



Staff Report

Administration

Report To: Community Communications Advisory Committee
Meeting Date: June 17, 2019
Report Number: FAF.19.107
Subject: Canadian Anti-Spam Legislation Update
Prepared by: Tim Hendry, CEDC

A. Recommendations

THAT the Community Communications Advisory Committee receive Staff Report FAF.19.107, entitled "Canadian Anti-Spam Legislation Update" for information.

B. Overview

This report is a follow up to the April 29th, 2019 Community Communications Advisory Committee meeting where the following motion was passed:

Moved by: Peter Bordignon

Seconded by: John Milne

THAT the Community Communications Advisory Committee direct staff to engage the Association of Municipalities of Ontario and the Federation of Canadian Municipalities to secure best practices and legal parameters regarding email address gathering and the sending of emails by the Town to its residents, specifically as it relates to "Canadian Anti-Spam Legislation" and communication for commercial purposes, Carried.

C. Background

As directed by the motion, staff contacted representatives from both the Association of Municipalities of Ontario and the Federation of Canadian Municipalities. Both organizations indicated that they did not have any information or insight related to the Canadian Anti-Spam Legislation to offer.

Staff also contacted neighbouring municipalities regarding their email communication protocol. The general recommendation was to ensure that all email communication efforts adhered to the requirements of the Canadian Anti-Spam Legislation.

D. Analysis

To ensure a comprehensive review of the legislation, staff engaged the Town Solicitor to obtain a legal opinion on the Canadian Anti-Spam Legislation (CASL). The report details that the requirements within the CASL are related to commercial electronic messages. The report states

“To ensure compliance, the Town will need to carefully determine which of the many electronic messages it sends will constitute a “commercial electronic message” (“CEM”) and what will qualify as an appropriate consent to the message. As the Act also strives to protect the privacy of Canadians, the Town is required to comply with the Personal Information Protection and Electronic Documents Act1 (“PIPEDA”), when transferring emails from its server to a third-party, commercial server service.”

The report also provides clear indication that municipalities are bound by the CASL when engaged in commercial activity.

Commercial Electronic Messages Defined

The report provides reference to section 1.2 of the Act, which defines a Commercial Electronic Message as:

(2) For the purposes of this Act, a commercial electronic message is an electronic message that, having regard to the content of the message, the hyperlinks in the message to content on a website or other database, or the contact information contained in the message, it would be reasonable to conclude has as its purpose, or one of its purposes, to encourage participation in a commercial activity, including an electronic message that,

(a) offers to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land;

(b) offers to provide a business, investment or gaming opportunity;

(c) advertises or promotes anything referred to in paragraph (a) or (b); or

(d) promotes a person, including the public image of a person, as being a person who does anything referred to in any of paragraphs (a) to (c), or who intends to do so.

The report details the following regarding Commercial Electronic Messages as related to the municipality.

“As municipalities are bound by the Act, whenever the Town offers to sell a service, they are engaging in a commercial activity. Thus, if the Town sends electronic messages advising residents of services the Town offers for a fee, it is a commercial electronic

message caught by the Act. If the Town advertises a business, by announcing the opening of a business or bringing the attention of the residents to a particular business, it is also a commercial activity with the Act. Any inclusion of a “commercial activity”, including the hyperlink for a local business, or mentioning a service that the town provides for a fee in a longer electronic newsletter, is enough to be considered a commercial activity.

On the other hand, Town emails on public events and meetings, on public goods where the residents do not pay a fee (above their taxes) and on safety issues, are not commercial electronic messages, and are not covered by the Act. However, care must be taken to ensure that no part of the message is “commercial activity”, or else the message will be a commercial electronic message. For instance, a Town newsletter with a sentence that informs residents that dog tags are available for a fee, may be considered a commercial electronic message. Similarly, a Town newsletter that alerts the public about a coming event may be a commercial electronic message, if the newsletter discusses a local business that offers goods or services at the event.”

Final Recommendation

The report concludes by clearly explaining that:

“So long as the Town takes care to properly ask for consent, and ensures that the unsubscribe mechanism works and is convenient for the user, then the Town can send commercial electronic messages to residents. The Town should also work to ensure that adequate records are taken.”

The final recommendation is included below:

The CSAL only covers emails that pertain to commercial activity. As commercial activity is defined extremely broadly, care should be taken to ensure that messages that have any commercial component, however small, meet the provisions of the Act. It is likely prudent for the Town to assume that emails are of a commercial character, and thus require consent, valid contact information for Town officials, and a working unsubscribe mechanism. In the event of a genuine emergency, the Town can however forgo the statutory requirements, and use electronic messages to alert residents of dangers.

Care should be taken to ensure that the contact information is valid, and the unsubscribe mechanism is convenient to use for the email recipient. The Town should create a standard form for emails with the appropriate contact information and working unsubscribe information.

The Town is free to contract their email operations to a commercial server. It is recommended that the Town use a Canadian service, to ensure compliance with Canadian privacy laws. The Contract with the service provider should ensure protections for the data, and notice should be given to the subscribers about the change in servers.

E. The Blue Mountains Strategic Plan

Goal #2: Engage Our Communities & Partners

Objective #1 Improve External Communication with our Constituents

Objective #2 Use Technology to Advance Engagement

Objective #3 Strengthen Partnerships

Goal #4: Promote a Culture of Organizational & Operational Excellence

Objective #2 Improve Internal Communications Across our Organization

Objective #3 To Consistently Deliver Excellent Customer Service

Objective #5 Constantly Identify Opportunities to Improve Efficiencies and Effectiveness

F. Environmental Impacts

N/A

G. Financial Impact

N/A

H. In consultation with

Shawn Everitt, Chief Administration Officer

I. Public Engagement

The topic of this Staff Report has not been subject to a Public Meeting and/or a Public Information Centre as neither a Public Meeting nor a Public Information Centre are required. However, any comments regarding this report should be submitted to Tim Hendry at communications@thebluemountains.ca

J. Attached

N/A

Respectfully Submitted,

Tim Hendry
Communications & Economic Development Coordinator

Shawn Everitt
Chief Administrative Officer

For more information, please contact:

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