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July 13, 2017

VIA EMAIL: [cpsc@london.ca](mailto:cpsc@london.ca); [msalih@london.ca](mailto:msalih@london.ca); [barmstro@london.ca](mailto:barmstro@london.ca);  
[mcassidy@london.ca](mailto:mcassidy@london.ca); [psquire@london.ca](mailto:psquire@london.ca); [husher@london.ca](mailto:husher@london.ca)

Chair and Members  
Community and Protective Services Committee  
City of London  
300 Dufferin Avenue, P.O. Box 5035  
London, ON N6A 4L9

Dear Chair and Members:

**Re: Council Policy for Publicly Releasing Enforcement Information  
Meeting on July 18, 2017; Additional LPMA Concerns**

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We are the lawyers for the London Property Management Association (“LPMA”). The LPMA is committed to promoting education and professionalism among its more than 500 members, the vast majority of whom are owners and operators of multi-residential rental properties, including apartment buildings.

The purpose of this letter is to augment our previous correspondence to your committee from May 17, 2017 (attached) and further communicate the LPMA’s position regarding the proposed Policy with respect to publicly releasing enforcement information that is the subject of the Community and Protective Services Committee’s (the “Committee”) meeting on July 18, 2017.

LPMA’s members continue to express concern about the proposal to publicly release information with respect to offences under the *Fire Code* and we suggest the City of London should also be concerned. Weeks ago we submitted a Freedom of Information Request to the City seeking details of enforcement and conviction information relative to buildings operated, in effect, by the City through your Housing Corporation for the period 2014 to the present. A copy of our initial request and the City’s response is attached and what you will see is that the City estimated its fees to be \$1890.00 before a response would be forthcoming.

In order to reduce the cost, we amended our request by dropping the 2014 calendar year from the scope of the searches. We have now been advised by the City that, due to the fact that there are a “large number of records” (see July 7 FOI email from City, attached) the information requested will not be provided until August 25, 2017, more than a month after the Public Meeting.

In our view, and consistent with the “transparency” theme touted in the Policy submitted by staff, it is relevant for members of the Committee, and ultimately for members of the Public, to be informed about large number of records that exist relative to enforcement and convictions that have been registered against City operated housing. The reason this information is relevant to the Committee’s decision is not to urge the City to support the policy, but rather, for the City to have a proper context to decide the “public safety” relevance for publicly posting such information on a City database.

If staff is transparent with the Committee, it will confirm that there are many instances where the City has been found in violation of the Fire Code and exposed to Provincial Offence Proceedings as a result. If the Fire Service and staff are transparent in their communications with your Committee, they will confirm that in many cases charges are laid against the City and against multi-residential landlords even though the perpetrator of the offence is a tenant. It is easier to charge landlords and to recover fines and the legislation gives the Fire Inspectors the option to charge the owner or the tenant, so the more desirable target is the owner/operator rather than the perpetrator. In such cases, the posting of enforcement/conviction information is of no value in assessing “health and safety” issues in a City owned building; however, it would leave a third party observer of the information with the impression that City operated rental buildings are sub-standard when it comes to fire safety, when in reality, they are not. The same holds true for inferences third parties may draw based on charges and convictions relative to private landlords.

In addition, and the Fire Service should confirm this, it is often the case that a landlord will enter a guilty plea to an offence charge rather than incur the cost of hiring legal counsel and going through the trial process even though the landlord may well have a valid defence. In such cases, the existence of a conviction does not reflect any reality about the safety of the building; however, a third party may well draw an incorrect inference about safety based on that information.

A further concern is with the suggestion in the staff report that the costs of the program would be nominal. The reality is that if such a program is to be properly operated, then there will be a need to record, monitor and remove information posted, and to respond to requests/challenges based on incorrect postings. Experience also shows that while there may be enthusiasm to post negative comments about a property, far less enthusiasm is deployed in removing or amending those comments. In addition, once the postings are public, the information is likely to be permanently enshrined in the “sharing” of such media electronically, thus permanently tainting the property and its operator, including the City, with respect to its properties.

Ultimately, the City staff proposal amounts to municipal “empire building” by staff whereas in public policy terms it amounts to nothing more than a form of “shaming” in situations where same is not warranted. If the City and the Fire Service are truly concerned about fire safety and health and safety issues, the logical approach is to be proactive with their inspection powers and to work in collaboration with LPMA and its membership to educate both Landlords and Tenants about fire safety issue and strategies to ensure a safe living environment. We are confident that a collaborative approach is used by the City with housing over which it has direct regulatory oversight and that the same approach would be effective in working with LPMA’s membership.

By contrast, the efforts to publicly shame landlords under the proposed policy will do nothing more than misinform the public as to the actual status of a property relative to fire safety; will further increase the inclination of landlords to mistrust the motivations of both City and Fire Service staff; and, will do nothing to increase fire safety in rental housing. It is noted that no other municipality engages in such public shaming, presumably because in those municipalities a “higher road” is taken when it comes to public dissemination of potentially misleading information.

Finally, before any final decision is made by your Committee, we ask that you allow the results of the FOI request that has been made by LPMA to be processed and the results provided to the Committee so that it can see that the existence of enforcement and conviction information is not reflective of the safety of a building. In our view, a deferral of a decision pending receipt of further information is appropriate and we ask that you do so. We make this request assuming that the City will not be exempting its own housing from the policy and that Members of Council have an equal interest as do private landlords in ensuring that the policy does not in fact mislead its viewers as to the safety of a property.

We have attached a copy of our May submission and of our FOI correspondence with respect to conviction and enforcement of City operated housing. We ask that, in addition to the submissions above, you also review our May submission as we continue to rely on that information in the context of this public meeting.

If there is an opportunity to make oral submissions at the public meeting, we would ask that LPMA be assigned a spot for same and that you advise the undersigned accordingly

Thank you, in advance, for your consideration of this and the attached material.

Yours very truly,

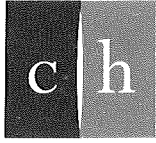
**COHEN HIGHLEY LLP**



signature electronically affixed

Joseph Hoffer  
JJH:rmh  
Email: [hoffer@cohenhighley.com](mailto:hoffer@cohenhighley.com)

Encl.



Cohen Highley<sup>LLP</sup>  
LAWYERS

[www.cohenhighley.com](http://www.cohenhighley.com)

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June 8, 2017

**VIA REGULAR MAIL**

**Attention: City Clerk's Office, Room 308**  
The Corporation of the City of London  
300 Dufferin Avenue  
P. O. Box 5035  
London, ON N6A 4L9

**Re: Request under *Municipal Freedom of Information and Protection of Privacy Act***

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We are the lawyers for the London Property Management Association. Please accept this correspondence as our Access or Correction Request under the *Municipal Freedom of Information and Protection of Privacy Act*.


We are requesting to be provided with a detailed report outlining the infractions and convictions registered against the Corporation of the City London by the London Fire Department from 2014 to present.

We enclose herewith our Firm cheque payable to the Treasurer, City of London in the amount of \$5.00, which represents the applicable fee.

We trust the foregoing is satisfactory; however, if you have any questions please do not hesitate to contact the undersigned. We look forward to receipt of the report.

Yours very truly,

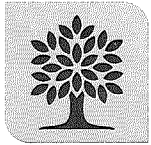
**COHEN HIGHLEY LLP**

  
Emma Sims, Paralegal  
EES:jpn  
Enclosure(s)

*email: [sims@cohenhighley.com](mailto:sims@cohenhighley.com)*

RECEIVED

JUN 22 2017



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London  
CANADA

June 20, 2017

Emma Sims  
Cohen Highley LLP  
255 Queens Ave., 11<sup>th</sup> Floor  
London, Ontario  
N6A 5R8

RE: MFIPPA Request #2017-120 – Convictions against City of London Owned Residential Properties from 2014 to Present

This is in response to your request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the "Act") for access to records of the City of London regarding the matter noted above.

As we have not yet reviewed the records in detail, no final decision has been made regarding access.

Regulation 483 s. 7 says that where the fee estimate is over \$100.00, an institution may request a deposit equal to 50% of the estimated fee.

We have determined that it will take approximately **7 hours of search time**, at \$30.00/hour, and **28 hours of programming time**, at \$60.00/hour to compile the information to answer your request. The cost for producing this information in accordance with the legislation is estimated to be **\$1,890.00**. We will wait until we receive the deposit amount of **\$945.00** before we resume processing the request. The following is a breakdown of the costs:

- 7 hours programming time to develop and test scripts for extracting information
- 7 hours programming time to refresh test databases
- 7 hours search time for GIS address validation
- 14 hours programming time to merge data between LFRS and GIS applications

We do not anticipate any additional costs for records preparation. Charges for photocopying at 20 cents per image have not been included in this estimate as they are not known at this time. Cheques are to be made payable to the City of London Treasurer. Or you may pay by cash, credit, debit or cheque at the 3rd floor City Clerk's Office during regular office hours. Do not send cash by mail. Please contact me at 519-661-2489 ext. 5590 or [eskalski@london.ca](mailto:eskalski@london.ca) to let me know how you would like to proceed.

The Act provides that all or part of the fee can be waived if in our opinion it is fair and equitable to do so, if the fee will cause you financial hardship or if dissemination of the record will benefit public health or safety. You may be required to provide proof to support any waiver claims. Please let me know as soon as possible of your wish to proceed with a request for a fee waiver.

If you disagree with any aspect of the fees, or wish to revise your request, please call to discuss the matter. Afterward, you may request that this fee estimate be reviewed by the Information and Privacy Commissioner who can be reached at 2 Bloor Street East, Suite 1400, Toronto, ON M4W 1A8. Please note that you have 30 days from the receipt of this letter to request a review of this response. If you wish to appeal this response, you must provide the Commissioner's office with the request file number shown in the subject line of this letter, a copy of this decision letter, and a copy of your original request for information that you sent to the City.

Evelina Skalski  
Manager of Records & Information Services  
ES/bs

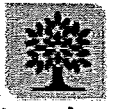
The Corporation of the City of London  
City Clerk's Office  
Office: 519-661-2489 ext. 5590  
Fax: 519-661-4892  
[eskalski@london.ca](mailto:eskalski@london.ca)  
[www.london.ca](http://www.london.ca)

## Rachel Henderson

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**From:** Skalski, Evelina <eskalski@london.ca>  
**Sent:** Friday, July 7, 2017 12:43 PM  
**To:** Emma E. Sims  
**Cc:** Somers, Bridgette  
**Subject:** RE: MFIPPA Request #2017-120 [CHLAW-DMS.FID149235]

I will be issuing a letter on Monday indicating that we do not anticipate to complete this request until August 25<sup>th</sup> due to the fact that there are a large number of records and meeting the time limit (July 31<sup>st</sup>) would unreasonably interfere with the operations of the institution.



**London**  
CANADA

**Evelina Skalski**

Manager, Records and Information Services  
City Clerk's Office, Legal and Corporate Services  
City of London

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May 23, 2017

Via Email: [cpsc@london.ca](mailto:cpsc@london.ca); [msalih@london.ca](mailto:msalih@london.ca); [barmstro@london.ca](mailto:barmstro@london.ca); [mcassidy@london.ca](mailto:mcassidy@london.ca); [psquire@london.ca](mailto:psquire@london.ca); [husher@london.ca](mailto:husher@london.ca)

Chair and Members  
Community and Protective Services Committee  
City of London  
300 Dufferin Avenue, P.O. Box 5035  
London, ON N6A 4L9

Dear Chair and Members:

**Re: Council Policy for Publicly Releasing Enforcement Information  
Meeting on May 24, 2017**

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We are the lawyers for the London Property Management Association (“LPMA”). The LPMA is committed to promoting education and professionalism among its more than 500 members, the vast majority of whom are owners and operators of multi-residential rental properties, including apartment buildings.

The purpose of this letter is to communicate the LPMA’s position regarding the proposed Policy with respect to publicly releasing enforcement information that is the subject of the Community and Protective Services Committee’s (the “Committee”) meeting on May 24, 2017.

The LPMA is very concerned about the proposal to publicly release information with respect to offences under the *Fire Code*.

*The Proposed Policy is Unnecessary and too Broad*

As stated in the Staff Report on the City of London’s website, convictions for Provincial Offences, including violations of the *Fire Code*, before the Ontario Court of Justice are already posted publicly as part of the hard copy docket of violations for a given date, and this includes details of the offence, the name of the defendant, and the case number.

Further, of the twelve other fire departments across the Province that responded to a request for information from the City of London, none publicly post *Fire Code* Offences.

Charges before the Ontario Court of Justice, and related proceedings, are already public. The *Fire Protection and Prevention Act, 1997*, the *Fire Code*, and the *Provincial Offences Act*

already provide mechanisms to ensure compliance with the *Fire Code*, and provide for suitable penalties and consequences in the event of a conviction. The proposed Council Policy essentially enacts an additional punitive measure that is not provided for in the relevant legislation and regulations. The public posting of information as proposed would certainly cause reputational damage to any landlord about whom such information is publicly released.

Additionally, there may be cases where a charge against a landlord is the result of the actions of a tenant (i.e. if a tenant disables or removes a smoke detector or tampers with a fire alarm). In such cases, landlords do sometimes plead guilty to the charge, not because they have done anything wrong, but because it is less expensive to incur the penalty under the *Fire Code* and *Provincial Offences Act* than it is to incur the legal fees associated with a trial to attempt to secure an acquittal. The reputational damage that would result from the public release of such information would be undeserved and unnecessary.

The proposed Council Policy provides that “[t]he nature of the information will dictate whether” information about *Fire Code* violations will be publicly released by press release, social media, or posted on the City’s website. The proposed Council Policy also provides that “[t]he nature of the information will dictate when information is suitable for release”, and that enforcement information should not be released before a summons is issued to the defendant. Summonses are, of course, issued before there is any conviction, withdrawal of charges, or acquittal.

This suggests that the City may release information about charges even before conviction, and may do so in a manner that may reach the public at large, as opposed to only those who seek out the information. The release of information about unproven allegations is wholly inappropriate. The proactive public release of such information would damage the reputation of a landlord, even if such charges are ultimately withdrawn or an acquittal is obtained with respect to such charges. Such damage cannot be adequately repaired by some future action, including publicly releasing information about an acquittal or withdrawal at a future date. Such information, particularly prior to a conviction, should not be publicly released.

Imposing punitive reputational damage on landlords who are convicted of, or perhaps even just charged with, an offence under the *Fire Code* is not necessary or appropriate: the relevant information is already public; the relevant legislation and regulations do not provide for such public release of information; no other fire department in the Province that we are aware of publicly releases such information; and appropriate consequences and penalties are already in place for *Fire Code* violations.

The LPMA asks that the Committee reconsider this policy for the reasons outlined above.

I trust the foregoing is satisfactory.

Yours very truly,

**COHEN HIGHLEY** LLP

A stylized, handwritten-style signature in black ink, consisting of several overlapping loops and a trailing line.

Electronic signature digitally attached.

Mark W. Melchers, Associate Lawyer  
MWM:mwm

email: [melchers@cohenhighley.com](mailto:melchers@cohenhighley.com)