



SUBJECT: Closed session meeting investigation report– Aird & Berlis LLP

TO: Corporate Services, Strategy, Risk & Accountability Cttee.

FROM: Office of the City Clerk

Report Number: CL-17-22

Wards Affected: Not applicable

File Numbers: 130-01

Date to Committee: May 4, 2022

Date to Council: May 17, 2022

Recommendation:

Receive and file office of the city clerk report CL-17-22, closed session meeting investigation report from Aird and Berlis LLP.

PURPOSE:

This report is a transmittal report to provide the findings of the closed session meeting investigation conducted by Aird & Berlis LLP regarding four closed session meetings held between November 2021 and February 2022.

Background and Discussion:

As of January 1, 2008 any person or corporation may request that an investigation be undertaken questioning whether a municipality or local board, or a committee of either, has complied with closed meeting rules outlined in the *Municipal Act*, 2001.

Pursuant to Section 239(2) of the *Municipal Act*, 2001 (the *Municipal Act*), the City has appointed Local Authority Services Limited (LAS) to provide Closed Session meeting investigation services to the City. LAS is a subsidiary of the Association of Municipalities of Ontario (AMO). It is the role of the investigator to determine compliance with the *Municipal Act* or the City of Burlington's Procedure By-law with respect to closed meetings and provide a report on the results of such investigations.

LAS has retained and delegated authority to Aird & Berlis LLP (Aird & Berlis) to act as closed meeting investigator to its participating municipalities. As the closed meeting investigator, Aird & Berlis are authorized to conduct investigations on meetings or parts of meetings which are closed to the public.

Section 239 of the Municipal Act provides that all meetings of a municipality, including its Council, local boards, and committees, shall be open to the public. Section 239(2) includes a list of exceptions that may be considered in a session closed to the public. An excerpt of the Municipal Act section 239 is attached as Appendix A.

Section 27 of the City's Procedure By-law also speaks to Closed Sessions. In addition to the provisions in the Municipal Act, the Procedure By-law includes procedures for reporting out after a Closed Session meeting:

- 27.6 On reconvening in public session, the Chair will accept a motion regarding the matters discussed in closed session, or alternatively advise that direction had been given to staff during the closed session in accordance with the *Municipal Act*.

On February 15, 2022, a request was filed with the Office of the City Clerk to investigate four closed session meetings:

- Corporate Services, Strategy, Risk and Accountability Committee Meeting, November 10, 2021
- Corporate Services, Strategy, Risk and Accountability Committee Meeting, January 10, 2022
- City Council Meeting, January 18, 2022
- Corporate Services, Strategy, Risk and Accountability Committee Meeting, February 2, 2022

The scope of the request was to investigate the following issues:

- Were Council and the Committee entitled to discuss those matters identified in the Request in closed session pursuant to a closed meeting exception in subsection 239(2) of the Municipal Act, 2001; and
- Did Council and the Committee's "report out" resolution passed following each closed session comply with the Procedure By-law?

The request was provided to Aird & Berlis on March 2, 2022, and the report with the findings of their investigation is attached as Appendix B. The report from Aird & Berlis concludes that in all cases, the City of Burlington did not contravene subsection 239(2) of the Municipal Act or the City's Procedure By-law in respect to the issues identified in the request.

Strategy/process

The information contained in the Aird & Berlis report and Committee discussion will be considered. Staff continue to work with Aird & Berlis on the creation of a closed session protocol. The protocol is expected to return to CSSRA by June 2022.

Financial Matters:

Total Financial Impact

The cost of this closed meeting investigation, as of writing this report is approximately \$15,000.

Source of Funding

Closed Meeting Investigator costs are funded from the contingency reserve.

Other Resource Impact

Not applicable.

Climate Implications

Not applicable.

Engagement Matters:

Not applicable.

Conclusion:

This is a transmittal report to convey a report from Aird & Berlis LLP regarding a closed session meeting investigation.

Respectfully submitted,

Samantha Yew

Manager of Committee Services/Deputy City Clerk

905-335-7600 ext. 7490

Appendices:

- A. Excerpt from *Municipal Act*, 2001, Section 239
- B. Report on Closed Session Meeting Investigation 2022-01, submitted by Aird & Berlis LLP

Report Approval:

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.