

REGIONAL MUNICIPALITY OF OTTAWA-CARLETON
MUNICIPALITÉ RÉGIONALE D'OTTAWA-CARLETON

REPORT
RAPPORT

Our File/N/Réf. 07-97-0119
Your File/V/Réf.

DATE 27 March 1997

TO/DEST. Chair and Members of Planning and Environment Committee

FROM/EXP. Co-ordinator, Planning and Environment Committee

SUBJECT/OBJET **BYLAW ENFORCEMENT AND MFIPPA REQUIREMENTS**

REPORT RECOMMENDATION

That the Planning and Environment Committee receive this report for information.

BACKGROUND

At the Planning and Environment Committee Meeting of 25 March 1997, Councillor Cullen requested that the attached memorandum be included on the next Planning and Environment Committee agenda for discussion purposes. In conjunction with this request, the following Motion was tabled:

That an annual report be prepared on the enforcement of the Regional Sewer By-law, including a listing of warning notices given, Part III Summons given, and convictions, including name of offender, date and place of incident.

The report entitled "Response to Outstanding P&E Inquiry No. 24 - Sewer Use By-Law" dated 28 Jan 97, previously considered by Planning and Environment Committee on 25 Feb 97 is also appended for ease of reference.

*Approved by
Dawn Whelan*

Attach. (2)

Our File/N/Réf. L.1.7.1
Your File/V/Réf.

DATE 14 March 1997

TO/DEST. The Chair and Members of Regional Council

FROM/EXP. Deputy Regional Solicitor

SUBJECT/OBJET **INFORMATION ITEM: BY-LAW ENFORCEMENT AND
MFIPPA REQUIREMENTS**

Recent matters before Planning and Environment Committee have involved discussion of the procedures and techniques used by the Water Environment Protection Division in the enforcement of the Regional Sewer By-Law. The purpose of this report is to provide the Committee with information regarding the access to information and protection of privacy considerations involved in the enforcement of this by-law, and of by-laws generally.

The Regional Corporation is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 (“MFIPPA”), which governs access to all information in the care and control of the Regional Corporation. It also imposes certain obligations with regards to the protection of an individual’s privacy, as well as protection of information about a company.

Personal Information: Information about an individual’s suspected contravention of a regional by-law is considered personal information under section 14 of MFIPPA. Information about the Region’s investigation into a suspected contravention, or any warnings that may have been given to the individual, are also considered to be that person’s personal information. This information is not a matter of public record. As such, this information may only be disclosed with that individual’s consent, or, if a specific disposition in MFIPPA allows the disclosure.

If a conviction has been obtained in Court against an individual for a violation of a by-law, then that conviction is a matter of public record. That information is available through the court itself and therefore may be disclosed if requested.

Company Information: Information about a company’s suspected contravention of a regional by-law, such as the Sewer-Use By-Law, is also subject to MFIPPA. Section 10 contains rules which would prohibit the disclosure of a company’s information, if certain criteria are met. It is possible, therefore, that where a company has been the subject of some investigation by staff or

communication with the Region with regards to compliance with a by-law, the information about the company could be protected under section 10 under certain circumstances.

In some situations, therefore, a case-by-case analysis of the information that the Region possesses with regards to a company is required to see if it is subject to section 10. This includes information about an investigation into a suspected contravention, a warning given to a company or any compliance negotiations and discussions with the company. Should the company in question provide a consent for disclosure of its information, the Region would then be in a position to release the information provided that no other exemptions to disclosure apply.

Law Enforcement Information: Section 8 of MFIPPA applies to disclosure of information of a law enforcement context. Disclosure is discretionary under this exemption. For example:

- Section 8(1)(a) allows the Region to refuse disclosure of information in law enforcement-related matters if the disclosure could reasonably be expected to interfere with a law enforcement proceeding or activity;
- Disclosure may be refused under section 8(1)(c) where it would reveal investigative techniques and procedures currently in use or likely to be used in the by-law enforcement process; and,
- Section 8(1)(d) allows the Region to refuse disclosure where it could disclose the identity of a confidential source of information in respect of a by-law enforcement matter.

The statutory exemptions in Section 8 are particularly pertinent to by-law enforcement procedures. As noted above, the exemptions are discretionary. However, the Region has traditionally taken the position that warnings issued by the Region under by-laws or other legislation are confidential. The consistent application of this exemption is used in order to preserve the co-operative relationship with the company in question, and to facilitate monitoring and exchange of information with the company. As the ultimate goal of fostering a co-operative relationship is to bring the company into a situation of voluntary compliance, the policy of keeping information about a company's suspected non-compliance confidential has proven to be a very useful tool.

Information regarding the conviction by a Court of a company for a violation of a by-law is a matter of public record. Such information may be obtained through the court system and as such, information concerning convictions may be disclosed by the Region.

Legal Proceedings: In addition to the above-noted obligations under MFIPPA, it should also be noted that disclosure of information concerning an individual or a company in the context of a suspected by-law infraction could also be subject to libel claims in certain circumstances. Should the Regional Corporation decide to disclose information concerning a suspected violation which subsequently cannot be fully substantiated in a law suit, the company may recover damages for loss to its reputation.

Conclusion

Information regarding individuals and companies which is obtained by the Region in the by-law enforcement process, including the issuance of warnings, is subject to MFIPPA. Disclosure of this information may be prohibited depending on the circumstances. Alternatively, the disclosure of information may be at the discretion of the Region. It is the position of staff that discretionary disclosure should occur rarely.

In the opinion of staff, a case-by-case approach that takes into account the applicable provisions of MFIPPA and the public interests to be served is the appropriate manner in which to proceed.

*Approved by
Eric A. Johnston
Deputy Regional Solicitor*

/VB

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REPORT
 RAPPORT

Our File/N/Réf.
 Your File/V/Réf.

DATE 28 January 1997

TO/DEST. Co-ordinator Planning and Environment Committee

FROM/EXP. Environment and Transportation Commissioner

SUBJECT/OBJET **RESPONSE TO OUTSTANDING P&E INQUIRY NO. 24
 SEWER USE BY-LAW**

DEPARTMENTAL RECOMMENDATION

That the Planning and Environment Committee receive this report for information.

BACKGROUND

On 4 October 1996, a complaint regarding a potentially illegal discharge into a manhole on Montreal Road was referred to the Industrial Waste section of the Water Environment Protection Division since this group is responsible for enforcing the Sewer Use By-law in Ottawa-Carleton.

As part of the investigation, the By-law Officer contacted both the person who had witnessed and reported the incident as well as the company involved. A comprehensive review of all existing records was also carried out to determine whether previous By-law violations existed for that company.

DISCUSSION

The overall objective of the Sewer Use By-law is to protect the wastewater infrastructure, safety and health of the sewer workers as well as the health of the receiving water environment. The strategy to apply the Sewer Use By-law has built on the concept of pollution prevention, which promotes continuous improvement through operational and behavioural changes. Pollution prevention is seen as a shared responsibility among governments, individuals, and industrial and community sectors. This strategy is consistent with the direction provided by the Canadian Council of Ministers of the Environment.

Key elements of the pollution prevention strategy include leadership, partnerships, practical tools and incentives. The Region has demonstrated leadership through the creation of the industrial waste program and the introduction of the Sewer Use By-law. The Region is also developing partnerships on a regular basis with the industrial sector through the encouragement of innovative approaches and sharing of experience.

Practical tools include promoting information and providing training. It also includes identifying compliance issues and working with companies to develop programs to obtain future compliance. This voluntary compliance approach has been very successful and should have positive long-term impacts since companies gain a comprehensive understanding of the need to go through an operational and behavioural change. Through compliance programs, the Region also provides incentives to companies for initiating pollution prevention measures.

Should these tools fail to ensure voluntary compliance, the By-law Officer has the options of either issuing a warning or issuing a Part III Summons under the Provincial Offences Act. The By-law Officer does not have the authority to issue a Part I Summons or "ticketing". The decision to issue a Summons under Part III is never made lightly since it is a costly process and is resource intensive. In addition, sufficient evidence must exist to demonstrate in Court all aspects of the offence. Accordingly, prior to issuing a Part III Summons, the By-law Officer always explore whether other more cost effective options exist to achieve our ultimate objective.

With respect to the specific incident reported on 4 October 1996, the By-law Officer considered all evidence including the absence of previous violations for the company involved, the measures taken by the company to ensure compliance with the By-law in the future and the low probability of obtaining a conviction in Court. Based on these considerations, it was determined that a formal warning was the most cost-effective means of successfully addressing this specific By-law violation. It was also felt that the approach taken had a greater likelihood of enhancing awareness and understanding of pollution prevention with the company involved.

RECOMMENDATION

The inability of issuing Part I Summons has in the past been identified as a weakness in dealing with some By-law violations. The Environment and Transportation Department, together with the Legal Department, are presently considering some revisions to the Sewer Use By-law to address this issue. It is presently envisaged that Part I Summons would be used when voluntary compliance has failed. The report identifying revisions to the Sewer Use By-law is scheduled to be before Committee and Council in the Spring 1997.

The Department recommends to continue using a co-operative approach with companies to address violations of the Sewer Use By-law and to use whichever tool is most appropriate on a case by case basis.

CONSULTATION

The approach taken to enforce the Sewer Use By-law has been to co-operate with the business community to help achieve an environmentally responsible society that anticipates and prevents pollution. Communication and consultation will continue to be at the core of the industrial waste program.

FINANCIAL IMPLICATIONS

Since it is the practice to consider cost effectiveness when exploring options to determine how compliance can be achieved, this process should result in positive financial implications for the Ottawa-Carleton community while ensuring protection of the environment, infrastructure and health and safety of the sewer workers.

*Approved by
M. J. E. Sheflin, P. Eng.*

FJ/jp