



CONFIDENTIALITY: A PRIMER

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PURPOSE

- [1] Members of Council and Members of Local Boards and Committees must ensure that they are performing their duties in a professional, responsible, transparent, and accountable manner. The **Code of Conduct for Members of Council and Local Boards/Committees** (“**Code of Conduct**”) outlines the principles of good conduct and ethics that Council Members and Members of Local Boards and Committees (“Members”) must demonstrate as elected officials or as Council appointees to Local Boards and Committees (See **Code of Conduct**, section 1.00 – Objective). It is important for both Members and all employees of the Corporation of the Town of Essex (“Town”) to recognize that confidentiality is critical in running an effective, efficient, and ethical municipal government.
- [2] Further, Members and employees of the Town should familiarize themselves with the *Communications and Media Relations Policy* and the *Corporate Social Media Procedure*. These documents further explain the expectations regarding confidentiality and confidential information.

THE CODE OF CONDUCT

- [3] Members must always adhere to the entire **Code of Conduct**. However, the sections discussed below are particularly relevant to Members’ obligations regarding confidentiality.
- [4] Elected Members of Council and volunteer Members of Local Boards and Committees must uphold the highest standards of ethical behaviour. The following are some examples:
- a. Making impartial decisions that benefit the municipality and are fair and equitable to all residents;
 - b. Upholding both the letter and the spirit of Federal and Provincial laws and the laws and policies adopted by the Town; and

- c. Being free from undue influence and not acting for personal gain or the gain of a Member's family, friends, or business interest (See **Code of Conduct**, section 2.01 – Integrity).
- [5] Section 2.06 of the **Code of Conduct** (Openness) states that Members have a duty to be as open as possible about their decisions and actions. According to this provision, that means **“communicating appropriate information openly to the public about decision-making processes and issues being considered, encouraging appropriate public participation, communicating clearly and providing an appropriate means for recourse and feedback.”** It is vitally important that Members understand what is considered appropriate information, participation, and recourse to guarantee that confidentiality is not breached.

CONFIDENTIAL INFORMATION

- [6] The general rule regarding confidentiality is clear: Members may not disclose, release, or publish by any means to any person or to the public any confidential information, as defined in Section 4.00 of the **Code of Conduct**, acquired by the virtue of their office, in any form. The only exception to this is when it is authorized by Council or otherwise by law to do so (See **Code of Conduct**, section 7.00 – Confidential Information).
- [7] The following list includes some examples of what is considered confidential information under the **Code of Conduct**:
- a. Information in possession of, or received in confidence by the Town, that the Town is prohibited from disclosing or has decided to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*;
 - b. Corporate, commercial, scientific, or technical information received in confidence from third parties, personal information, solicitor-client privileged information, matters pertaining to personnel, labour relations, litigation, property acquisition, security of property of the municipality or local board, and any other information lawfully determined by Council or a Local Board to be confidential or required to remain confidential by legislation or order;
 - c. A matter, substance of a matter, and information pertaining to a matter that has been debated or discussed at a meeting closed to the public, unless the matter is subsequently discussed in open Council meetings or is authorized to be released by Council, a Local Board, or otherwise by law;

- d. Reports of consultants, draft documents, and internal communications, which if disclosed may prejudice the reputation of the Town, its officers and employees, or its effective operation;
 - e. Information concerning litigation, negotiation, or personnel matters; and
 - f. Information that, if published, may infringe on the rights of any person (e.g. source of a complaint where the identity of a complainant is given in confidence);
 - g. Such other Information as may be considered and/or disclosed in a Closed Meeting of Council or its Local Board or Committee, properly held pursuant to Section 239 (2) and (3.1) of the *Municipal Act*, S.O. 2001, c.25, as amended (the “*Municipal Act*”).
- [8] Council members are not to use confidential information for personal or private gain, or for the gain or benefit of any other person or body (See **Code of Conduct**, section 7.00 – Confidential Information).
- [9] Furthermore, any request for information must be referred to the appropriate staff to be addressed as either an informal request for access to municipal records or as a formal request under *MFIPPA* (See **Code of Conduct**, section 7.00 – Confidential Information).
- [10] The rules surrounding confidential information also extend to emails and other types of correspondence. Corporate emails and other types of correspondence provided to Members are the property of the Town and are intended for Council use only. Any disclosure, dissemination, reproduction, or other use of any part of the information in these communications is strictly prohibited (See **Code of Conduct**, section 11.00 – Corporate Emails and Correspondence).

CLOSED MEETINGS

- [11] Open democratic debate is the hallmark of municipal governance in Canada. Nevertheless, for municipal governments to run efficiently and effectively, there are times where the matters of the Town will need to be discussed out of the public sphere before they can be disclosed to members of the general public. Matters of Closed Meetings must remain confidential unless authorized by Council or legislation to be released, either generally or with conditions.
- [12] A Meeting that is closed to the public in order for Council or a Committee to consider confidential information is referred to as a “Closed Meeting” and is permitted by the *Municipal Act, 2001* and the *Town’s Procedure By-Law* (See **Code of Conduct**, section 4.00 – Definitions).

- [13] Matters that are discussed in Closed Meetings shall remain confidential. No Member shall disclose the content of any such meeting, the substance of deliberations of any such Meeting, **or even that such matters were discussed in a Closed Meeting**, until Council or the Committee discusses the information at a Meeting that is open to the public or releases the information to the public (See **Code of Conduct**, section 7.00 – Confidential Information). In other words, Council Members may only disclose information from Closed Meetings after it has been lawfully authorized to be released by either Council, the Committee, or Board to do so.
- [14] Moreover, it is **not** a defence to a charge of violating the **Code of Conduct** that the Member believed the matter should not have been taken into a Closed Meeting. (**Note the Precedent:** In a Report to Toronto City Council on June 14, 2006, the Integrity Commissioner noted: “Councillors cannot find justification for releasing confidential information to the press in their own conviction that their colleagues have erred in going *In-camera.*”)
- [15] Fundamentally, there are three main points to be made surrounding confidentiality, confidential information, and Closed Meetings in general. First, if a Member discloses information from a Closed Meeting, even if the Member claims it came from a different source, it will be a violation of the **Code of Conduct**.
- [16] Second, it will be a violation of the **Code of Conduct** if a Member confirms the substance of a matter discussed in a Closed Meeting when the source of the confirmation comes from the confidential information obtained in the Closed Meeting.
- [17] Third, if a Member releases confidential information before it was authorized by Council or otherwise by law to do so, it will be a violation of the **Code of Conduct**, even if another Member or a third-party had already released the confidential information.

TOWN EMPLOYEES

- [18] All Town employees and anyone who is retained by the Town to act on the Town’s behalf have an obligation to retain confidential information. For employees, confidential information refers to information that is not generally available to the public and used in the course of Town operations. It includes sensitive information and personal information about employees, taxpayers, customers, volunteers, vendors, suppliers, elected officials,

citizens, and other stakeholders (See *Communications and Media Relations Policy – Definitions*).

- [19] In all communications, employees are prohibited from disclosing confidential, proprietary, or sensitive information related to the Town, its business and affairs, employees, volunteers, vendors, suppliers, elected officials, citizens, and other stakeholders (See *Communications and Media Relations Policy – Confidentiality*).

SOCIAL MEDIA

- [20] While posting anything on social media accounts, confidentiality must be maintained. Confidential or sensitive information related to the Town, its business and affairs, employees, volunteers, vendors, suppliers, elected officials, citizens, or other stakeholders cannot be posted without written approval. Privacy must also be maintained (See *Corporate Social Media Procedure – Posting Comments*).

- [21] As a general guideline, Members and employees should not post anything online that would be seen as a breach of confidentiality if it was disclosed in person in any way.

FURTHER INFORMATION

This document is intended to provide general information. If you have any questions or wish to seek written advice on this matter, please contact the **Office of the Integrity Commissioner** for the Town of Essex.