

4. OFFICE OF THE AUDITOR GENERAL – REPORT ON THE INVESTIGATION INTO THREE REPORTED CLIENT SERVICE CENTRES DEPOSIT SHORTAGES

BUREAU DE VÉRIFICATEUR GÉNÉRAL – RAPPORT D’ENQUÊTE SUR DES ÉCARTS NÉGATIFS DANS TROIS DÉPÔTS DE CENTRES DU SERVICE À LA CLIENTÈLE

COMMITTEE RECOMMENDATION

That Council consider and approve the report recommendations.

RECOMMANDATION DU COMITÉ

Que le Conseil examine et approuve les recommandations du rapport.

DOCUMENTATION/DOCUMENTATION

1. Auditor General’s report dated 12 June 2017 (ACS2017-OAG BVG 0004)
Rapport du Vérificateur général daté le 12 juin 2017 (ACS2017-OAG BVG 0004)
2. Extract of draft Minutes, Audit Committee, 22 June 2017
Extrait de l’ébauche du procès-verbal, Comité de la vérification, le 22 juin 2017

**Report to
Rapport au:**

**Audit Committee
Comité de la vérification
22 June 2017 / 22 juin 2017**

**and Council
et au Conseil
28 June 2017 / 28 juin 2017**

**Submitted on June 15, 2017
Soumis le 15 juin 2017**

**Submitted by
Soumis par:
Ken Hughes, Auditor General / Vérificateur général**

**Contact Person
Personne ressource:
Ken Hughes, Auditor General / Vérificateur général
613-580-9602 / oag@ottawa.ca**

Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2017-OAG BVG 0004

SUBJECT: Office of the Auditor General – Report on the Investigation into Three Reported Client Service Centres Deposit Shortages

OBJET: Bureau de vérificateur général – Rapport d'enquête sur des écarts négatifs dans trois dépôts de centres du service à la clientèle

REPORT RECOMMENDATION

That the Audit Committee receive the Report on the Investigation into Three Reported Client Service Centres Deposit Shortages and recommend that Council consider and approve the report recommendations.

RECOMMANDATION DU RAPPORT

Que le Comité de la vérification prenne connaissance du rapport d'enquête sur des écarts négatifs dans trois dépôts de centres du service à la clientèle et recommande au Conseil d'examiner et d'approuver les recommandations du rapport.

BACKGROUND

The investigation resulted from Fraud and Waste Hotline report(s) received by the Office of the Auditor General.

DISCUSSION

In accordance with the Governance report approved by Council on December 10, 2014, the report will be tabled with the Audit Committee for referral to Council for approval of the report recommendations.

RURAL IMPLICATIONS

There are no rural implications associated with this report.

CONSULTATION

As this is considered an internal administrative matter, no public consultation was undertaken.

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide issue.

ADVISORY COMMITTEE(S) COMMENTS

This section does not apply, as this is a city-wide administrative report.

LEGAL IMPLICATIONS

There are no legal impediments to the Audit Committee and Council considering this report.

In preparing this report, Legal Services and the Office of the Auditor General worked together to prepare a public version of the Executive Summary of the Three Reported Client Service Centres Deposit Shortages (the "Investigation") to be presented at the

Audit Committee meeting. That Executive Summary does not include commentary which may have constituted a breach of personal privacy or put at risk the security of the property of the City in this instance. In doing so, the City Clerk and Solicitor, in consultation with the Auditor General and the City's Meeting's Investigator, has recommended that, should the Committee desire to meet in closed session to discuss the complete Investigation, those matters would not be reported out. The comments set out below explain the underlying rationale for this recommended approach as it relates to two exceptions to the statutory rule that all meetings of municipal committee and councils should be open to the public. The first exemption is with regard to "personal matters about an identifiable individual including municipal or local board employees" and the second is concerning "security of the property" of the City, a statutory exemption for a closed meeting that has only been used twice before by the City of Ottawa.

The so-called 'open meetings' rule, whereby "all meetings" of municipal councils and local boards "shall be open to the public" was enacted in the 2006 amendments to the *Municipal Act, 2001*. In addition, Subsection 239(2) of those revisions set out a number of discretionary provisions which would enable a municipal council or local board to pass a motion and move into closed session (i.e. *in camera*) to discuss certain matters, including "labour relations" negotiations or the "proposed or pending acquisition or disposition of land". These same exemptions are reiterated in Section 13 of the City's *Procedure By-law*.

In reviewing the case law from the Ontario Ombudsman's Office, the Closed Meetings Investigator for more than 200 municipalities, the February 2016 ruling with regard to the *Municipality of St.-Charles* is the only one which directly deals with a council addressing audit reports in closed session. In that instance, draft audit reports of the "municipal and library financial statements for 2011" and the management responses to them were considered by the council at three *in camera* meetings and the exemption relied upon was "personal matters about an identifiable individual". In rejecting this discretionary exemption, the Ombudsman provided the following distinctions with regard to such financial audits and the performance of individual employees at Paragraph 28:

The auditor's presentation, report and management letter did not identify individual employees. The presentation, report and management letter did not fit within the personal matters exemption or any other exception to the open

meetings requirements of the Act. This portion of the discussion should not have taken place in closed session.

However, the Ombudsman went on to recognize, at Paragraph 30, that some parts of the discussion about the performance of individual and identifiable employees was appropriately addressed in closed session:

While the auditors' findings may have prompted the discussion about employee performance, the two topics were distinct. Council could have discussed the auditors' findings, including their draft report and management letter, in open session before proceeding into closed session to address the employee performance issues.

In relying on the first discretionary exemption under Subsection 239(2)(b) of the *Municipal Act, 2001*, concerning personal matters about an identifiable individual City employee, staff is of the view that there are comments and observations in the complete Investigation that may reveal personal information about an employee working in one of the Client Service Centres.

With respect to the second, discretionary reason for a municipal council or local board to consider a matter *in camera*, it is important to note that the phrase "security of the property of the municipality" has not been expressly defined in Subsection 239(2)(a) of the *Municipal Act, 2001*. That said, both the Ontario Ombudsman and the Local Authorities Services Ltd. (LAS), the Closed Meeting Investigator Program that is available via the Association of Municipalities of Ontario, have issued a number of closed meeting reports that set out the application of this provision. In addition, both of these interpretations are based upon earlier decisions of the Information and Privacy Commissioner of Ontario ("IPC"). In a 2009 decision involving the *City of Toronto*, the IPC reviewed the phrase, "security of the property" in the context of the *Municipal Freedom of Information and Protection of Privacy Act* and concluded as follows:

In my view, 'security of the property of the municipality' should be interpreted in accordance with its plain meaning, which is the protection of property from physical loss or damage (such as vandalism or theft) and the protection of public safety in relation to the property.

In a further IPC report involving the *City of Toronto* in 2011, it was determined that the word "property" in the phrase "security of the property" could include both corporeal

(having a physical or tangible existence like land) or incorporeal (something that is intangible or not physical, such as a legal right) matters. This analysis has been summarized in the 2013 edition of the LAS document, What You Need to Know About: Closed Meetings in the following manner:

Property includes not only the physical assets of the municipality but also some of its financial records and intellectual property. Security of information and records, both in hard copy and electronic, are included in this exception.

In addition, the IPC noted that in order to establish that the security of the property exception applies, the municipality must show that it owns the property and that the subject matter being considered at the closed meeting is “security” in the sense of “taking measures to prevent loss or damage to that property”. In this same vein, the Ombudsman’s Sunshine Law Handbook (3rd edition) states that ‘security of the property’ include:

Discussions relating to the protection of property from physical loss or damage and the protection of public safety in relation to this property.

In light of the above-noted cases and comments, it is suggested that in order for a municipality to rely upon the “security of the property” exemption to hold a closed meeting, it must be able to establish that:

1. It owns the corporeal or incorporeal property identified; and
2. The consideration of the matter at the meeting is, in fact, the security of that property, including taking the appropriate measures to prevent the loss of, or damage to, that property.

After consulting with the various officers noted above, I am of the view that the discretionary exception to the open meeting rule for the ‘security of the property’ would meet that two-part test and apply with regards to the Committee considering this Investigation. On the one hand, the ‘property’ of the City in this instance is cash paid to it for a variety of reasons, being a valuable tangible asset. On the other hand, matters described within the Investigation include various security controls that are measures aimed at preventing loss of any further funds at Client Service Centres.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with this report.

TERM OF COUNCIL PRIORITIES

(GP2) “Apply management controls to achieve Council’s priorities”.

SUPPORTING DOCUMENTATION (held on file with the City Clerk and Solicitor)

The Report on the Investigation into Three Reported Client Service Centres Deposit Shortages will be issued separately at the Audit Committee meeting and portions of this report will be discussed in camera.

DISPOSITION

The Office of the Auditor General will proceed according to the direction of the Audit Committee and Council in considering this report.