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RECORDS RETENTION BY-LAW

The Finance and Administration Committee recommends the adoption of the recommendation contained in the following report, May 26, 2006, from the Commissioner of Corporate Services:

1. RECOMMENDATION

It is recommended that:

1. Council enact a new Records Retention By-law to provide for the disposition of Regional records, including transitory records, and to incorporate the retention periods for records set out in Attachment 1 to this report.

2. PURPOSE

The purpose of this report is to seek Council approval for the enactment of a new Records Retention By-law for the Region's paper and electronic records.

3. BACKGROUND

On November 16, 1996, Council enacted By-law No. A-216-96-139 setting out the periods for the retention and disposition of Regional records. There have been a number of changes to the Region's information, business and legislative environment since 1996. Following an extensive review, the new Records Retention By-law has been drafted to reflect these changes.

3.1 Legislation

The *Municipal Act, 2001* ("the Act") provides that a municipality shall retain and preserve its records in a secure and accessible manner. The Act also provides that a record of the municipality may be destroyed if a retention period for the record has been established and the retention period has expired or the record is a copy of the original record. Municipalities are authorized to establish retention periods for their records, with the approval of their auditor.

The *Municipal Act*, the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") and other access and privacy legislation define "record" very broadly to include information however recorded or stored, including paper and electronic records, minutes, correspondence, financial statements, maps, drawings, photographs, digitized images, and e-mail. Under access and privacy legislation, every person has a right of access to any record under the Region's custody or control, subject to a number of exemptions. The protection of personal privacy is the principal exemption.

In litigation matters involving the Region, any relevant records relating to the matter in question are required to be disclosed and produced pursuant to the discovery provisions set out in the *Rules of Civil Procedure*, subject to claims of privilege.

4. ANALYSIS AND OPTIONS

Major changes have taken place since 1996 at the Region with key new business areas including Housing, Emergency Services, Courts Administration and Transit. As well, there have been significant changes in the electronic information environment and various new legislative and regulatory requirements. These have made it necessary to review the Records Retention By-law.

4.1 Review of Records Retention By-law

Paper and electronic records serve as the “official memory” of the Region’s activities. A high-level inventory of paper records conducted in 2005 showed that there are about 40 million paper records in the Region’s general office areas, archives, corporate records centre and off-site commercial storage facility. An inventory of electronic records, including e-mails, that was conducted in 2005 showed that the Region has over nine million electronic records, not including electronic records contained in databases. All paper and electronic records must be managed throughout their life cycle in accordance with the legislation.

The Records Retention By-law provides for the organization of records throughout their life cycle to conduct business efficiently and to meet legislative responsibilities and expectations of accountability. This includes disposing of records when they are no longer considered of legal, financial, operational or historical value. Without a records retention by-law, the Region would be legally obliged to retain all of its records other than copies indefinitely at great cost to the public.

The records retention by-law has been developed through a detailed analysis of the current by-law in the context of the various types of records held by Regional departments. Analysis was undertaken of all of the legislation applying to the records to determine how long they need to be kept legally. Records and Information Management staff reviewed the records retention by-laws from various other municipalities, including Toronto, Peel, Durham and Ottawa. They also consulted with staff in each Department to determine how long records are required to meet administrative and operational requirements and public expectations. The draft by-law was then reviewed by a team comprised of senior representatives from the Regional Clerk’s Office, the Director of Audit Services, the Director of Information Technology Services, the Risk and Insurance Manager and the Regional Solicitor’s office.

The result is a new draft by-law that reflects the various retention requirements of the Region. We have attached a copy of the proposed retention schedule, with the various

classification codes that would be included in the by-law, as Attachment 1 to this report. The number of classification codes is similar to the number in other large Regional and urban municipalities. The by-law will come in to force upon receiving the approval of the external Auditor who has been appointed by Regional Council.

It should be noted that the by-law introduces a distinction between “official” and “transitory” Regional records. Records that will be subject to a retention period are records (“official records”) in the Region’s custody and control that serve important functions of the Region, such as supporting program delivery or policy development, committing the Region to an action, meeting legal, financial, operational and other official requirements, or providing evidence of obligations, responsibilities, decisions and actions. These records would need to be kept for the entire retention period for their records series before being disposed of.

There are other records (“transitory records”), on the other hand, including e-mail, voice mail or text messages, that have only temporary value and are not required to meet statutory obligations, set policy, establish guidelines or procedures, certify a transaction, become a receipt or provide evidence of legal, financial, operational or other official decisions for the Region. The Retention By-law would provide legal authority to dispose of “transitory” records as soon as they are no longer required so as to free up physical file and disc space as well as increase efficiency of operation and speed of retrieval.

“Official” records would continue to be disposed of by generating annual lists of files and documents whose retention period has expired. The Region’s information management systems can generate automatic electronic reports each year recommending the disposition of individual electronic records whose retention period has expired. We are continuing to monitor technological advances that would streamline the process for the retention and disposition of Regional records while complying with the various pieces of legislation.

The bylaw will set out the broad classification scheme for records and establish the appropriate retention period. The by-law will be supplemented by a staff policy that will provide in greater detail how the retention schedule is administered. As new categories of records are identified, the Corporate Records and Information Manager will consult with the appropriate department(s) and the Records and Information Management Staff Committee to determine the appropriate retention. Records will then be assigned a classification either as part of an existing category or as a new category. In the event a new category is created the by-law will need to be amended.

The proliferation of electronic records in many formats and different media throughout all sectors of industry and government has resulted in the potential for the generation of electronic records to outstrip the ability of record generators to effectively manage, retain and recover the records. At the same time, all governments, including the Region, have statutory obligations regarding records, which include requirements to identify, locate, disclose and produce these records pursuant to the applicable access and privacy

legislation. The challenge presented by this “proliferation/obligation” dichotomy with respect to electronic records will require a careful balancing of the Region’s fiscal, technological and staff resources now and in the future.

4.2 Relationship to Vision 2026

The proposed Records Retention By-law supports the Vision of Engaged Communities and a Responsive Region by providing cost-effective service and accountability that is based on information contained in Regional records.

The Retention By-law supports the Guiding Principles of Stewardship; recognizing that it is everyone’s duty to protect the legacy of York Region’s documentary heritage by providing accountable service will secure, protect and provide access to Regional archival records.

5. FINANCIAL IMPLICATIONS

There are no financial implications resulting from the adoption of this report.

6. LOCAL MUNICIPAL IMPACT

There is no impact on the local municipalities.

7. CONCLUSION

The proposed Retention By-law is based on the Region’s legal, financial, operational and historical needs. It is an important tool in maintaining accountability and managing the Region’s paper and electronic records efficiently to meet the public’s and staff’s needs for service delivery and information.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause was included in the agenda for the June 8, 2006 Committee meeting.)