



TO: GENERAL COMMITTEE

SUBJECT: DELEGATED AUTHORITY TO EXECUTE NON-DISCLOSURE AGREEMENTS

WARD: ALL

PREPARED BY AND KEY CONTACT: S. MACGREGOR, DIRECTOR OF INTERNAL AUDIT, X5452

SUBMITTED BY: S. MACGREGOR, DIRECTOR OF INTERNAL AUDIT

GENERAL MANAGER APPROVAL: N/A

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That the Director of Internal Audit and City Clerk or designate be authorized to execute Non-Disclosure Agreements on behalf of the Corporation for the purpose of conducting third party audits, where appropriate, in a form approved by the Director of Legal Services.

PURPOSE & BACKGROUND

2. The purpose of this Staff Report is to seek delegated authority to permit the Director of Internal Audit and City Clerk to execute Non-Disclosure Agreements (NDAs) for the purpose of conducting third party audits, where appropriate.
3. NDAs are legal documents requiring the Corporation to follow particular protocols as it relates to confidential business matters. Third parties subject to audit by the City of Barrie sometimes request that the City sign an NDA in order that the exchange of information between the two parties remain confidential during the audit process. The purpose of this is to protect confidential business information or competitive positioning in the marketplace.
4. Requests to execute NDAs are infrequent. However the ability for staff to execute an NDA, can be a key criteria in conducting audits with third parties to assess third party compliance with City contracts.

ANALYSIS

5. Staff currently do not have the authority to execute NDAs for the purpose of conducting audits. In 2018, Invest Barrie was granted the authority to execute NDAs to pursue business opportunities but otherwise there is no authority for staff to execute NDAs.
6. The purpose of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) is to provide a right of access to information under the control of institutions with limited and specific exemptions, while protecting the privacy of individuals. MFIPPA covers institutions such as Ontario municipalities, municipal service boards, school boards, public library boards, etc. MFIPPA requires the "head" for the institution to refuse to disclose a record about a third party when certain criteria are met. The record may be released if the third party provides its consent.

7. The position of City Clerk was designated as the “head” of The Corporation of the City of Barrie for the purposes of MFIPPA under By-law 90-110 and would provide notice to a third party if access to a record that meets the criteria, was requested. The third party would be given the opportunity to provide representations as to why the information should not be disclosed.
8. Although the above noted protection exists for specific third party information, it must be supplied in confidence either implicitly or explicitly. In order to explicitly identify records that businesses wish to remain confidential in advance of any detailed discussions, some businesses have requested that a representative of the City execute an NDA.
9. MFIPPA requires that any third party information the City receives must be treated with confidentiality, but in order to retain the confidentiality it must meet three main tests:
 - a) The information received must fit within one of the specified categories of third party information (trade secret, scientific, technical, commercial, financial and labour relations information);
 - b) The information must have been supplied in confidence, either implicitly or explicitly; and
 - c) The disclosure of the information could reasonably be expected to cause certain harms.
10. Any NDAs would be reviewed by the Legal Department to ensure that the agreements reflect the City’s obligations under applicable legislation prior to being signed.

ENVIRONMENTAL AND CLIMATE CHANGE IMPACT MATTERS

11. There are no environmental and climate change impact matters related to the recommendation.

ALTERNATIVES

12. The following alternative is available for consideration by General Committee:

Alternative #1

General Committee could choose not to provide delegated authority for the Director of Internal Audit and City Clerk to execute NDAs.

This alternative is not recommended as Internal Audit may not obtain consent from third parties to conduct audits without an NDA. If the City is not in a position to sign an NDA, audits may not be completed, or may be delayed, resulting in the City being unable to sufficiently assess third party compliance with the contract.

FINANCIAL

13. There are no financial implications for the Corporation resulting from the proposed recommendation.



LINKAGE TO 2018–2022 STRATEGIC PLAN

14. The recommendation included in this Staff Report supports the following goal identified in the 2018-2022 Strategic Plan:
- Offering Innovation and Citizen Driven Services
15. Implementation of the recommendation will assist Internal Audit to protect the City's assets and increase efficiency in the delivery of services to make tax dollars go further.