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THE SECRETS YOU KEEP:
THE MGA, THE FOIP ACT AND COUNCILLORS

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In a recent decision out of British Columbia, a councillor was convicted of the offence of improperly disclosing personal information obtained during an *in camera* council session without authorization under British Columbia's Freedom of Information and Privacy Act. Within similar legislation in Alberta, councillors can be exposed to the possibility of being sanctioned for the unauthorized disclosure of personal information obtained in the course of one's duty as councillor pursuant to the *Municipal Government Act*. Therefore, councillors need to be aware of the relevant legislation and the potential penalties involved in disclosing information obtained through one's duties as councillor.

A Case Study – R. v. Skakun

In the 2012 British Columbia Supreme Court decision of *R. v. Skakun*, the issue of the improper disclosure of personal information by a councillor was addressed. Councillor Brian Skakun was charged under the British Columbia's *Freedom of Information and Protection of Privacy Act* for the unauthorized disclosure of a confidential RCMP investigative report to the Canadian Broadcasting Corporation ("CBC"). The confidential investigative report dealt with an interpersonal workplace conflict involving civilian staff of the City of Prince George's RCMP Detachment. The report contained personal information of the staff involved. This report was provided to Council in confidence, however, Councillor Skakun disclosed it to the CBC due to his belief that it was in the public interest to do so. The CBC subsequently posted the report on its website for public access. Councillor Skakun was charged and later convicted of breaching Section 30.4 of British Columbia's *FOIP Act* due to his disclosure of this report to the CBC. The Supreme Court dismissed the appeal and upheld the conviction.

Under the British Columbia *FOIP Act* it is an offence for an employee, officer or director of a public body to disclose personal information in the custody or control of a public body unless authorized under the *FOIP Act*. The Trial Court found that the councillor was an officer of a public body pursuant to the British Columbia *Community Charter* and the councillor had a duty to keep in confidence information considered in any part of a council meeting or council committee meeting held *in camera* until the council or committee discusses the information in a

public meeting or releases the information to the public. There was no discussion of the report in any council meeting that was open to the public nor was the report released to the public by the RCMP or the municipality. It was no defence to this statutory offence that the councillor was protected by a whistle-blower defence or an ability to overcome his statutory obligations due to a belief that it was in the public interest that the report be disclosed.

Application in Alberta

Alberta has similar legislation as British Columbia, including the duties of municipal councillor and offences under access to information and privacy legislation. As such, it is quite possible for a situation similar to the *Skakun* case to occur in Alberta resulting in a councillor facing signification penalties for breaching his or her statutory duties.

Under the *Alberta Municipal Government Act*, RSA 2000, c M-26 (the “MGA”), councillors have a duty to keep in confidence matters discussed in private at a council or council committee meeting until discussed at a meeting held in public (s. 153(e)). This applies to any and all information, including personal information of third parties, that a councillor is privy to during an *in camera* discussion or meeting.

In regards to personal information, a public body has a statutory duty to collect, use, disclose and protect personal information in its custody and control in accordance with the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (the “FOIP Act”) [See in particular, Sections 33, 38, 39 and 40]. Personal information is defined as any information which is identifiable of and about an individual. Under the *FOIP Act*, personal information must be secured against unauthorized access, collection, use and disclosure and any unauthorized access, collection, use or disclosure is an offence punishable by a fine (see Section 92(1)(a)). A individual charged with an offence under the *FOIP Act* is punishable by a fine of up to \$10,000, and for a public body or organization by a fine of up to \$500,000 (Section 92(2)). Therefore, if a situation similar to the *Skakun* case occurred in Alberta, the offending councillor could face a fine of up to \$10,000.00 for disclosing personal information without authorization.

The combined effect of the referenced Sections of the *MGA* and the *FOIP Act* is that councillors have a duty to keep matters discussed *in camera* at a council or council committee meeting, particularly matters involving personal information, confidential unless they have proper authorization to disclose and use such information outside of council. The failure to do so could result in not only sanction by the municipal council pursuant to a council code of conduct, but also a prosecution under the *FOIP Act* and a personal fine of up to \$10,000.00. Even though the case discussed above occurred in British Columbia, our legislation similarly forbids confidential, and in particular personal, information to be disclosed by a councillor without the proper authority.

The *Skakun* case is, therefore, a cautionary reminder for councillors in Alberta regarding matters discussed *in camera* – particularly matters involving personal information of other individuals – and the importance of one’s statutory duties as a councillor.

If you have any questions or concerns with respect to this article or privacy and access to information matters in general, please contact Lorne I. Randa at 780-497-4832 or lranda@brownleelaw.com or any other member of the Brownlee LLP Privacy & Access to Information Practice Group.