have access to open the agenda. No responding municipalities allow Councillor staff access to closed session meetings.

A few municipalities, who permit some shared access to the closed meeting agenda between the Councillor and Councillor staff, also do limit so as not to include Councillor staff access to confidential business regarding personal matters about an identifiable individual or labour relations or employee negotiations. Such item details are presented separately directly in closed session by way of a verbal update or slide presentation without material distribution.

Council Office Access to Closed Session Agendas:

Council may wish to consider expanding access to limited closed session agenda materials to one or more Council Office staff. As discussed in November 2020, this could include up to one person (e.g., Executive Assistant) per Councillor, on a voluntary basis as determined by the Councillor, to receive access to the same closed session meeting digital agenda package as their Councillor for meeting preparation and support to the Councillor.

All Members of Council are required to take a mandatory oath of office at the start of the Council term. All Members are also bound by the Council Code of Conduct (see Rule 3 extract within Appendix 1) in regard to confidential information. Councillor staff have similar provisions under the Employee Code of Conduct and within the recently confirmed Council Office Management Framework. However, given the unique nature of acknowledged access to closed session agenda information, it may be appropriate to have the Councillor and authorized Councillor staff person sign a specific undertaking to protect the confidentiality of Council's closed session proceedings. Participating Councillors should provide the authorization in writing to the City Clerk's Office and the authorized staff would be required to sign a confidentiality and non-disclosure agreement specific to closed session agenda information.

As previously discussed, there is certain closed session information that, by the nature of its content including personal information or labour relations or employee negotiations, should have very restricted access and not be included in closed meeting agendas that are accessible by Council Office staff, as determined by the CAO, City Solicitor and City Clerk.

If Council intends to proceed to expand closed session meeting agenda access, it could adopt the following statement for inclusion in the current closed session meeting protocol:

As determined by Council Resolution, the closed session agenda may be provided to the Mayor's Chief of Staff and to one (1) employee of the Member of Council, as identified by the Member with the Member's name watermarked on the agenda materials. Written authorization is required from the Member to identify the authorized Member staff to receive the closed session agenda, and the authorized Member staff is required to sign a confidentiality and non-disclosure agreement specific to closed session agenda information, to the satisfaction of the City.

The Mayor and Member of Council shall be responsible for the closed session agenda materials distributed to the Chief of Staff and any authorized Member staff, respectively, in accordance with all the policies and procedures of the City.

Certain closed session materials, due to the sensitivity of the information and/or reason for the open meeting exception, may only be provided to the Mayor and Member of Council and not the Chief of Staff and authorized Member staff, based on consultation between the CAO, City Clerk and City Solicitor.

Council Office Access to Closed Session Meetings:

Staff do not recommend allowing additional Council Office staff to attend closed session meetings. Potentially allowing 10 additional persons to attend a closed session could undermine the security and confidentiality of closed session deliberations of Council and its Committees. The more persons attending closed session, the greater the likelihood of an inadvertent release of confidential information without Council's approval. Additionally, once in-person meetings resume, the current closed session room is not large enough to accommodate additional Councillor staff to attend session in the Council-Committee Boardroom, currently used for closed session deliberations.

If Council decides to expand closed session meeting access to designated Council Office staff, it should be limited to one person per office and each person (and their Councillor) should be required to sign a specific confidentiality undertaking/non-disclosure agreement prior to attending closed session of meetings.

Corporate Implications:

Financial Implications:

There are no direct financial implications resulting from this report.

Other Implications:

nil

Term of Council Priorities:

This report supports and reinforces the Term of Council Priority of a Well-run City by ensuring appropriate meeting procedures and practices are in place to balance accountability and transparency in Council decision-making, while enabling Council to deliberate in limited closed session circumstances in accordance with the *Municipal Act, 2001*.

Conclusion:

Council requested staff to report on expanding access to closed session for Council Office staff. Staff comments, supported by some municipal benchmarking, support

limited access to closed session meeting agendas by limited and designated Council Office staff, with an appropriate specific confidentiality undertaking. Language is included in this report should Council wish to allow limited access to closed session agendas, for inclusion in the current Closed Session Meeting Protocol. Staff do not recommend allowing Council Office staff, beyond the current access provided to the Mayor's Chief of Staff, to attend closed session meetings. There is no precedent in benchmarked municipalities for allowing Councillor staff access, save and except for the chief of staff of the Mayor/Chair.

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Attachments:

Appendix 1 – Closed Session Meeting Protocol (January 2021)

Appendix 2 - Benchmarking Comparable Municipal Practices for Access to Closed Session Agendas and Meetings by Mayor/Chair Chief of Staff and Councillor Staff