

**To:** SPECIAL COUNCIL

**Meeting Date:** 6/28/2021

**Subject:** Report 22-047-CRS Closed Meeting Investigation

**Submitted By:** Danielle Manton, City Clerk

**Prepared By:** Danielle Manton, City Clerk

**Report No.:** 22-047-CRS

**File No.:** C1101

**Wards Affected:** All Wards

## **RECOMMENDATION(S):**

THAT Report 22-047-CRS Closed Meeting Investigation be received for information.

## **EXECUTIVE SUMMARY:**

### **PURPOSE:**

As a result of a closed meeting complaint the City received on December 15, 2021 this report presents the Closed Meeting Investigation report dated Complaint File No. 2021-02 received from Aird & Berlis LLP attached as Appendix A.

Aird & Berlis LLP acted on behalf of Local Authority Services Inc. (LAS) being the City of Cambridge's Closed Meeting Investigator to conduct a closed meeting investigation as a result of a complaint received December 15, 2021.

### **KEY FINDINGS:**

- On December 15, 2021 the City of Cambridge received a complaint related to meetings that preceded the Council meeting of October 12, 2021;
- The City of Cambridge has appointed Local Authority Services Inc. (LAS) as its Closed Meeting Investigator;
- As a result of the complaint a Closed Meeting Investigation was initiated and LAS delegated its authority to act as the Investigator to Aird & Berlis LLP;

- The outcome of the investigation was received on June 19, 2022 and is attached as Appendix A;
- The jurisdiction of a Closed Meeting investigator is set out in section 239.2 of the Municipal Act, 2001 (the Act). The Act authorizes a third party to investigate in an independent manner complaints made by any person that a municipality has breached section 239 of the Act in respect of a closed meeting.

## **FINANCIAL IMPLICATIONS:**

Currently the City of Cambridge does not charge a fee for an investigation request.

The City of Cambridge does account through the Clerk's operating budget for professional contracted services when complaints are filed. The estimated costs for the investigation attached as Appendix A are approximately \$10,595.

## **STRATEGIC ALIGNMENT:**

- ☐ Strategic Action; or  
☒ Core Service

**Objective(s):** Not Applicable

**Strategic Action:** Not Applicable

**Program:** Council Services

**Core Service:** Council and Citizen Committees

The City of Cambridge is committed to dealing with concerns related to Council meetings fairly, openly and promptly. The municipality will fully cooperate with an investigator and related parties throughout an investigation.

In accordance with Section 239.2(11) of the Act, the City of Cambridge shall ensure that any reports received from the Municipal Closed Meeting Investigator by the municipality are made available to the public.

The municipality commits to including any report received from the Investigator related to an investigation under the Act, on a public agenda and to considering such report in an open public session of Council or a Standing Committee of Council.

This practice applies to all appointed Boards and sub-committees of the municipality.

## **BACKGROUND:**

As of January 1, 2008, the Act provided persons with the right to request an investigation into whether or not a meeting, closed to the public, was held using the exemptions that are prescribed in Section 239 of the Act.

The City of Cambridge has appointed Local Authority Services Limited (LAS) – Aird & Berlis as a Municipal Closed Meeting Investigator and authorized them to conduct investigations upon receipt of a complaint in respect of meetings or part of meetings that are closed to the public to determine compliance with the Act or the City's Procedure By-law and to report on the results of such investigations.

On Tuesday, October 12, 2021 report 21-293 (CRS) Cambridge Consumption and Treatment Services Site Identification Public Feedback report on Community Consultation was presented to Council. A complaint was received on December 15, 2021 and as a result, LAS was contacted to advise of the Closed Meeting Investigation request on December 16, 2021 and the City was advised that Aird & Berlis LLP would be delegated the authority on behalf of LAS to complete the investigation.

Pursuant to subsection 239(1) of the Municipal Act (the "Act"), the City's duly appointed Closed Meeting Investigator completed its investigation into the request, and provided a final report to Staff on June 19, 2022.

Section 239 of the Municipal Act provides that all meetings of a municipal council, local board or a committee of either of them shall be open to the public. This requirement is one of the elements of transparent local government. The section sets forth exceptions to this open meeting rule. It lists the reasons for which a meeting, or a portion of a meeting, may be closed to the public.

Section 239 also requires that before a council, local board or committee move into a closed meeting, it shall pass a resolution at a public meeting indicating that there is to be a closed meeting.

The current Procedure By-law 18-15, that governs the calling, place and proceedings of meetings, including provisions for public notice of meetings is currently under review. Through the review process Council has identified the need for increased transparency for matters that come before Council in meetings and has made recommendations for

new measures to be in place. The proposed Procedure By-law will be presented to the 2022-2026 term of Council.

### **ANALYSIS:**

Any person or corporation is able to request that an investigation be undertaken respecting whether a municipality or local board, or a committee of either, have complied with closed meeting rules outlined in the Act or the applicable procedure by-law.

The City appointed LAS as its closed meeting investigator pursuant to section 239.2 of the *Municipal Act, 2001*. LAS has delegated to Aird & Berlis LLP its authority to act as the Investigator for the City.

Aird & Berlis LLP was selected by LAS through a competitive procurement process to provide closed meeting investigation services to its participating municipalities. Aird & Berlis LLP was not directly selected by the City as its Investigator to act in this particular matter. Prior to accepting any investigation mandate, Aird & Berlis LLP conducts a thorough legal conflict search and makes other conflict inquiries to ensure they are in a position to conduct an independent and impartial investigation.

Prior to submitting a request for investigation, members of the public, including corporations, are encouraged to complete the City's Closed Meeting Request form available on the City's website. Any questions related to the process may be discussed with the City Clerk.

Members of the public, including corporations, may submit requests to the City Clerk who will forward to the Investigator relating to compliance with the *Act* or the Procedure By-law for meetings or part of meetings that are closed to the public.

### **EXISTING POLICY / BY-LAW(S):**

- Municipal Act, 2001
- Procedure By-law 18-15

### **FINANCIAL IMPACT:**

The City of Cambridge accounts for professional contracted services through the Clerk's operating budget for complaints that initiate an inquiry or investigation with the Integrity Commissioner or Closed Meeting Investigator. The estimated costs for the investigation attached as Appendix A are approximately \$10,595.

### **PUBLIC VALUE:**

Subsection 239(1) of the *Municipal Act, 2001* provides that all meetings are to be open to the public, unless otherwise excepted. Unless they deal with subject matter falling within a specific exception set out in subsection 239(2), all meetings are required to be held in an open forum where the public is entitled to attend.

The City of Cambridge recognizes that it is responsible to provide good government for its stakeholders in an accountable and transparent manner by:

- Encouraging public access and participation to ensure that decision making is responsive to the needs of its constituents and receptive to their opinions;
- Delivering high quality services to its citizens; and
- Promoting the efficient use of public resources.

Accountability and transparency are important in maintaining public trust in council and staff.

#### **ADVISORY COMMITTEE INPUT:**

“Not Applicable”.

#### **PUBLIC INPUT:**

A closed meeting investigation results from a request from a Member of the Public through the City Clerk, who then contacts the third party assigned to investigate closed meetings on behalf of the City. The investigation process is determined by the third party who may interview the requestor, staff or Council and may require documentation related to the complaint.

#### **INTERNAL / EXTERNAL CONSULTATION:**

Upon receipt of the request for a closed meeting investigation, the City Clerk contacted LAS to request the process be initiated. Following the request, LAS delegated the investigation to Aird & Berlis LLP.

#### **CONCLUSION:**

Pursuant to subsection 239(1) of the Act, the City’s duly appointed Closed Meeting Investigator completed its investigation into the request, and provided a final report to Staff on June 19, 2021. Based on the outcome of the investigation, staff request that Council receive this report and the report from the Closed Meeting Investigator for information.

#### **REPORT IMPACTS:**

Agreement: **No**

By-law: **No**

Budget Amendment: **No**

Policy: **No**

#### **APPROVALS:**

**This report has gone through the appropriate workflow and has been reviewed and or approved by the following as required:**

**Director**

**Deputy City Manager**

**Chief Financial Officer**

**City Solicitor**

**City Manager**

#### **ATTACHMENTS:**

1. Report 22-047 Appendix A – REPORT ON CLOSED MEETING INVESTIGATION  
2021-02