

Background Information

**Transparency & Openness
in
City of Hamilton Public Purchasing**

Comments by George Geczy

The City of Hamilton Mission statement, as well as various other City policies and guidelines, stress the need for "open and transparent" government.

However, City Staff's interpretation of these guidelines has a lot of latitude, and current City policy is that details of awarded bids and contracts are kept secret and sealed except for "total contract price". Often important particulars are not released, and for longer term contracts without a "total price" essential bid elements remain confidential. This has resulted in the need to use the Freedom of Information Act by citizens and organizations interested in the details of purchasing contracts entered into by the City.

Interestingly, most of the requests for release under the *Municipal Freedom of Information and Protection of Privacy Act* are granted in part or in full, yet the City often forces a long and drawn out process, costly to both the enquiring citizens and to the City taxpayers.

Open and public inspection of City purchasing and contracts has successfully identified a number of issues that were missed by City Staff and Council, ie:

- Patent payments being made by the City after the Patent in question had expired;
- Duplicate and unnecessary equipment purchases in Fleet;
- Significant overpayments under Equipment Leasing Contracts (admittedly, this was discovered in Toronto first, as to my knowledge the Hamilton MFP contracts remain sealed to this day).

In my own case, in September 2001 I made a Freedom of Information request (#01-130) to see the City's Computer Systems purchase award (RFP #C6-1-01). The request was denied by the City. I submitted an appeal to the *Information and Privacy Commissioner*, and the City fought my appeal aggressively in an attempt to prevent release of the winning bid details. Finally, more than a year after my original submission, the City was forced to

release all details of the bid in its entirety, and the Commissioner discounted all of the City's arguments preventing the release (Order # MO-1559).

It was not entirely surprising to find that (in my analysis of the Bid and other information available) the vendor had been taking advantage of the terms of the contract and overcharging the City for products provided under this RFP. In a letter dated December 3rd, 2002, sent to City of Hamilton Manager of Purchasing Stephen Bauld and CIO Louis Shallal, I detailed my review and calculations and stated that the City was possibly over-billed by as much as \$200,000 to that date, and that further over-billings were continuing to occur. Though I have never received a formal reply to my letter, at an informal meeting with Mr. Bauld and Director of Financial Services Rick Male on February 3rd 2003, I was told that the problem "had been corrected" and that the total over-billings were "nowhere near" my estimates. However, no documentation or factual evidence was provided of this, and with continued secrecy in City Purchasing policies it is not possible to verify whether the problems I identified had in fact been corrected. (It should also be noted that, as of October 2003, this same faulty RFP for Computer Purchases remains in force.)

While one could expect that the City might follow the guidelines of Order MO-1559 and begin releasing winning bid information on a more regular basis in the future, instead the City changed the wording of its Bid Submission documents to try to protect its policy of awarded bid secrecy. A new clause "Confidentiality" was added in the instructions to bidders, and the following sentence in particular was included in late 2002, after my successful FOI appeal (note that the underlining is part of the Bid Submission text, and is NOT added by me):

"To safeguard your rights, you must mark each other part of your submission that you wish kept confidential" (a rubber stamp or watermark to this effect is sufficient). Unless required, the City will not disclose any information so marked."

City policies have moved in entirely the wrong direction, at a time when many other jurisdictions are opening up their bid results publication policies. On February 10th, 2003, I provided Mr. Male and Mr. Bauld a number of examples and citations from Canadian Federal Government policy and US Freedom of Information legal cases that encourage the release of awarded bid details including unit pricing and contract terminology. This is the direction that I believe the City of Hamilton should be moving in its Purchasing Policies.

Documents and Links for further information:

- **Review / Appeal of Decision to Deny Access**, Dated December 24, 2001, from George Geczy to Information and Privacy Commissioner, 20 pages. Currently not available on-line
- **Review / Appeal of Decision – Additional Information per City of Hamilton Response**, Dated May, 2002, from George Geczy to Information and Privacy Commissioner, 6 pages. Currently not available on-line
- **Information and Privacy Commissioner Order MO-1559** Granting full release of requested records – 6 pages. Internet link http://www.ipc.on.ca/scripts/index.asp?action=31&N_ID=1&P_ID=12407&U_ID=0
- Letter (Dated December 3, 2002) from George Geczy to Stephen Bauld (Manager of Purchasing, City of Hamilton) and Louis Shallal (CIO, City of Hamilton) – Currently not available on-line
- Article, Hamilton Spectator, (Dated December 3, 2002) Community Editorial Board – Available on-line via Hamilton Public Library e-Library Search
- Email (Dated February 10, 2003) from George Geczy to Rick Male (Director of Financial Services, City of Hamilton) and Stephen Bauld (Manager of Purchasing, City of Hamilton) – Currently not available on-line
- "Public Works and Government Services Canada, Supply Operations Service, Supply Manual, Section 7F.705, Updated Mar 31 1997, internet link www.pwgsc.gc.ca/sos/corporate/sm/text/ch07f-01-e.html
- United States Department of Justice, Office of Information and Privacy; FOIA Update on Exemption 4; case *J. H. Lawrence Co. v. Smith*, Nos. 81-2993, 82-0361 (D. Md. Nov. 10, 1982), internet link www.usdoj.gov/oip/foia_updates
- United States Department of Justice, Office of Information and Privacy; FOIA Update on Exemption 4; case *Racal-Milgo Government Systems, Inc. v. SBA*, 559 F. Supp. at 6 ruling by District Judge June L. Green, internet link www.usdoj.gov/oip/foia_updates

About George Geczy...

George Geczy is a resident of Ancaster and an independent businessman and software developer. He is co-chair of the Hamilton Chamber of Commerce Science & Technology Committee, and he is also a Board Member of the Hamilton Public Library and the Hamilton CommunityNet. Project participation in recent years includes "Connect Hamilton", Vision 2020, Hamilton Safe Communities, and Industry-Education Council, among others.

This initiative for increased public transparency is being done independently of any of the above committees and organizations that Mr. Geczy is (or has been) involved with.

Background Information

"A case for Greater Openness"

Full Text of an Open Letter by
Ann Cavoukian, Ontario's Information and Privacy Commissioner, and
Tom Mitchinson, Assistant Commissioner

Published October 14, 2003, Toronto Star

Citizens now demand that public business be conducted in a transparent manner and not behind closed doors. The issue of accountability has taken centre stage in light of recent abuses of good governance in both the corporate and public sectors.

The public's demand for greater accountability is getting stronger and "trust me" is just not good enough; either for shareholders who demand accountability from their corporate directors, or for citizens who expect good governance at all levels.

For government, transparency is a key requirement to achieve accountability.

Our freedom of information law is the vehicle for Ontarians to review what government officials are doing and how they are spending taxpayer dollars.

Clearly, the Ontario public is demanding to know how local governments are spending money and how decisions are being made.

Last year alone, freedom of information requests to municipalities jumped a full 25 per cent. Citizens now demand that public business be conducted in an open and transparent manner, not behind closed doors and not without prior notice and an opportunity to become involved before a decision is made.

Municipal governments take considerable pride in their open business style and - on one level - they deserve this reputation.

However, public concerns are pushing things further, and transparency and accountability have become hot topics in this year's municipal election campaign.

In Toronto, for example, at least three mayoralty candidates have complained that too many meetings take place in "backrooms" away from public scrutiny. Some call for tougher ethics rules, and others want to reduce opportunities for closed meetings.

Ontario needs a tough new municipal "open meetings" law to bring greater transparency and accountability.

The Municipal Act does not go far enough. It does require, with limited exceptions, that councils conduct their business at open meetings where the public can attend and observe the debate. But accessible, transparent government goes far beyond opening the doors to a meeting.

The broader objective of transparency is to ensure that citizens understand how decisions are made and have an opportunity to participate in the decision-making process.

To be truly effective, we need a new law that will encourage integrity in our municipal governments and help ensure that elected and appointed municipal officials operate in the public interest.

This legislation must:

- Require municipalities to give the public adequate notice of each council and committee meeting.
- Prohibit councils from considering business not included on a published notice.
- Give the public a legal right to complain if it feels that open meeting rules have not been followed.
- Establish an efficient and accessible oversight system, with a body responsible for investigating complaints and resolving disputes.
- Provide remedies and penalties if the law has been broken.

The issue of what constitutes a "meeting" has dogged municipalities for years.

The courts have even had to step in on occasion to provide direction.

The Municipal Act attempts to define various types of meetings, but we still read about situations where informal "meetings" take place, without proper notice or quorums, invariably accompanied by cynical allegations that elected officials are trying to avoid an open public process for dealing with controversial issues.

Integrity will always be an issue unless we have rules for transparency that are clearly understood and consistently adhered to.

Some municipalities are very good about posting notices of meetings, with agenda items clearly described. Some are even tapping into the potential of the Internet as a vehicle to disseminate this information throughout the community.

But what if a council wants to amend an agenda? What if a topic is raised at a meeting that wasn't included in the posted notice?

Do these actions erode citizens' democratic rights? These issues need to be more clearly addressed and understood.

The State of Hawaii's Public Proceedings and Records Act has grappled with this issue.

It prohibits council from meeting unless written public notice, including a detailed agenda, is provided at least six days prior. If not complied with, the meeting must be cancelled.

The agenda of a properly constituted meeting also can't be amended unless the meeting is postponed in order to re-notify the public.

One of the most glaring deficiencies in Ontario's current municipal open meetings scheme is the lack of efficient and accessible oversight.

What do citizens do if they learn that an issue of public importance was decided in a "backroom"? Who do they turn to when they learn of a meeting that was held without proper notice?

A lengthy and costly court process is clearly not the answer. We must have a dispute-resolution process that is flexible and accessible to everyone.

And finally, any open meetings scheme must have teeth. If rules have been broken there has to be a remedy, or series of optional remedies, to address the problem.

With a municipal election campaign underway, we need to hear where candidates stand on a new "open meetings" regime. Many candidates, of all political stripes, appear to accept the need to improve integrity and transparency in public administration.

Let them now take these worthy concepts and root them in a practical and concrete way.

-- End of Letter --