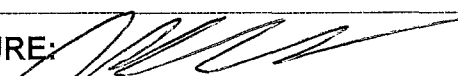


Hamilton

INFORMATION REPORT

TO: Chair and Members, Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: September 5, 2012	
SUBJECT/REPORT NO: Sharing The Names Of Owners Whose Dogs Are Involved in Attacks/PED11053(b) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Ron Sabo Acting City Solicitor, Legal Services City Manager's Office	PREPARED BY: Lisa Pasternak Senior Solicitor 905-546-2424, ext. 7292
SIGNATURE: 	

Council Direction:

Planning Committee at its meeting of November 22, 2011 approved the following:

- (a) That the City Solicitor be directed to submit Report PED11053(a) and the Disclosure Policy attached to Report PED11053(a) as Appendix A to the Information and Privacy Commissioner for comment on its privacy protection implications, in accordance with subsection 46(a) of the *Municipal Freedom of Information and Protection of Privacy Act*.
- (b) That the City Solicitor report back to the Planning Committee when the Information and Privacy Commissioner has responded to the submission of the attached Disclosure Policy.

Information:

On April 17, 2012, the Information and Privacy Commissioner responded to the City's submission of its "Disclosure Policy – Owner Whose Dog Has Attacked A Person or a Person's Animal" (the Policy). The response is attached below.

Staff has reviewed the response and can inform Council of the following:

- As recommended by the Information and Privacy Commissioner, disclosure under the Policy is discretionary, allowing the Manager of Animal Services to

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take into consideration all the circumstances of each disclosure before making a decision.

- As recommended by the Information and Privacy Commissioner, the Policy has been revised to provide the dog owner with the opportunity to make representations to the Manager of Animal Services as to why the disclosure should not take place when such disclosure will include their address. Under the revised Policy, the Manager of Animal Services must consult freedom of information staff and may consult legal staff when providing this opportunity. (The Manager of Animal Services will continue to consult with freedom of information staff and/or legal staff on matters involving access and privacy as needed whether the Policy applies or not.) The revised Policy is attached as Appendix A to this Report.

Please take note that the response from the Information and Privacy Commissioner states that the second scenario - disclosure to the public of the name, charge and address of the dog owner (now 5(1)(b) in the revised policy) - is the most problematic scenario. While staff will always be cautious in disclosing personal information, additional care will be taken in this scenario to balance the public and private interests.

Also take note that the response from the Information and Privacy Commissioner indicated that the Hamilton Police Service (HPS) may provide useful input on this matter. Direction can be given to staff to submit this report and the Policy to the HPS Chief of Police for comment.

Subject to any direction with respect to a submission to the HPS Chief of Police for comment, staff intend to implement the revised Policy attached as Appendix A upon this report being received by Council.

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Information and Privacy
Commissioner of Ontario
Commissaire à l'information
et à la protection de la vie privée de l'Ontario

April 17, 2012

VIA ELECTRONIC MAIL

Lisa Pasternak
Senior Solicitor
City of Hamilton
Legal Services Division
71 Main Street West
Hamilton, ON L8N 4Y5

Dear Ms. Pasternak,

Re: Dog attacks – Disclosure policy

Thank you for providing the Office of the Information and Privacy Commissioner with supplementary information about the City of Hamilton's proposed disclosure policy regarding owners whose dogs have attacked a person or a person's animal.

We are providing comments on your three proposed disclosure scenarios pursuant to the Commissioner's power under section 46(a) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), to comment on the privacy implications of proposed programs of institutions.

The first scenario you describe involves the city disclosing the name of the dog owner and the charge, but not the address of the dog owner. This disclosure, under section 5(1) of your policy, would be made to city council, presumably at an open meeting or to the media. As the intent of this disclosure would be to notify the public of the city's law enforcement activities and to deter others from such offences and the information does not include address information, we would find this type of disclosure to likely be compliant with section 32 of MFIPPA, especially in light of IPC jurisprudence to date (see, for example, Privacy Investigation Report I93-054P).

We would characterize the second scenario as being more problematic as it would involve the disclosure to the general public of the dog owner's name, the charge *and the address* of the dog owner, by any means that would bring the information to the attention of the public. The application of section 32 to the additional information being disclosed, that is, the address of the dog owner, is less clear. Past IPC decisions have found that the disclosure of an individual's address in somewhat similar circumstances was considered an unjustified breach of that individual's privacy (see for example, PC-990034-1 and Order MO-2147). As such, a dog owner whose address has been disclosed could make a complaint to the IPC and the city runs the risk of this type of disclosure being considered a breach of the disclosure prohibition at section 32 of MFIPPA. Obviously, in the absence of a real fact situation, the IPC cannot make a definitive statement on this.

.../2



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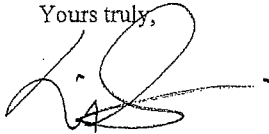
The third scenario proposes disclosure to the victim of the name of the dog owner, the charge and the last known address of the dog owner. Although this disclosure also includes the address of the dog owner, the fact that the disclosure is being made to the victim makes the application of section 32(c) more supportable. While the disclosure of address information to victims may not be fully compatible with previous decisions of the IPC, there is considerable support for the concept that victims have a greater right to information regarding an offence. For example, the victim of a dog bite may have legitimate health concerns that will require contacting the owner for information regarding the dog.

Should the city adopt a policy that provides for the disclosure of address information to either the public or the victim, we would encourage an approach that makes this a discretionary, rather than a mandatory process. Providing the dog owner with an opportunity to make representations to the city as to why this disclosure should not take place makes it more likely that the city will be found to be in compliance with Part II of MFIPPA in the event that a privacy complaint is made.

We also note that Regulation 265/98 under the *Police Services Act*, provides the police with broad discretion to disclose personal information, including address information, about individuals charged with offences. Accordingly, you may wish to consult with the police, if you haven't already, about their views and experience on this issue, prior to finalizing your policy.

Please note that while we cannot provide you with legal advice or an advance ruling and the Commissioner is not bound by the contents of this letter, we hope that this information is of assistance to you and thank you, again, for contacting the IPC.

Yours truly,



David Goodis
Director of Legal Services and General Counsel

Appendix A

DISCLOSURE POLICY

OWNER WHOSE DOG HAS ATTACKED A PERSON OR A PERSON'S ANIMAL

1. Policy Statement

This Policy sets out when the Manager of Animal Services, Parking and By-law Enforcement, Planning Department ("Manager of Animal Services") may disclose the name of, charge against and last known address of an owner whose dog has attacked a person or a person's animal.

The Policy is not applicable to any information relating to a dog attack other than the name of, the charge against and the last known address of the owner.

2. Definitions

For the purposes of this Policy:

"**animal**" means any member of the animal kingdom, other than a human;

"**charge**" means a charge under a City of Hamilton by-law or the *Dog Owners' Liability Act*;

"**owner**" means an adult who has care, control or possession of an animal; and

"**victim**" means:

(a) a person who has been attacked by an animal and includes:

(i) when the person is a child, the child's parent or guardian;

(ii) when the person is incompetent or incapacitated, the person's legal representative; or

(b) an owner of an animal that has been attacked by another animal.

3. Scope

This policy applies to animal attacks on a person or a person's animal in the City of Hamilton that are investigated by Animal Services.

4. Before a Charge is Laid / No Charge is Laid

- (1) The Manager of Animal Services may not disclose the name and/or last known address of an owner whose dog has attacked a person or a person's animal before a charge in respect of the attack is laid.

Rationale

Disclosure is not provided before a charge is laid because this may be detrimental to proceeding with enforcement. (Section 8(1)(b) *Municipal Freedom of Information and Protection of Privacy Act*)

In addition, the information is not yet publicly available through the courts.

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- (2) The Manager of Animal Services may not disclose the name and/or last known address of an owner whose dog has attacked a person or a person's animal when no charge in respect of the attack is laid.

Rationale

Disclosure is not provided when no charge is laid because in most circumstances, this occurs when a reasonable belief that an offence took place is lacking.

In addition, the information is not yet publicly available through the courts.

5. After a Charge is Laid

- (1)(a) The Manager of Animal Services may disclose to the public the name of and the charge against an owner whose dog has attacked a person or a person's animal after a charge with respect to the attack is laid upon request, in the form of a press release or by other means.

Rationale

Disclosure to the public of the name and the charge is provided after a charge is laid because it notifies the public of the City's law enforcement activities and deters others from committing similar offences.

In addition, the name and the charge, although difficult to obtain, are publicly available through the courts.

- (b) The Manager of Animal Services may disclose to the public the name of, the charge against and the last known address of an owner whose dog has attacked a person or a person's animal after a charge with respect to the attack is laid and when the dog remains in the possession of the owner, in the form of a press release or by other means.

The Manager of Animal Services shall make a reasonable attempt in advance to provide the dog owner with the opportunity to make representations as to why the disclosure should not take place and shall consider any such representations before making a disclosure. The Manager of Animal Services will consult the City's freedom of information staff and may consult legal staff in making a request for and responding to any representation. The timeline for responding for a request for a representation will be such that the objective of protecting the health and safety of residents of the City can be met.

Rationale

Disclosure of the name, the charge and the last known address is provided after a charge is laid when the dog has not been impounded to protect the health and safety of residents of the City by making them aware of where the dog is kept and allowing them to take precautions to protect themselves and their animals against subsequent attacks. Notice of this disclosure will be provided to the dog owner in accordance with s. 14(1)(b) of *Municipal Freedom of Information and Protection of Privacy Act* which states that:

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Personal privacy

14.(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

...

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

In addition, the name, the charge and the last known address, although difficult to obtain, are publicly available through the courts.

- (2) The Manager of Animal Services may disclose to a victim the name of, the charge against and the last known address of an owner whose animal has attacked a person or a person's animal after a charge which respect to the attack is laid upon request.

The Manager of Animal Services shall make a reasonable attempt in advance to provide the dog owner with the opportunity to make representations as to why the disclosure should not take place and shall consider any such representations before making a disclosure. The Manager of Animal Services will consult the City's freedom of information staff and may consult with legal staff in making a request for and responding to any representation. The timeline for responding for a request for a representation will be such that the objective of enabling a victim to seek redress can be met.

Rationale

Disclosure of the name, the charge and the last known address is provided after a charge is laid to a victim to enable them to seek redress.

In addition, the name, the charge and the last known address, although difficult to obtain, are publicly available through the courts.

6. Access Request under the *Municipal Freedom of Information and Protection of Privacy Act*

It is open to the public to make a formal access request to the City of Hamilton for the name and/or last known address of a dog owner under the *Municipal Freedom of Information and Protection of Privacy Act*. Such access requests should be directed to:

Manager, Records and Freedom of Information
City Clerk's Division
City Hall
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

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(905) 546-2424 ext 2743
(905) 546-2095 (fax)
clerk@hamilton.ca (email)

7. Review and Updating of Policy

This Policy will be reviewed and updated as required.