






CITY OF HAMILTON

PUBLICLY RELEASED
DECEMBER 11, 2019

**CORPORATE SERVICES
Legal and Risk Management Services
and
Financial Planning, Administration and Policy**

TO:	Mayor and Members City Council
COMMITTEE DATE:	December 11, 2019
SUBJECT/REPORT NO:	Contractual Update (LS19048/FCS19095) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY: SIGNATURE:	Mike Zegarac General Manager Finance and Corporate Services  
SUBMITTED BY: SIGNATURE:	Nicole Auty City Solicitor, Legal and Risk Management Services 

Discussion of this Confidential Report in closed session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the *Ontario Municipal Act, 2001*:

- Advice that is subject to solicitor-client privilege, including communications necessary for that purpose; and
- A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

RECOMMENDATIONS

- (a) That the City Manager be directed to formally request a prompt and comprehensive explanation from Alectra Utilities regarding the breach of contract and potential privacy breach as outlined in Report LS19048/FCS19095;

- (b) That staff report back to the General Issues Committee regarding Alectra's response to the explanation request as outlined in recommendation (a) to Report LS19048/FCS19095 no later than January 31, 2020;
- (c) That the contents of to Report LS19048/FCS19095 remain Confidential.

EXECUTIVE SUMMARY

It is appropriate that Report LS19048/FCS19095 be discussed in-camera as it refers to a potential privacy breach and outlines solicitor-client advice to Council, as well as, positions to be applied to negotiations respecting the City of Hamilton's ongoing relationship with Alectra Utilities ("Alectra"). Given that staff is not aware that any person has been harmed by this potential privacy breach, staff believes that the premature release of this information could adversely affect its relationship with the public and Alectra.

In 2017, Alectra assumed Horizon's Utilities' responsibilities to provide water meter reading, billing, payment, collections and customer care services on behalf of the City. Alectra provides similar services to three other shareholder municipalities. In Hamilton, there are currently approximately 154,000 active water accounts. To facilitate the provision of these services, the City provides to Alectra information including customer names, addresses and mailing addresses that meet the definition of 'Personal Information' under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA).

In 2007, at the City's behest, Horizon Utilities implemented a process change whereby it obtains consent from new customers with respect to the use of information collected. In 2015, the City established its Water Account Privacy Statement and Notice of Collection with a summary version of the Privacy Statement being provided to all customers in the form of a bill insert that accompanied customer's fall 2015 water bills. The City's Water Account Privacy Statement continues to be available to the public via the websites of Horizon/Alectra.

Alectra's current contract with the City expires on December 31, 2019 and Council has already authorized an extension of this contract for up to five years. If the City decided to provide these services itself, it would require at least 18 months lead time to implement its own water billing program.

Alectra's contract stipulates that "Alectra Utilities shall not, without the prior written consent of the City: (a) disclose any of the Personal Information to any affiliated or unaffiliated third party, or (b) transmit or provide access to the Personal Information to any of Alectra Utilities' personnel, or to any facility, outside Ontario."

In April 2019, City Information Technology staff observed that one of Alectra's sub-contractors located in India had access to Alectra's servers located in Ontario which house customer names and addresses (i.e. Personal Information). The City has not consented to the sharing of Personal Information with any third parties or to disclosure outside Ontario.

Staff met with Alectra representatives in June 2019 at which time staff:

- Advised Alectra that staff believed that Alectra was in breach of its contract and was concerned that Alectra had shared Personal Information with third-parties without appropriate permissions or consents;
- Directed Alectra to cease providing access to parties outside of Ontario; and,
- Learned that several Alectra sub-contractors had access to Alectra's servers. As a result, staff requested copies of all third-party agreements so that staff could assess the scope of Alectra's disclosures.

Subsequent communications revealed that Alectra provides access to approximately 23 sub-contractors but, to date, has only recently, and reluctantly, provided copies of approximately 14 third-party agreements which documents City staff are currently reviewing. To date, Alectra has not provided any confirmation that it has ceased providing access to third parties outside Ontario and has rejected the City's request to include privacy restrictions/provisions in all its third-party agreements.

While Alectra is clearly in breach of its contractual obligations to the City, staff are also concerned that Personal Information provided by the City to Alectra is being shared with third parties without appropriate restrictions, consents or authorizations. While this Personal Information (i.e. names and addresses) may be available from other sources in some cases and is less sensitive than personal medical or financial information, it is still accorded a level of confidentiality protection under MFIPPA. Although staff do not yet have sufficient information to confirm, there is the potential for a privacy breach affecting over 150,000 accounts.

That said, Alectra may take the position that it has obtained satisfactory consents and authorizations, either explicitly or implicitly, to share this Personal Information with third parties because of its direct relationship with consumers that arises either from its water billing operations or its delivery of electrical services.

City staff have yet to hear a satisfactory explanation for these third-party arrangements. Accordingly, it is recommended that the City Manager request a prompt and comprehensive explanation from Alectra in which it would precisely outline its authority to share this information with third parties failing which the City would expect that Alectra would initiate standard Privacy Breach protocols which would normally include notifying all affected customers and the Information and Privacy Commissioner (IPC). Alectra would also be notified that should its explanation not be satisfactory to the City,

the City reserves the right to initiate its own Privacy Breach protocol, at Alectra's expense, and directly advise the IPC.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: No immediate financial impacts are anticipated.

Staffing: No staffing impacts are anticipated.

Legal: As outlined in this report.

HISTORICAL BACKGROUND

As outlined in the Executive Summary.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

As outlined in the Executive Summary.

RELEVANT CONSULTATION

City Manager's Office, Financial Planning, Legal Services and Clerks

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

As outlined in the Executive Summary.

ALTERNATIVES FOR CONSIDERATION

N/A

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

N/A

CONFIDENTIAL

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