



Town of Midland

An update respecting the
Town of Midland's efforts to recover the former
Midland Police Service Records

Council Meeting
Wednesday, August 14, 2019



Purpose for this Presentation

- Why a public presentation vs in-camera?
- What's at the core of this issue?
- What has been done to-date and what are the next steps in our efforts to reclaim property that legally belongs to the municipality/MPS Board?



In-Camera vs Public

- July 10/19 Planned In-Camera update for Council
 - Administration withdrew the presentation to seek clarification from the Town's Integrity Commissioner regarding Administration's perception that a conflict of interest exists for Councillor Gordon.
 - The Administration should not be making the presumption of a conflict as **only the individual** (e.g. Council Member) **can determine if a conflict exists**



In-Camera vs Public

- Councillor Gordon's e-mail July 16, 2019 (in part)
 - "... Your continued attempts to exclude me are not supported by the ethics commissioner. Your attempts to "declare" that I have a COI are both unfounded and improper as nobody can do that on behalf of someone else... and yet you tried to do that to me last week despite my legal opinion to the contrary. ...
 - Do I need to escalate this issue or will you concede that you can no longer do what you are doing to me? ..."



In-Camera vs Public

- **“I have the authority, the mandate, the right and the support of ethics commission legal counsel to FULLY participate – regardless of your opinions. I expect a response about your intentions and when the items you improperly denied Council last week will be presented to us...”**



In-Camera vs Public

- E-mail from J. Skorobohacz to Councillor Gordon
 - “...However, based upon this request, I will ask the Clerk to include this matter on the agenda for the next regular Council meeting for a full presentation. “



What's the issue?

- The issue that we have been dealing with is the fact that the electronic records of the Midland Police Service were encrypted at or some time prior to the transition to the OPP which rendered the records inaccessible.



What's the issue?

- Both the MPS Board and the Town are therefore unable to fulfill their responsibilities both under disbandment provisions as set out before the Ontario Civilian Police Commission (OCPC) and under existing provincial legislation.



What's the issue?

- 2017 (November) – Efforts were underway between Town/Board and the MPS to transition certain records – Of immediate concern to the MPS Board was the transition of the MPS Board records. A transfer of the MPS Board's electronic records (minutes and recordings of meetings) was provided. Further it was agreed that the paper records would transition when the MPS disbanded.



What's the issue?

- RIM – OPP Records & Information Management met with MPS and Town to discuss the issue of the MPS records
- Required the transfer of certain records to other parties and to address the retention and destruction of records in accordance with the Policing Standards Manual and existing Provincial Statute.



What's the issue?

- As a result of the encryption the Town as the rightful custodian of the MPS records is unable to meet its obligations under provincial privacy legislation, (M)FIPPA
- To our knowledge there continues to be a risk that personal information is vulnerable and not being afforded the protections the legislation mandates



What's the issue?

- The encrypted data along with the uncertain whereabouts of two external hard drives exposes both the municipality and the Midland Police Services Board to the potential of future legal action.



Update on Social Media Commentary

- Mr. Sidhu will also provide Council with an update detailing the recent Social Media activities respecting this matter and the implications arising from the Councillor's posts and hosting of comments in response to those posts





Response to Mr. Gordon's Facebook Post



Mr. Gordon's Role with the MPS

- Not a Police Officer.
- A **civilian employee** of the MPS.
- Between 2002 and 2015, he was also appointed as a **Special Constable**. In Ontario, Special Constables are appointed by a Municipal Police Services Board under section 53 of the *Police Services Act* for a specific period, area and purpose.



Mr. Gordon's Role with the MPS cont'd

- The purposes mentioned for Mr. Gordon's appointment as a Special Constable were:
 - 2002 – 2010: Prisoner transportation and court security with a secondary role of technical support; and
 - 2010 – 2015: Providing assistance to police officers in matters under the *Highway Traffic Act 134(1)*

Section 134(1) of the Act states:

Where a police officer considers it reasonably necessary,

(a) to ensure orderly movement of traffic;

(b) to prevent injury or damage to persons or property; or

(c) to permit proper action in an emergency, he or she may direct traffic according to his or her discretion, despite the provisions of this Part, and every person shall obey his or her directions.

R.S.O. 1990, c. H.8, s. 134 (1).



Guardianship of MPS Records

- Mr. Gordon has posted:



Christine Archer There are numerous documents that should be reviewed and numerous question on why both sides have dug their heels in.

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Bill Gordon For me it is a sense of duty. I have no legal obligation to continue to protect the data that I spent 25 yrs protecting, but I do feel that I have a moral obligation. I think we are close to a win/win deal with the OPP and the Town but that is now threatened by their recommendation to prosecute me.

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- Mr. Gordon recognizes and acknowledges he has no legal obligation in this matter. Yet, he continues to interfere and interrupt the legal agreements between the OCPC, the OPP, the MPS Board and the Town of Midland.



Guardianship of MPS Records Cont'd

- In one instance, this obstruction and interference has led to an appeal to the Information and Privacy Commissioner of Ontario.
- It is of particular note, once again, that he was a civilian employee of the MPS. Guardianship, care, control, custody or ownership of the MPS records would not have been conferred upon him in that capacity.



The Role of the OPP and Mr. Gordon

- Mr. Gordon has posted:

4. We all agree that the OPP is authorized to review and redact (as they see fit) the protected data and make determinations about whether the Town or Police Board should have access to the data. Furthermore, the OPP has confirmed, repeatedly, that they have no jurisdiction to compel me to turn over the encryption key to them and have advised the Town that they should be seeking a civil remedy since there is NO criminality in this issue.

- Mr. Gordon agrees that *“the OPP is authorized to review and redact (as they see fit)”*. However, he refuses to hand over the encryption codes to the OPP to do the work that he agrees that they have the authority to do.



Bill Gordon The OPP disagrees to some degree and says that the data will be returned to the town, but only once they have redacted sensitive data... I accept that but now that they know how much data and how many types of data are still there, the agreement needs to be re-worded to protect everyone involved.

Like · Reply · 3d



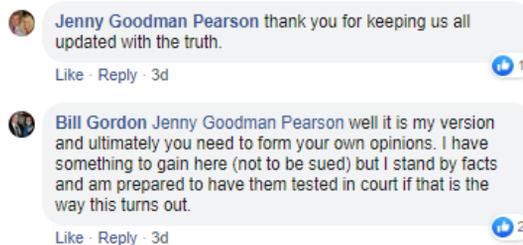
The Role of the OPP and Mr. Gordon Cont'd

- Mr. Gordon recognizes that the OPP disagrees with his position to some degree. Yet, he continues to obstruct and interfere in the implementation of the agreement between the OPP, Town and MPS Board.
- The Town continues to have the right and option to pursue both Civil and Criminal remedies. The OPP have not stated that there is no criminality associated with the actions undertaken by either of the parties.
- The OPP has been asked for clarification on several points by the Town to which the Town has not received a reply.



Personal gain as a result of influencing Council decision in this matter

- Mr. Gordon has posted:

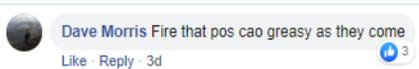
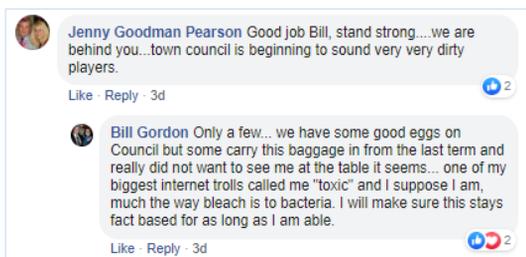


- Mr. Gordon recognizes that he will personally gain by advocating his position before Council and by influencing Council's decision in this matter.



Vehicle for Defamation of Council and Administration and potential violation of the Code of Conduct for Councillors

- Mr. Gordon and his followers have posted:
- Mr. Gordon's Facebook page continues to be used to defame members of Council and the Town's Administration.



Mr. Gordon's desire to Update Council: In what capacity?

- Mr. Gordon has posted:

8. The agenda for August 14th has my motion on it. It also includes a staff report where there is no mention of the brokered deal or how close we are to a voluntary conclusion and instead characterizes the issue in another light and seek support to launch new legal action against me (and Micheal Osborne)

- Council or Administration have never authorized "Councillor" Gordon to act on their behalf and negotiate with the OPP.
- Mr. Gordon's actions are unrelated to his duties as a Councillor and specific to his earlier role as a civilian IT employee of the MPS.
- Councillor Gordon may have already had conversations with some Councillors to advance his version of events.



Mr. Gordon's desire to Update Council: In what capacity? Cont'd

- The “*brokered deal*” between Town Administration and the OPP is a result of the efforts of the Town Administration and the Legal Counsel for the OPP. The OPP has advised that Mr. Gordon has impeded the successful implementation of the May 30, 2019 Agreement with the OPP.
- Administrations letter of August 13, 2018 to Mr. Osborne stated:

Please let me know if you would prefer to meet before handing over the encryption keys to discuss potential safeguards with respect to:

- a. Information/items over which the former MPS Staff may have a reasonable expectation of privacy;
- b. Information/items that pertain to sensitive information and should not be accessed unless so authorized by a Court of competent jurisdiction; and
- c. Any other items that require special restrictions on access.



Appointment of a Town Employee as Special Constable

- Administration will reach out to the MPS Board and the office of Solicitor General to have a Town Employee appointed as Special Constable to deal with the specific issue of maintaining confidential police records (if permitted under Section 53 of the *Police Services Act* or successor legislation).

SPECIAL CONSTABLES

Appointment of special constables

By board

53 (1) With the Solicitor General's approval, a board may appoint a special constable to act for the period, area and purpose that the board considers expedient. R.S.O. 1990, c. P.15, s. 53 (1); 1997, c. 8, s. 33 (1).

By Commissioner

(2) With the Solicitor General's approval, the Commissioner may appoint a special constable to act for the period, area and purpose that the Commissioner considers expedient. R.S.O. 1990, c. P.15, s. 53 (2); 1997, c. 8, s. 33 (2).

Powers of police officer

(3) The appointment of a special constable may confer on him or her the powers of a police officer, to the extent and for the specific purpose set out in the appointment.

Restriction

(4) A special constable shall not be employed by a police force to perform on a permanent basis, whether part-time or full-time, all the usual duties of a police officer. R.S.O. 1990, c. P.15, s. 53 (3, 4).



Recap

- Staff Report CS-2019-6
 - Sets out for Council and the Public the extent of the work undertaken to date.
 - Staff would be pleased to the extent possible to respond to questions
 - Some questions related to Solicitor/Client privilege and/or Legal Strategy may be more appropriate for an in-camera discussion



Next Steps

- Direct Administration to take all necessary legal steps to address the encrypted MPS records issue and Mr. Michael Osborne's and Mr. William Gordon's involvement in that issue and recover the Taxpayers' costs;
- Authorize Administration to co-ordinate with the MPS Board and legal counsel to address the Statement of Claim from Michael Osborne former Chief of Police, MPS

