August 13, 2018

Dear [Redacted]:

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act, 2015 [Our File #: MAE/75/2018]

On August 9, 2018, the Department of Municipal Affairs and Environment received your request for access to the following records/information:

1. A copy of the report compiled by the Dept. of Municipal Affairs staff concerning [Redacted] formal investigation into the operation of the Town of Paradise regarding violations of the Municipals Act & the Elections Act.
2. A copy of the letter sent to the Town of Paradise from your Dept regarding [Redacted] a formal investigation.”

I am pleased to inform you that a decision has been made by the Deputy Minister of the Department of Municipal Affairs and Environment to provide access to the requested information.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

The Access to Information and Protection of Privacy Act requires us to provide an advisory response within 10 days of receiving the request. As this request has been completed prior to day 10, this letter also serves as our Advisory Response.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (the Act). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL, A1B 3V8
Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

P.O. Box 8700, St. John's, NL, Canada A1B 4J6 709 729 5677 709 729 0943 www.gov.nl.ca
You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-7183 or by e-mail at lisas@gov.nl.ca.

Sincerely,

Lisa Sullivan
ATIPP Coordinator

Enclosures
Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52(1) or 53(1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16(2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45(2).
July 26, 2018

Mayor Dan Bobbett and Council
Town of Paradise
28 McNamara Drive
Paradise, NL A1L 0A6

Dear Mayor Bobbett and Council:

I am writing in response to correspondence received by the Department of Municipal Affairs and Environment (MAE) that raised concerns regarding a number of matters within the Town of Paradise; specifically, the concerns centered on conflict of interest allegations, hiring practices for senior staff, severance of former employees, and irregularities related to the 2017 municipal election.

Over the past several months, department officials reviewed the areas of concerns. The analysis included discussions with the resident, discussions with town officials, and a review of various materials and documents related to the matters. As a result of the analysis, there are a couple of areas of interest that have been highlighted and recommendations with respect to legislative requirements.

Conflict of Interest

The review highlighted two instances where Council became aware of potential conflict of interest situations. Since Council has the responsibility to investigate and make decisions regarding allegations of conflict of interest, there is a high degree of accountability placed on Council to ensure the proper process and legislative requirements are followed.

In both instances reviewed, although legal advice was obtained, there does not appear to be a decision of Council or motion made during a public meeting of Council, per section 209, 212 and 213 of the Municipalities Act, 1999. Council is reminded that all decisions of council should take place at a public meeting of Council. Furthermore, it is recommended that following a Council’s review of conflict of interest allegations, the decision and vote of Council regarding conflict allegations should be made during a public meeting of Council per section 209, 212, and 213 of the Municipalities Act, 1999.

Hiring of Employee and Severance of Employees

With respect to hiring of employees, the responsibility for operational decisions, such as hiring, is with the municipality. As such, there is no role for the Department in this matter.
With respect to severance of employees, town officials confirmed that the files were discussed at a privilege meeting, as the matter was considered to be private in nature. Council is reminded that all decisions of Council must be made at a public meeting of Council in accordance with sections 212 and 213 of the legislation. Council may wish to consult with the Access to Information and Protection of Privacy Office prior to such meetings as necessary to ensure that personal and private information is protected in that regard.

Irregularities Relating to the 2017 Municipal Election

Although concerns were expressed with regards to the destruction of the tally sheets and associated materials with the ballot boxes, it appears the ballot boxes were destroyed in accordance with the Municipal Elections Act. MAE acknowledges that the returning officer did receive legal advice relating to this matter; however, given the ongoing Access to Information Request at the time, it would have been prudent to consult with the Office of the Information and Privacy Commissioner prior to the destruction of the records.

MAE notes that per recommendations from the Information and Privacy Commissioner, the Town adopted a revised Record Retention Policy in April, 2018. MAE recommends that Council regularly review this policy and update as required.

If you have any questions regarding the above, please call the Eastern Regional Office at 729-0259.

Sincerely,

LORI EVOY
Regional Manager

cc: Ms. Heather Tizzard, ADM - Municipal Infrastructure and Support
Report Pertaining to the Town of Paradise
Prepared in response to a concerns raised by a resident of the Town of Paradise

Submitted July 24, 2018
By Officials of the Department of Municipal Affairs and Environment
SECTION 1 – PURPOSE

This is a report on the review of the operational activities of the Town of Paradise. Specifically, the report contains the findings of the analysis undertaken in response to several concerns expressed by a resident. The concerns centered on conflict of interest allegations, hiring practices for senior staff, severance of former employees, and irregularities related to the 2017 municipal elections.

SECTION 2 - BACKGROUND

On February 2, 2018, [Redacted] met with officials from the Department of Municipal Affairs and Environment (MAE) and outlined a number of concerns he had regarding the Town of Paradise. In addition, [Redacted] contacted departmental officials on several occasions to outline his concerns regarding the Town’s operations.

On February 9, 2018, [Redacted] submitted a package of information which outlined his concerns and asked the Department to investigate.

The analysis included these issues as well as other issues that were brought to the Department’s attention during the course of the review.

SECTION 3 – THE REVIEW

Part 1 - Conflict of Interest

This part of the report will outline the conflict of interest allegations. The conflict of interest situations in this report were reviewed as a result of being brought to Department’s attention or as they were noted during the review of the minutes of council. As such, there may be other conflict of interest situations that have not been reviewed.

Prior to engaging in the specific instances of conflict as raised for review, it is important to understand: the legislative framework regarding conflict of interest; recommended policies and procedures, including principals of natural justice and transparent discussion and tabling of decisions, in investigating same; and the Department’s role in these matters.

Pursuant to section 207(1)(b) of the Municipalities Act, 1999 (the Act), a Councillor with a relative who has a monetary interest in a matter, directly or indirectly, may be in a conflict situation if speaking to or voting on a decision regarding that matter.

207. (1) A councillor shall not vote on or speak to a matter before the council or a committee of the council where

(a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;
(b) the councillor has a monetary interest directly or indirectly in the matter;

(c) a relative of the councillor has a monetary interest in the matter; or

(d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.

(2) For the purpose of subsection (1) a relative of a councillor means a father, mother, spouse, cohabiting partner, sister, brother, child, step-child, ward, mother-in-law, father-in-law, sister-in-law, or brother-in-law of the councillor.

The Municipalities Act, 1999, places the onus on Council to investigate and determine conflict of interest matters. Section 206(2) states:

A council shall, by resolution, declare vacant the office of an elected councillor where that councillor

(a) fails to disclose that he or she has a conflict of interest in a matter being discussed by the council; or

(b) discusses or votes on a matter on which he or she has a conflict of interest.

It is important to note, that the Department does not provide advice to Councils as to whether or not a Councillor is considered to be in a conflict of interest. The Department’s role in such matters is to outline the legislation and recommended best practice, and Council’s responsibility to investigate conflict of interest allegations.

Since Council has the responsibility to investigate allegations of conflict of interest, there is a high degree of accountability placed on Council to ensure the rules of natural justice are applied. In other words, Council has an obligation to ensure that a fair process is followed in determining conflict of interest.

In general, this would mean that once Council has made a decision to investigate a potential conflict, Council then has the duty to provide details of the allegation to the Councillor and to provide for a friendly hearing in order to allow the Councillor to be heard. The Councillor should have adequate notice of the meeting and be presented with an opportunity to provide evidence and information to Council. Only then, should Council make a final determination.

Furthermore, as per section 209 of the Act, if a Councillor is unsure if they are in a conflict of interest, a councillor may ask Council to determine whether or not they are in conflict. This decision of Council should take place during a public meeting of council and include a recorded vote by Council.

209. (1) Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall
make a disclosure and the council may decide the question by majority vote and its decision on the matter is final.

(2) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

Conflict of Interest Allegations – Councillor Quilty

Background:
Councillor Debra Quilty was first elected to Council as a councillor during the General Election in 1993. Councillor Quilty was re-elected in the 2017 General Election and has served on Council for 24 years.

It is alleged that Councillor Quilty participated in a discussion and/or voted on a matter before council which may represent a potential conflict of interest.

Review:
The review focused on one potential conflict of interest situation involving Councillor Quilty.

Change Order #1 for Paradise Road and St. Thomas Line Intersection.

On April 4, 2017, during a public meeting of Council, a motion was moved by Councillor Quilty and seconded by Councillor Willis to approve a “Change Order #1 – Engineering Fees for Design and Construction of Intersection improvements at Paradise Road and St. Thomas Line in the amount of $41,668 (HST included)”. Motion #: M17-083. The minutes of April 7, 2017, do not reflect any discussion regarding conflict of interest in regards to this motion.

On February 9, 2018, a resident wrote Council and advised the Town of a potential conflict of interest matter concerning Councillor Quilty with respect to the motion of April 4, 2017. The allegation is that Councillor Quilty should have declared a conflict of interest because [redacted] could financially benefit from the construction of a proposed roundabout.

On March 12, 2018, the Chief Administrative Officer (CAO) of the Town of Paradise responded to the resident in a letter and advised that upon review of the Council meeting minutes, the Municipalities Act, 1999, discussions with Municipal Affairs and Environment and discussions with legal counsel that Councillor Quilty was not deemed to be in a conflict of interest.

Town officials confirmed that during a privileged meeting on March 21, 2017 (prior to the April 4 meeting), the Town Council discussed the potential conflict of interest for Councillor Quilty and Council agreed that Councillor Quilty was not in conflict in discussing the issue regarding the intersection on Paradise Road and St. Thomas Line.
MAE advises that all Council decisions must take place at a public council meeting as per the Municipalities Act, 1999, sections 212 and 213.

Voting

212. (1) A motion or resolution before a council shall be decided by a majority vote of the councillors in attendance at the meeting except where a 2/3 vote of the councillors in office is required.

(2) A councillor shall not abstain from voting on a motion or resolution before the council unless he or she is required to abstain from voting because of a conflict of interest under section 207 or he or she has been permitted to abstain by a majority vote of the other councillors in attendance at the meeting.

(3) Where a councillor abstains from voting on a motion or resolution, a decision shall not be made on that motion or resolution unless the number of councillors in favour of the motion or resolution is equivalent to or more than a majority of the councillors in attendance at the meeting.

(4) The minutes of a council meeting shall indicate the names of the councillors who vote for and against and who abstain from voting on a motion or resolution.

(5) Where there is a tie vote on a motion or resolution, that motion or resolution shall be considered to be defeated.

Privileged meetings

213. (1) A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.

(2) Where a meeting is held as a privileged meeting or declared to be a privileged meeting, all members of the public present at the meeting shall leave.

(3) A decision of the councillors made at a privileged meeting shall not be valid until that decision has been ratified by a vote of the councillors at a public meeting.

Conclusions/Recommendations:
In the case of Councillor Quilty, while Council discussed the matter prior to the motion of April 4, 2017, during a privileged meeting of Council. There does not appear to be a decision of Council or motion during a public meeting of Council, as per section 212 and 213 of the legislation.

It is recommended that Council be reminded that all decisions of council should take place at a public meeting of Council as per the legislation.

Conflict of Interest Allegations –Mayor Dan Bobbett

Background:
Mayor Dan Bobbett was first elected to Council as a councillor during the General Election in 2005. Mayor Bobbett was re-elected in the 2017 General Election. Mayor Bobbett has served on Council for 12 years.
It is alleged that Mayor Bobbett participated in a discussion and/or voted on a matter before council which may represent a potential conflict of interest.

**Review:**
The review focused on one potential conflict of interest situation involving Mayor Bobbett.

**Letter sent to Employees of the Town of Paradise**

On December 31, 2016, the contract between the Town of Paradise and the Nape Local expired and negotiations for a new contract were initiated.

In October, 2017, a letter was sent to employees of the Town of Paradise, signed by Mayor Dan Bobbett. The letter outlined the Town’s position with respect to recent labour negotiations and advised that benefits would not be provided by the Town’s insurance provider in the event of a strike or lock-out.

The allegation is that Mayor Bobbett was in a conflict of interest in writing the letter, as [redacted] was an employee of the Town of Paradise when the letter was written. The letter outlined the Town’s latest offer to the union, including a proposed schedule of pay increases.

On January 16, 2018, MAE received an anonymous complaint regarding Mayor Bobbett’s involvement in contract negotiations for the Town throughout 2017 until he removed himself in October 2017 and alleged that the Mayor was in a conflict of interest as [redacted] was an employee of the Town.

MAE officials contacted the Town and advised the Town Clerk of the conflict of interest allegations. The Town Clerk advised that the information would be reviewed.

On January 30, 2018, the Town Clerk advised in an e-mail that when the Mayor became aware of the potential conflict in October, the Town addressed the situation and obtained a legal opinion. The matter was also discussed with the Finance Committee and Council as a whole.

On February 9, 2018, the same resident that notified Council of a potential conflict of interest with Councillor Quilty, advised Council of a potential conflict of interest with regards to Mayor Bobbett and the letter to employees of the Town in October 2017.

On March 12, 2018, the Chief Administrative Officer (CAO) of the Town of Paradise responded to the resident in a letter and advised that upon review of the Council meeting minutes, the *Municipalities Act, 1999*, discussions with Municipal Affairs and Environment and discussions with legal counsel that Mayor Bobbett was not deemed to be in a conflict of interest. The letter was the same letter that advised of Councillor Quilty’s matter.

On April 18, 2018, the Town Clerk further advised that the Town followed legal advice on the matter. Furthermore the Mayor declared a conflict of interest and left the room at the following times:

- October 17, 2017 - Finance Committee meetings
• November 7, 2017 - Privileged meeting of Council
• November 7, 2017 – Public meeting of Council when contract was voted on.

In a follow up conversation, the CAO and Town Clerk confirmed that specific legal advice was obtained in regards to the matter. Although, there were updates provided to Council with respect to the negotiations, the CAO was the chief negotiator for the Town and Council was not involved. The October 2017 letter was an update to employees and had been drafted by the Town’s lawyer. A discussion took place whether the CAO or Mayor would sign the letter, and the Town was advised that the Mayor should sign the letter.

Conclusions/Recommendations:
In the case of Mayor Bobbett, there does not appear that a decision of council was made as per the legislation. Although there were discussions with both staff and councillors and legal advice obtained on the matter, it does not appear a decision of Council was made by a motion during a public meeting of Council, as per section 209 the legislation.

It is recommended that following a Council’s review of conflict of interest allegations, the decision and vote of Council regarding conflict allegations should be made during a public meeting of Council per section 209, 212, and 213 of the Municipalities Act, 1999. Decisions regarding conflict of interest should be tabled by Council at a public meeting.

Part 2 – Hiring Practices

This part of the report will outline concerns forward to MAE regarding the promotion of the acting CAO to permanent CAO.

Background:
The Town of Paradise has a position of CAO. The former CAO resigned on August 1, 2017. The Town’s Executive Assistant was promoted to acting CAO following the resignation. In September, 2017, a competition for the position was held and the acting CAO was successful in the competition and became the new permanent CAO.

The allegations are as follows: interviews were conducted by only two councillors and the Manager of Human Resources (who reports to CAO); interviews were conducted prior to the General Municipal Election and a new Council taking office; and the new CAO did not meet the qualifications as outlined in the posted notice. There was also a concern that the Manager of Human Resources, who reports to the CAO, was in a conflict of interest by participating on the hiring committee.

Review:
The Town of Paradise is incorporated under the Municipalities Act, 1999 (the Act). The Act enables municipalities to deliver various services to their residents. Furthermore, a municipality only has the authority conferred on it by its enabling legislation. As such, the Council must follow the legislation with respect to hiring the Town Manager position.
As per section 53(1) of the Act, a municipality may establish the position of Town Manager. Section 53(4) allows a council to appoint an acting Town Manager in the absence of a Town Manager. Furthermore, as outlined in section 54, a Manager is the chief executive and chief administrative officer of the council.

53. (1) A town council may establish the position of town manager and may, by a vote of 2/3 of the councillors in office, appoint a person to the position of town manager.

53. (4) Where the office of manager is vacant, or the manager is unable to carry out his or her duties, the council may appoint a person to act as manager and the acting manager has and may exercise the powers and shall carry out the duties of the manager.

54. (1) A manager is the chief executive and administrative officer of the council and head of its administrative branch and is responsible to the council for the proper planning, execution, conduct and the proper administration of the affairs of the council.

The Minutes of September 19, 2017, contain the following motion to appoint the CAO:

M17-295  Moved by Councillor Laurie, seconded by Councillor Martin.

“BE IT RESOLVED that the Town of Paradise appoint Lisa Niblock to the position of Chief Administrative Officer.” Motion carried.

Conclusions/Recommendations:

The Act specifies that a vote of 2/3 of the councillors in office is required to appoint a person to position of town manager. The legislation does not outline the procedure with respect to how a Council should recruit a candidate for a particular position.

The responsibility for operational decisions, such as hiring, is with the municipality. As such, Council may conduct interviews in a manner that they choose. The concerns raised as noted above, regarding the interview process and the qualifications of candidates are matters that fall under the authority and purview of the town and in which MAE has no authority to intervene.

With respect to the concern that the Manager of Human Resources, who reports to the CAO, was in a conflict of interest by participating in the hiring committee, municipal legislation does not provide for such matters. The Act refers to conflict of interest with respect to councillors only. It is recommended that conflicts regarding employees be covered by a municipality’s policy and procedures manual.

Part 3 – Severance of former Director and CAO

This part of the report will outline concerns forwarded to MAE regarding the resignations and payout of the former Director of Public Works and CAO.
Background:
The Town of Paradise has a number of management positions including a Director of Public Works and CAO. The Director of Public Works resigned on June 6, 2017, and the CAO resigned on August 1, 2017.

The allegation is that both employees resigned from their positions but remained on the Town’s payroll for several months, continued to receive pension and benefits, and received a severance payout.

Review:
Town Officials confirmed that the Council contacted legal counsel with respect to the positions and followed legal advice with respect to the resignations. Town Officials also confirmed that the Town has several human resource policies. The Town’s Management Staff Policy and Procedure was developed in 2005 and had become outdated. A new policy, Compensation Policies – Management and Non-Union/Non-Union Employees was adopted in August 2017, and came into effect on January 1, 2018.

Town officials stated that they followed the old policy with respect to the resignations. In addition, legal advice was sought and followed in both cases.

Town officials confirmed that both the Public Works Director and CAO files were discussed at a privilege meeting of Council. Council felt that since the employee resigned, there was no requirement to bring a motion forward at a public meeting. Council was concerned that the matter was considered to be private in nature, with respect to the resignations.

As highlighted during the conflict of interest sections of this report, MAE advises that all Council decisions must take place at a public council meeting as per the Municipalities Act, 1999, sections 212 and 213.

Recent rulings from the Office of Information and Protection of Privacy Commissioner, with respect to severance, provided additional information to the Town. There were two reports provided, report #A-2017-024 and report #A-2017-027. The reports noted that payment information related to individuals could be provided, but other information contained in the record related to employment history could be withheld by the town.

Town officials confirmed that since the ruling received from the Office of Information and Protection of Privacy Commissioner with respect to severance, the Town is now ratifying all monthly payrolls at a public meeting of Council.

Conclusions/Recommendations:
It is recommended that Council be reminded that all decisions of council should take place at public meeting of Council, as per the legislation. Council may wish to consult with the Access to Information and Privacy Protection Office in order to ensure that personal and private information is protected in that regard.
Part 4 – Irregularities related to the 2017 Municipal Election

This part of the report will outline concerns forward to MAE regarding concerns of possible irregularities related to the 2017 general municipal election.

Background:
The Town of Paradise held a general municipal election on September 26, 2017. Following the election, there was an access to information (ATIPP) request to the Town of Paradise for information with respect to the general municipal election. The requested information included a copy of the tally sheets and a list of streets associated with each of the 34 ballot boxes. The ballot boxes were destroyed before the ATIPP request could be completed.

The concern raised is that the ballot boxes were destroyed prior to the completion of the ATIPP request. Furthermore, a concern was expressed that the ballot boxes were destroyed without the proper authority.

Review:
As the Office of the Information and Privacy Commissioner prepared a report (Report #A-2018-004) with respect to the election records being destroyed with respect to the ATIPP request, the review focused on whether or not the ballot boxes were destroyed in accordance with the Municipal Elections Act (MEA).

The MEA establishes the rules of conduct and the administration of municipal elections in the province.

The report prepared by the Office of the Information and Privacy Commissioner, stated that an applicant submitted a request on October 12, 2017, for “...a copy of the 34 polling station tally sheets signed by the poll clerk. The official tally sheet signed by the ballot, Election Ballots.”

The report stated that the Town acknowledged the request on October 13, 2017, and advised the applicant on October 26, 2017, that “some of the information that you requested including the election ballots and tally sheets were sealed in the ballot boxes on the election night as per the Municipal Elections Act.”

Furthermore, the report also stated that a response was provided to the applicant advising that there were “no records responsive to your request” and that “all election materials including the ballots were destroyed on October 26, 2017, in accordance with section 59 of the MEA.”

Section 59(1) of the MEA states the following:

unless it is otherwise ordered by a court or unless a recount is demanded, the ballot boxes shall remain sealed as received by the returning officer and shall be retained by him or her for a period of 30 days after the election and until the termination of a legal proceeding instituted to test the validity of the election taken within that period of time.
Furthermore, section 59(2) states:

*when the time has elapsed under subsection (1), the ballot boxes shall be unsealed and the ballots and other associated material shall be destroyed as authorized by the returning officer.*

The Town took the position, that in the absence of a recount or court order, section 59 requires the destruction of the ballot boxes and their contents 30 days after the election.

According to Town officials, the returning officer authorized the destruction of the ballot boxes on October 25, 2017, in accordance with the legislation. Town officials also stated that the Town received a legal opinion on the matter prior to the destruction of the boxes as the Town was aware of an ATIPP request for the documents. The Town advises that it followed the legal opinion and destroyed the ballots and other associated materials.

Section 57 of the MEA references a number of documents used in the administration of the elections. Section 57(1) states:

*the poll book, the list of voters, the envelopes containing the ballots, and all other materials related to the elections, except for the returning officers statement referred to in subsection 56(3) shall then be placed in the box.*

Furthermore, section 57(2) states:

*the returning officer or deputy returning officer shall, after the requirements of subsection (1) have been carried out, immediately seal the ballot box and in the case of a deputy returning officer shall immediately deliver it and the statements referred to in subsection 56(3) to the place designated by the returning officer.*

The tally sheets are known as the MEF-15 forms. Section 57 refers to “*all materials related to the election,*” which would include the tally sheets. According to the Report, the Town advised that these records were destroyed with the ballot boxes and were no longer available.

The report concluded that while there was insufficient evidence to find the Town destroyed the records to evade the access request, the destruction of the documents were careless at best.

With regards to the MEA, the report concluded that the Town had the authority to destroy certain records, such as those outlined in section 57 of the legislation. However, the report recommended that the Town revise its Record Retention Policy to address the retention and destruction of election related records other than the ballot boxes and their contents.

Town officials confirmed that the Town adopted a revised Records Retention Policy on April 17, 2018.
Section 68 of the MEA, provides for a candidate or person who has a right to vote at the election to petition the court with respect to an unlawful election.

68. (1) A petition complaining of
   (a) an unlawful return or election of a councillor;
   (b) no return or a double return; or
   (c) an unlawful act committed by a candidate returned, by which that
candidate is alleged to have become disqualified to serve on the council,

may be presented to the court by a candidate for the election or another person
who had the right to vote at the election.

Furthermore, section 72 outlines the time limits for a petition to be completed.

72. (1) A petition complaining of the unlawful return or the unlawful election of
a councillor or of a double return may be presented within 30 days after the
return has been made by the returning officer of the councillor to whose election
the petition relates.

   (2) Notwithstanding subsection (1), where the petition questions the
return or election upon an allegation of corrupt practices, and specifically alleges
a payment of money or other reward to have been made by a councillor or on his
or her account or with his or her knowledge since the time of that return in
pursuit of or to further those corrupt practices, the petition may be presented
within one month after the date of that alleged payment.

A petition was not filed with respect to the Town of Paradise municipal general election.

Conclusions/Recommendations:
Although concerns were expressed with regards to the destruction of the tally sheets and associated materials with the ballot boxes, Town officials confirmed that the records were authorized by the returning officer and destroyed after the Town sought legal advice on the matter. It appears the tally sheets and ballot boxes were destroyed in accordance with the MEA.

It is recommended that Council continue to monitor and review their Records Retention Policy.

SECTION 4 – SUMMARY AND RECOMMENDATIONS

Based on the review, there are areas in which recommendations have been made, others which fall under the purview of the Town and outside the purview of MAE, and areas under which the Town has already taken corrective measures.

Conflict of Interest
The report highlighted two instances where Council was notified of potential conflict of interest situations.
In both of the instances reviewed in this report, it appears that the process is not being followed with respect to the tabling of information and undertaking decisions during public meetings. Although legal advice was obtained and the conflicts reviewed and discussed, there does not appear to be a decision of Council or motion made during a public meeting of Council, as per the legislation.

**Recommendation:** It is recommended that Council be reminded that all decisions of council should take place at a public meeting of Council as per the legislation. Furthermore, it is recommended that following a Council’s review of conflict of interest allegations, the decision and vote of Council regarding conflict allegations should be made during a public meeting of Council per section 209, 212, and 213 of the *Municipalities Act, 1999*.

**Hiring Practices and Severance of Employees**
Regarding the process for the hiring of the CAO, MAE does not, nor does it have the authority to, become involved in operational issues of a Town. The responsibility for hiring employees is an operational decision of the Town. As such, Council may hire a CAO in a manner that they choose as legislation specifies that Council is responsible for such matters.

With respect to severance for employees, town officials confirmed that both the Public Works Director and CAO files were discussed at a privilege meeting of Council. Council felt that since the employee resigned, there was no requirement to bring a motion forward at a public meeting. Council was concerned that the matter was considered to be private in nature, with respect to the resignations.

MAE advises that all Council decisions have to take place at a public council meeting as per the *Municipalities Act, 1999*, sections 212 and 213. MAE notes that following a ruling received from the Office of Information and Protection of Privacy Commissioner with respect to severance, the Town is now ratifying all monthly payrolls at a public meeting of Council.

**Recommendation:** It is recommended that per sections 212 and 213 of the *Municipalities Act, 1999*, that all Council decisions take place via a motion at public Council meetings.

**Irregularities Related to the 2017 Municipal Elections**
While concerns were expressed with regards to the destruction of the tally sheets and associated materials with the ballot boxes, according to the Office of the Privacy Commissioner’s report, there is no evidence to suggest the materials were to evade the access request. Furthermore, Town officials confirmed that the records were authorized by the returning officer and destroyed after the Town sought legal advice on the matter. It appears the tally sheets and ballot boxes were destroyed in accordance with the MEA.

The Town has since adopted a revised Records Retention Policy.

**Recommendation:** It is recommended that Council continue review and update its Records Retention Policy as required.