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MO-1947: Commissioner orders City of Toronto to release lawsuit information

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Letting the public know

Globe and Mail

Too many bureaucracies believe in secrecy. They elevate it to a culture. They spend their days dreaming up ways not to release information, and can be very inventive in the service of stonewalling. That makes it all the more satisfying when someone with sufficient knowledge and authority pokes holes in their story and overrides their decision.

The CBC had asked for records of the City of Toronto's lawsuits from 1998 to 2004, including the dates they were settled and the amount they had cost the city. The city said no. It said it could reasonably expect such disclosures to injure it economically or financially -- two grounds for exemption under Ontario's Municipal Freedom of Information and Protection of Privacy Act.

Enter Ann Cavoukian, Ontario's Information Commissioner. She ordered the records released by Aug. 8, and the city complied immediately, after Toronto Mayor David Miller spoke approvingly of the need for more openness. Good for her, and for him, and for the city. But it's worth underlining a couple of points, since those who have suckled so long at the teat of secrecy may have difficulty weaning themselves from it. They need encouragement.

The first point was made by then-justice Gerard La Forest of the Supreme Court of Canada and is quoted in Ms. Cavoukian's order. It deserves to be embroidered on a sampler and hung above the desks of non-believers. "Parliament and the public cannot hope to call the government to account without an adequate knowledge of what is going on; nor can they hope to participate in the decision-making process and contribute their talents to the formation of policy and legislation if that process is hidden from view."

Beyond the general statement is the particular rebuttal. The city had argued that, if it told people what it spent on lawsuits in those six years (\$49-million, with an average settlement of \$2,376), more people might sue it. Insurance rates might rise. Insurers might refuse to cover the city. As Ms. Cavoukian noted, such "speculation of possible harm" isn't remotely good enough to meet the law's test of reasonable expectation. The city offered no evidence that releasing such information had led to a sudden upsurge in claims in Toronto or anywhere else. There was no good reason to keep the records secret and a very good reason to release them. The taxpayers have an interest in knowing that the city is settling so many lawsuits at such a cost. They might, for instance, ask why. Is the city being financially responsible? Is it doing enough to fix problems that can be fixed before they result in lawsuits?

Information is like that. It answers questions and it raises questions. The more of it about, the healthier the democracy.



Lift city hall's veil of secrecy

The Toronto Star

The culture of secrecy that pervades Toronto City Hall has suffered a powerful and well-deserved blow from Ontario Information and Privacy Commissioner **Ann Cavoukian**. In a stinging eight-page order, she compelled city officials to reveal the amount of taxpayers' money they spend on lawsuits, and she took bureaucrats to task for refusing to disclose that basic information when it was formally requested by CBC Radio.

For the record, Toronto has spent almost \$49 million settling claims filed against the municipality and its agencies since 1998. City budget chief David Soknacki explained that many of the claims concerned matters such as people falling on slippery streets, and damage to vehicles caused by potholes and badly maintained roads.

This is basic information that taxpayers, who actually foot the bill, have a right to know. Yet city officials wanted to hide it. Cavoukian described a "protective mindset" in the bureaucracy.

That mindset must change. Bureaucrats need to realize that the information they hold does not belong to them; rather it belongs to the public at large, and the public has a right to see it. "Citizens cannot participate meaningfully in the democratic process, and hold politicians and bureaucrats accountable, unless they have access to information held by the government," Cavoukian wrote.

City officials had argued that lawsuits against Toronto would rise if legal costs were made public. But the privacy commissioner labelled that argument "highly speculative," adding the city had offered no good evidence to back its view. Without knowing how many lawsuits have been filed against Toronto, or how much money is being paid out, "citizens would be in the dark and have no meaningful way of scrutinizing whether the city is processing claims in a financially responsible manner," she concluded.

Cavoukian called for a shift to a "culture of openness" at city hall. Mayor David Miller has responded positively by saying Toronto's departments should routinely release information needed by the public. He also noted the city recently appointed a new director of corporate access and privacy to help make that happen.

That's a sound reaction. But it is hard to see why it has taken so long for the city to act. Toronto's former director of access and privacy, Rita Reynolds, was fired more than two years ago after clashing with the city's secretive bureaucracy. Yet she has only recently been replaced. And bureaucrats' wrongheaded refusal to release the city's legal costs occurred more than half way through Miller's term as a "new broom" mayor who was supposed to bring openness to city hall.

Hopefully, Cavoukian's order will help spark real change at city hall, including a thorough commitment to open and transparent government.



Miller getting nowhere fast with secrecy

The Globe and Mail

The last time a senior official responsible for enforcing public access to municipal government records lashed out at secretive bureaucrats determined to quash and cover up, the bureaucrats responded promptly and efficiently: They fired her, claiming she was not a "team player" (i.e., insufficiently secretive).

Then, for good measure, they abolished her former position, thus barring their ranks to any other potential traitors with a mandate to help the public pry public information from their tight grasp.

But not even city manager Shirley Hoy is able to fire provincial Privacy Commissioner **Ann Cavoukian**, who yesterday railed against the city's culture of secrecy in an order demanding that it release information requested by CBC Radio this spring.

Dismissing city arguments in favour of withholding the information as "highly speculative and unpersuasive," Ms. Cavoukian put the boots to Saint Shirley et al in a way that poor Rita Reynolds, the city's former information director, tried but never could manage.

"The bureaucracy has to be reminded that the government is there at the pleasure of the governed, and the government's records are theoretically the public's records," Ms. Cavoukian said yesterday.

"I don't think that's been happening in Toronto."

The very fact that it was Ms. Cavoukian rather than one of her several underlings who issued the order shows how bad the problem in Toronto has become.

Other ongoing cases reveal the same impulse to unreasonable, even illegal secrecy in Toronto, according to Ms. Cavoukian. "And we have certainly had some meetings with the city to discuss it," she added.

But the tipping point came when Mayor David Miller warmly endorsed Ms. Cavoukian's order and urged the creation of a new "culture of openness" at city hall. Less than an hour later, the bureaucrats released the lawsuit information they had fought for months to suppress.

This might seem to be progress, especially to anyone who remembers Ms. Reynolds's doomed struggle to release information about former mayor Mel Lastman's tainted Union Station deal.

But it still helps to be cynical: As Ms. Cavoukian herself noted in her

comments on the latest case, the bureaucrats have routinely ignored the wishes of both the mayor and council for almost two years now.

Even as she was busy rebutting the city's arguments in favour of keeping the lawsuit information public, Ms. Cavoukian was surprised to hear Mayor Miller make "a very strong statement" in favour of openness and accountability, saying that he and council "recently gave direction to city staff to routinely disclose everything possible."

"That was a far cry from the decision that I had to deal with in my order," Ms. Cavoukian noted. "The inference is that there seems to be a very significant disconnect between the political level and the bureaucracy -- and surely that has to be addressed."

The privacy czarina says she has "nothing but praise for Mayor Miller, because I know he believes in openness and transparency and would like to bring it about."

But the cynic notes that he has been in office for almost two years now and, as the lawsuit case proves, little has changed since the arch-paranoia of the Lastman regime.

"Perhaps this order will give the mayor the impetus or initiative that he needs to set a new direction," Ms. Cavoukian added.

Ever sensitive to criticism centring on those i-words -- impetus and initiative -- the mayor claims that the changes have already occurred, pointing out that the city recently hired a new access-to-information director to replace Ms. Reynolds (albeit with more limited powers) and is about to hire a "training manager" to inform all senior bureaucrats about their obligations under the Municipal Freedom of Information and Protection of Privacy Act.

"We're taking some clear steps to change the culture here," he said. But as Ms. Cavoukian embarrassingly revealed, Mr. Miller and his colleagues are getting nowhere fast.



City reveals \$50-million lawsuit bill: Privacy ruling

National Post

Toronto has spent \$48.9-million to deal with 20,630 lawsuits against city departments over the past seven years, according to information released yesterday by order of Ontario's privacy commissioner.

Ann Cavoukian condemned the "protective mindset" of bureaucrats who initially refused to disclose the number or cost of civil lawsuits filed against the city each year. "Without such information, citizens would be in the dark and have no meaningful way of scrutinizing whether the city is processing such claims in a financially responsible manner," Ms. Cavoukian writes in her eight-page ruling. "Nor would citizens have sufficient information to begin to assess whether the conduct of the city

may be contributing to the number of claims it receives."

Mayor David Miller praised the ruling, saying the city was "wrong" not to disclose the information sooner. "[The order] provides very clear direction to the city and the administration about how government should be open and respond to requests of citizens and the media," he said. "It sends a very clear message about what is appropriate information to release and what is appropriate to keep private."

Documents released yesterday show that since the city was amalgamated in 1998, Toronto has paid nearly \$50-million to cover everything from claims related to park maintenance to suits against councillors. Close to half of the civil litigation costs, or \$25.3-million, stemmed from 8,465 claims against Transportation Services, the department responsible for maintaining roads and sidewalks.

"It's huge exposure for the city," said Jeff Madeley, the city's manager of risk management. "These are claims where a member of the public would allege Transportation Services failed to do their duty. They are claims that involve the roadway, sidewalks, boulevards, infrastructure, lamps, lighting, and traffic signals."

Other divisions with multi-million-dollar legal bills include the Economic Development, Culture and Tourism department, which faced 4,722 claims and paid out \$6.1-million. The claims relate primarily to park conditions and recreation programs, Mr. Madeley said. "All our parks, playgrounds and swimming pools are all captured in there," he said.

In addition, the city's agencies, boards and commissions, such as libraries and the TTC, faced 900 claims worth \$9-million, the fire department had 56 claims costing \$579,587 and the ambulance service incurred 64 claims and paid out \$514,555. There were also 23 claims against city councillors, which cost the municipality \$686,925. All of the amounts include not only settlements and court-ordered judgments but also court costs and legal fees.

None of the departments' civil litigation costs exceeded those incurred by the Toronto Police Service. In March, Toronto revealed it has paid \$30-million to settle 8,000 claims against police officers.

At that time, city staff refused to reveal the comparable expenses for other departments, despite receiving requests filed under freedom of information legislation.

But following a formal appeal by the CBC, Ms. Cavoukian ruled yesterday the records should be released.

The privacy commissioner rejected arguments put forward by the city and its insurance broker suggesting disclosing the city's legal costs will increase the number of claims against Toronto.

While the city argues it could lose its insurance coverage if there is an

influx of claims, Ms. Cavoukian said there is no "fact-based evidence" to support the contention.

"It does not logically follow that its insurer would demand increased premiums, that the city would lose its insurance altogether ... or that there would be an increased burden on taxpayers," she writes.

Ms. Cavoukian called upon Mr. Miller to ensure "there is a shift in the city bureaucracy from a protective mindset to a culture of openness."

According to the Mayor, Toronto has already taken steps to improve accountability and transparency, including the hiring of Susanne Craig as its new corporate access and privacy director. In addition, departmental staff are being trained to handle requests made under the Municipal Freedom of Information and Protection of Privacy Act, Mr. Miller said.

"The intent is to have each department know that it can release the information without having a bottleneck in the corporate access and privacy office," he said. "We should train the departments so they're routinely responsible for releasing public information."



Lawsuits cost city \$49 million; Paid an average of \$3,000 per claim, many for icy falls **Information released on order from privacy czar**

The Toronto Star

Toronto has settled nearly \$49 million worth of lawsuits filed against the city and its agencies since 1998, according to city records.

It is the first time the information has been made public.

The figures were released yesterday on the order of Ontario **Information and Privacy Commissioner** Ann Cavoukian after the city had refused a **freedom-of-information** request for the material from the CBC.

The city dealt with 16,380 lawsuits from 1998 through 2004, according to the city records, and paid out \$48.9 million in settlements - an average of about \$3,000 per claim.

About half the settlements - \$24.3 million - were agreed to by the city's transportation division. It also attracted about half the lawsuits.

The transportation division is the target for many claims by pedestrians who have fallen on icy or snowy streets, city budget chief David Soknacki said in an interview yesterday.

Motorists also file numerous claims against the city for damage from potholes or bad roads, Soknacki said.

Other city agencies - including the Toronto Transit Commission, the police services board and Exhibition Place - also attract lawsuits.

The figures show the city has paid out \$9,026,836 to settle 900 lawsuits against these bodies since 1998 - an average of about \$10,000.

The city's economic development, culture and tourism department - which includes city parks - paid out more than \$6 million to settle 4,722 lawsuits.

Soknacki said the city sets aside contingency funds in the budget to settle small claims. For larger claims, the city carries insurance policies with private companies.

Cavoukian argued that citizens cannot hold their politicians accountable unless they are armed with information held by government.

"Ultimately, taxpayers are responsible for footing the bill for any lawsuits that the city settles with litigants or loses in the courts," she wrote. "Consequently, taxpayers have a right to know, at a minimum, how many lawsuits or claims have been filed against the city, and how much money the city has paid out in damages or in settling such matters."

Mayor David Miller is vowing a new culture of openness at city hall when it comes to disclosing information sought by citizens and the media.

"Departments should routinely release information that should be public. That should be the way government should work. That's what we're trying to do," Miller told reporters yesterday after the privacy commissioner ordered the city to disclose records of lawsuits.

Miller cited the recent appointment of Suzanne Craig as director of corporate access and privacy as well as plans to hire a training director who will teach staffers about what can and cannot be released.

"I think that training will go a long way towards creating a culture of openness," Miller said.

"We're doing our best. It's a very large organization - 40,000 employees."

Craig, who was hired from the environment ministry, said city council issued a directive last month to encourage the release of information, unless there is an exemption under the law or a clear and compelling reason to withhold information.

Under this policy, information that can be released would be available instead of people having to send requests through the corporate access office, she said.

The city's former director of corporate access and privacy, Rita

Reynolds, was fired in May 2003. Reynolds was at the centre of a controversy over the deal to redevelop Union Station. After receiving a **freedom-of-information** request, she divulged that key documents used in judging the bids had been destroyed.

The disclosure led to a formal review of the selection process by Justice Coulter Osborne, who deemed the process not perfect but essentially fair.



Open up, city told

Privacy commish slams secretive staff

Toronto Sun

DENIED!

It's a frequent response from the City of Toronto's Corporate Access and Privacy office.

Now the provincial privacy watchdog has ruled the city is going too far, shutting the door too often, calling the mindset of bureaucrats "protective," not open.

Ontario's Information and Privacy Commissioner, Ann Cavoukian, slammed the city for denying a journalist's request to see the number of lawsuits, dates settled and dollar amounts.

Cavoukian, who held an inquiry into why the Freedom of Information request was denied, didn't even ask for the journalist's rebuttal before ruling the city's argument it could injure the financial interests of the city, was unfounded.

SECRETIVE CULTURE

Cavoukian said this isn't a one-time problem and she'll ask Mayor David Miller to shift the culture of city employees from secretive to open.

"You don't just do what you think you should be doing in a protective way, concealing information," Cavoukian said yesterday. "You disclose whatever you can because it is the public's information.

"The mayor and council seem very pro-openness and disclosure," she said. "There seems to be some kind of disconnect between the politicians and the bureaucrats."

Cavoukian's report said bureaucrats should stop hiding behind exemptions.

Cavoukian wrote citizens can only hold politicians and bureaucrats accountable if they have the information necessary. She said taxpayers end up footing the bill for lawsuits and have a right to know how much is being spent.

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