

MANAGEMENT REPORT TO THE GREATER TORONTO TRANSPORTATION AUTHORITY

Board Meeting Date: August 24, 2007
Item Class: Chair's Item
 Decision
 In Camera
 Information
 Resolution / By Law

RECOMMENDATIONS:

BE IT RESOLVED THAT:

The Corporation approve the attached Corporate Administration Policy 07-004 – Board Members' Use of Municipal and Regional Staff.

ISSUE:

It is necessary to define the circumstances in which a Board member may provide the Corporation's confidential information to regional and municipal staff (including GO Transit and TTC staff).

Legal Implications:

If the Corporation does not establish restrictions and controls around the distribution and use of confidential information, there is a risk that inappropriate information may come within the public domain. This consequence does not serve the Corporation's commercial or other best interests and may result in a breach of the Corporation's statutory and contractual confidentiality and privacy obligations.

POLICY STATEMENT:

It is in the Corporation's and public's best interests to allow a Board member to use municipal and regional staff to assist him or her in assessing those issues and matters which require board approval, consideration or direction. At the same time, it is important to maintain the confidentiality of GTTA information which is not in the public domain. This policy seeks to achieve a balance between these priorities by authorizing the disclosure of certain confidential information to those employees on a need-to-know basis provided such employee first signs the Corporation's form of non-disclosure agreement.

Some categories of confidential information will be designated by the Chair as Excluded Confidential Information and may not be disclosed to employees without the Chair's authorization. Generally these categories will follow similar criteria to the guidelines

designated for items requiring in camera Board consideration in the Corporation's Open Meeting Policy. Regardless of the absence of a Chair designation of Excluded Confidential Information, on a case-by-case basis each Board member must consider whether, or the extent to which, disclosure of confidential information to an employee is appropriate and in the Corporation's best interests.

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GTTA CORPORATE ADMINISTRATION
ADMINISTRATIVE MANAGEMENT

Section	Subject Board Members Use of Municipal and Regional Staff (Confidential Information)	Date Approved TBD	Policy Number CA-07-004
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INTRODUCTION

The object of this Policy is to define generally the circumstances in which a GTTA board member may call upon the staff of the region or municipality which recommended such Board member to assist him or her in assessing those issues and matters which require board approval, consideration or direction. In view of the magnitude, scope and importance of GTTA's mandate and the demanding timetable in which GTTA intends to fulfill its mandate, allowing Board members to utilize such staff resources is in GTTA's and the public's best interests.

Providing staff with access to information relating to GTTA or the proposed Regional Transportation Plan must balance certain interests and priorities. On the one hand, such access permits Board members to discharge their responsibilities by enabling the fullest possible consideration of the relevant issues. On the other hand, prior to releasing certain information, recommendations or conclusions to the public, GTTA's staff and Board must be both free to candidly discuss these matters internally and to observe confidentiality and privacy obligations. This balance is reflected in GTTA's existing policy (CA-O7-001) on Open Board Meetings.

PART 1- INTERPRETATION

1.01 Definitions

In this Policy, unless another meaning is stated or is dictated by the context, words or phrases which are defined in the Act have the meanings so ascribed to them and

"Act" means the *Greater Toronto Transportation Authority Act, 2006*.

"Board" means the board of directors of the Corporation.

GTТА CORPORATE ADMINISTRATION
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"**Chair**" means the chair of the Board.

"**Corporation**" or "**GTТА**" means the Greater Toronto Transportation Authority.

"**Director**" means any director of the Corporation.

"**GTТА Confidential Information**" means information or material which has not been made available generally to the public and which relates to the actual or anticipated business or operations of GTТА. GTТА Confidential Information can exist in any form, including oral or written statements, information remembered, information stored electronically, and information embodied in objects or processes. GTТА Confidential Information includes the following:

- a) Information about GTТА's programs, plans and strategies;
- b) Information about current or proposed GTТА contract negotiations or contractual agreements;
- c) Financial, accounting, or cost information and projections concerning GTТА and any of its activities;
- d) Information obtained from others which GTТА has agreed or determined to keep confidential;
- e) Information about GTТА transactions, including proposed transactions;
- f) Information relating to current and proposed GTТА personnel, including compensation data.

Provided that such information or material has been acquired by a Director primarily by reason of that Director's Board membership.

"**GTТА Employee**" means any employee of the Corporation, whether full- or part-time and whether employed for an indefinite or a fixed or otherwise limited term.

"**GTТА Excluded Information**" means GTТА Confidential Information designated by the Chair in accordance with section 2.03 of this policy.

"**GTТА Region**" means the regional transportation area as defined in the Act.

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“Municipal Employee” means any permanent employee of any municipality or region in the GTHA Region for which the Act requires Board representation who is contractually bound to keep confidential any municipal or regional information which is not in the public domain, including third party information in the possession of such municipality or region.

“Open Meeting Policy” means the policy identified as GP-07-001 approved by the Board on April 27, 2007 authorizing the holding of all Board meetings in public except in those circumstances defined in the Open Meeting Policy where an in-camera consideration is required.

PART 2 - MUNICIPAL EMPLOYEE STAFF ACCESS TO GTТА INFORMATION

- 2.01** Except as set out in this policy Directors are permitted to disclose to Municipal Employees all GTТА Confidential Information.
- 2.02** Disclosure may only be made by a Director to a Municipal Employee of the municipality or region which recommended the Director for GTТА board membership. Permitted disclosures shall not be made generally to municipal or regional employees but shall be limited to disclosures on a need-to-know basis to those Municipal Employees who have signed a GTТА non-disclosure agreement in the form attached as Schedule A, as may be amended by GTТА from time to time.
- 2.03** The Chair may designate certain GTТА Confidential Information as strictly confidential and restricted to Board review only. No Director shall disclose GTТА Excluded Information to any Municipal Employee or other third party without the express authorization of the Chair. In making such designation the Chair will consider criteria similar to the criteria set out in section 3 of the Open Meeting Policy, provided that information or materials relating to the Regional Transportation Plan shall not automatically result in such designation where other criteria of section 3 in the Open Meeting Policy do not apply. Section 3 of the Open Meeting Policy is excerpted and attached as Schedule B to this policy.

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- 2.04** In addition, notwithstanding the absence of a Chair designation, it is each Director’s individual responsibility to determine whether and the extent to which it is appropriate to disclose GTТА Confidential Information to a Municipal Employee, an assessment which must be made on a case-by-case basis having regard to all relevant matters including the nature of the GTТА Confidential Information.

- 2.05** This policy is not intended to supersede or amend any provision in the Open Meeting Policy, including provisions relating to attendance of non-Board members at closed Board meetings. Any Municipal Employee who is authorized by the Board to attend any in-camera Board meeting shall sign a non-disclosure agreement in the form stipulated by GTТА in its sole discretion. Specific Board authorization and non-disclosure agreements shall be required for each in camera Board meeting attended regardless of whether a particular individual has satisfied these requirements with respect to earlier Board meetings. Failure to sign such form of agreement without amendment shall result in exclusion of that Municipal Employee from the relevant meeting.

- 2.06** This policy also applies, with appropriate modifications, to any Director’s release of GTТА Confidential Information to employees of GO Transit or the Toronto Transit Commission.

PART 3 – EFFECTIVE DATE

- 3.01** This policy shall take effect immediately upon adoption by the Board.

Schedule A

NON-DISCLOSURE AGREEMENT

1. The undersigned, _____, hereby acknowledges and agrees that any access I am provided to confidential information of the Greater Toronto Transportation Authority (the "Corporation" or "GTTA")) is expressly conditional upon my agreement to the terms and conditions set out in this Non-Disclosure Agreement.

I understand and agree that, in providing support to a GTTA board member, I have received or will receive information or material which has not been made available generally to the public and which relates to the actual or anticipated business or operations of the Corporation. All of such information and material will be referred to in this agreement as "Confidential Information." Confidential Information can exist in any form, including oral or written statements, emails, Board reports and information remembered. Confidential Information includes, but is not limited to, the following:

- Information about the Corporation's programs, plans and strategies;
 - Information about the Corporation's current or proposed contract negotiations or contractual agreements;
 - Financial, accounting, or cost information and projections concerning the Corporation and any of its activities;
 - Information obtained from others which the Corporation has agreed or determined to keep confidential;
 - Information about Corporation transactions, including proposed transactions;
 - Information relating to current and proposed Corporation personnel, including compensation data.
2. I shall not, without the Corporation's prior written permission and except as required by law, use, reproduce or disclose to anyone outside of the Corporation or a member of the Corporation's Board of Directors, any Confidential Information. For greater certainty I will be entitled to discuss Confidential Information with any other employee employed by the municipality or region which employs me provided such employee (i) has first signed and delivered to GTTA this form of non-disclosure agreement; and (ii) first establishes that the GTTA Board member recommended by the region or municipality which employs me has authorized him or her in writing by to receive the Confidential Information.

3. I shall guard against inadvertent disclosure of Confidential Information, including discussing such matters where they may be overheard by others. I understand and agree that the Corporation is entitled to legal relief to prevent me from using or disclosing such Confidential Information, and I understand that I also may be subject to other civil or criminal sanctions.

Dated at Toronto this ____ day of _____, 2007

[print name, and employer]

[witness]

I hereby authorize the disclosure of GTTA information to _____
_____ and acknowledge that his or her use of such
information is governed by this Non-Disclosure Agreement.

[name and signature of Board member]

[date]

Schedule B

Excerpt from Open Board Meeting Policy

Exceptions to open Board meetings

1. GTTA Board meetings shall be closed in the following circumstances:
 - a. Where necessary to respect the rules of Cabinet confidentiality and Ontario Budget secrecy;
 - b. To deal with matters related to intergovernmental negotiations involving two or more orders of government, as described in section 15 of the Freedom of Information and Protection of Privacy Act;
 - c. Where necessary to ensure personal privacy and commercial competitiveness in its dealings;
 - d. Where the security of property is at stake;
 - e. Where human resource issues or personal matters about an identifiable individual are being considered;
 - f. Where a proposed or pending acquisition or disposition of land by the GTTA, GO Transit, railways, the Ontario Government or any municipality or local board, including municipal transit authorities and municipal parking authorities is being considered and disclosure could impact the transaction;
 - g. Where labour relations or employee negotiations, including negotiations affecting the GTTA, GO Transit, railways, the Ontario Government or any municipality or local board, including municipal transit authorities and municipal parking authorities are being considered;
 - h. Where litigation or potential litigation, including matters before administrative tribunals, affecting the GTTA, GO Transit, railways, the Ontario Government or any municipality or local board, including municipal transit authorities and municipal parking authorities is being considered;
 - i. Where legal advice that is subject to solicitor-client privilege is being received;
 - j. Where the subject matter relates to the consideration of a request under the Municipal Freedom of Information and Protection of Privacy Act affecting the GTTA, GO Transit, railways, the Ontario Government or any municipality or local board, including municipal transit authorities and municipal parking authorities;
 - k. Where the meeting is held for the purpose of educating or training Board members and no decision-making takes place (unless the matter would otherwise qualify under the closed meeting exceptions

outline in these policies and procedures); or

- I. Where the meeting is held for the purpose of developing the Corporate Strategic Plan. The Board will adopt the final version of any such Strategic Plan at a regularly scheduled open Board Meeting.