

INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	July 6, 2020
SUBJECT/REPORT NO:	Alectra Renewal Agreement (FCS19095(a) \ LS19048(a)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
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COUNCIL DIRECTION

At the December 11, 2019 meeting of Council (Council Minutes 19-022, Item 10.3), Council directed staff to formally request a prompt and comprehensive explanation from Alectra Utilities regarding a breach of contract and potential privacy breach, and report back to GIC regarding Alectra's response.

INFORMATION

Report FCS19095(a) \ LS19048(a) provides an update to Council regarding a Renewal Agreement (Agreement) that recently has been fully executed between the City and Alectra Utilities (Alectra) for the continued provision of water and wastewater/storm account management and billing services to the City. Additionally, this Report will address a breach of contract by Alectra and its response to a potential privacy breach identified by City staff in April 2019 (refer to Report LS19048 \ FCS19095).

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 (Guelph, Markham and Vaughan). 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).

Alectra's current contract with the City expired on December 31, 2019 and Council has already authorized an extension of this contract for up to five years (refer to Report FCS14045). The 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 had not consented to the sharing of Personal Information with any third parties or to disclosure outside Ontario. Staff subsequently communicated with Alectra regarding the breach in its contractual obligations to the City.

Staff also expressed concerns 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.

A Renewal Agreement has been executed by both parties that extends the contractual relationship to December 31, 2024. This Agreement seeks to ensure that due diligence is practised by Alectra with respect to all information belonging to the City and its customers. As such, there are several conditions that Alectra must adhere to, including but not limited to:

- **MFIPPA Compliance** – The Agreement includes an acknowledgement that both Alectra and the City are subject to MFIPPA, and that Alectra is bound both by statute and by contract to compliance with all requirements of MFIPPA. In addition, the Agreement expressly obligates Alectra to require compliance with MFIPPA by its contractors and their subcontractors.
- **Indemnification** - Alectra commits to compensate the City for any harm, liability, or loss arising out of any breach of privacy under the Agreement by Alectra or Alectra's

agents, employees, contractors, and subcontractors in relation to services performed for the City.

- **Selection of Contractors** - Alectra agrees that in its selection of contractors and in the award of subcontracts for services to be performed in support of this agreement, it shall take all reasonable steps and shall exercise due diligence to satisfy itself that data breaches are unlikely. Beyond this base level reasonableness requirement, Alectra is to ensure appropriate security and other measures are in place to minimize the possibility that any water customer information will be used or disclosed otherwise than in accordance with the requirements of MFIPPA.
- **Risk Assessment** - As part of each RFP or contract negotiation involving access to water customer information, each prospective proponent is required to complete and deliver to Alectra a Risk Assessment Questionnaire. In turn, Alectra shall only award any contracts involving water customer data belonging to the City where responses have been to the satisfaction of Alectra. Alectra shall repeat this screening exercise on at least an annual basis after the award of any such contracts to determine whether the satisfactory responses provided to Alectra remain in effect.
- **Annual Privacy and Information Security Review** – Given that the threats to privacy and security protection are in a constant state of flux, the measures taken to safeguard privacy and security require periodic review and updating. Alectra and the City will therefore review the contents of Schedule “C” to the Agreement (Privacy and Information Security) on an annual basis.

As previously mentioned, Alectra provides similar services to three other shareholder municipalities (Guelph, Markham and Vaughan). Staff have engaged in discussions with staff from these municipalities as their current agreements with Alectra all expire by the end of 2020. The Renewal Agreement has been shared with and is being considered as a boiler plate template for the new agreements required by the other shareholder municipalities.

Alectra Response to Potential Privacy Breach

Alectra has provided the following in response to concerns raised by the City regarding a potential privacy breach:

City of Hamilton Water Customer Information

In June 2019, the City of Hamilton advised Alectra Utilities Corporation (“Alectra Utilities”) that it was concerned there was a possible privacy breach of City of Hamilton water customer information because some of that information had been shared with third parties.

The City has an agreement with Alectra to deliver water-related services including meter reading, billing, payment, collections, and customer care services, and it provides Alectra with Hamilton resident information including property owner names, service addresses, billing addresses and tax assessment roll numbers.

Upon being advised of the concern Alectra Utilities completed a thorough investigation into the allegations of a potential breach of information related to City of Hamilton water customers. The investigation confirmed that no breach of customer information had occurred.

Alectra Utilities' customer data including City of Hamilton water customer information resides locally on Alectra Utilities owned servers that require multi-factor authentication for authorized use by Alectra Utilities' employees and agents. Alectra Utilities ensures that customer information is only accessed and used for the purposes for which it was intended. All agents which access this information are under contract with Alectra Utilities and must act in accordance with the terms of agreements including provisions ensuring customer confidentiality and privacy. Applicable privacy laws permit the sharing of personal information under those conditions.

In December 2019 the City staff advised City Council, the public and the Ontario Privacy Commissioner of this concern.

In response to the concern expressed by the City staff to the Ontario Privacy Commissioner, the Privacy Commissioner contacted Alectra Utilities advising that it had set up a file for the matter which it would be investigating. The Privacy Commissioner also had an initial discussion with Alectra Utilities privacy officer about the details of the alleged breach and advised it would be following up which it has not yet done.

This Information Report addresses Outstanding Business List Item No. 20-VV (Contractual Update - Alectra); this item can be removed from the General Issues Committee Outstanding Business List.