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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**

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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

Information Previously Distributed

To be listed on Planning and Environment  
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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*

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