




Hamilton

CITY OF HAMILTON

City Manager's Office Legal Services

TO: Chair and Members, Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: November 20, 2012	
SUBJECT/REPORT NO: Sharing The Names Of Owners Whose Dogs Are Involved in Attacks/LS12035 (preceding reports: PED11053/(a)/(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, ext. 7292
SIGNATURE: 	

RECOMMENDATION

That the Disclosure Policy, attached as Appendix A to report LS12035, be approved by Council, replacing the Disclosure Policy that was approved by Council on September 12, 2012.

EXECUTIVE SUMMARY

As directed, staff corresponded with the Office of the Information and Privacy Commissioner (IPC) about disclosing a dog owner's name and address when public safety is at risk and no charge has been laid against the dog owner. The response from the IPC was favourable.

The "Disclosure Policy: Owner Whose Dog Has Attacked A Person Or A Person's Animal" approved by Council on September 13, 2012 has been revised, in accordance with the IPC's response, to include this scenario as section 4(3), and is attached as Appendix A. The revisions are highlighted.

Staff recommends approval of the revised Disclosure Policy.

Alternatives for Consideration - Not Applicable

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial: None
Staffing: None
Legal: None

HISTORICAL BACKGROUND (Chronology of events)

Council, at its meeting of September 12, 2012, approved the following recommendations:

- (a) That the Information Report PED11053(b), respecting Sharing the Names of Owners Whose Dogs are Involved in Attacks, be received;
- (b) That the disclosure policy, attached hereto as Appendix "A", be approved and enacted by Council;
- (c) That staff be directed to correspond with the Privacy Commissioner to seek clarification on the discretion of identifying an individual's name and address of a pet owner, if staff believes that public safety is at risk by the animal, and if no charges have been laid against the pet owner.

(Item 7 of Planning Committee Report 12-013)

POLICY IMPLICATIONS

Approval of "Disclosure Policy: Owner Whose Dog Has Attacked A Person Or A Person's Animal", which replaces the Disclosure Policy that was approved by Council on September 12, 2012.

RELEVANT CONSULTATION

- Office of the Information and Privacy Commissioner
- Animal Services, Parking and By-law Services, Planning and Economic Development Department
- Records and Freedom of Information, Office of the City Clerk, Corporate Services Department

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Staff revised the Disclosure Policy approved by Council on September 12, 2012 to include, as a new subsection 4(3), the disclosure of a dog owner's name and address

when public safety is at risk and no charge has been laid against the dog owner as a new subsection 4(3). The revised Disclosure Policy was forwarded to the IPC for comment. David Goodis, Director of Legal Services and General Counsel to the IPC, responded favourably by email on October 26, 2012, recommending a "slight clarification":

As a general statement, we believe your proposed section 4(3) of the policy would be consistent with s. 32 of *MFIPPA*, as I explained in my April 17, 2012 letter to you regarding the "third scenario". Note that this does not necessarily mean that any given disclosure under this part of the policy would automatically be found to be compliant with *MFIPPA*. Also, we would suggest a slight clarification to the provision, so that the first sentence, second paragraph reads: "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 deciding whether to make a disclosure.***"

Mr. Goodis' recommendation has been incorporated into the Disclosure Policy, which is attached as Appendix A. The revisions to the Disclosure Policy, including the new subsection 4(3), highlighted.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Not applicable.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Healthy Community

- ♦ Plan and manage the built environment

APPENDICES / SCHEDULES

Appendix A: Disclosure Policy: Owner Whose Dog Has Attacked A Person Or A Person's Animal

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;

"**attack**" includes an alleged attack and, when used as verb, includes to allegedly attack;

"**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.

- (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.

- (3) Despite subsections 4(1) and 4(2), the Manager of Animal Services may disclose the name and last known address of an owner whose dog has attacked a person or a person's animal before a charge in respect to the attack is laid or when no charge in respect of the attack is laid if 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 deciding whether to make 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 to 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 and the last known address is provided 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:

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;

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 deciding whether to make 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 to 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:

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 with 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 deciding whether to make 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.