

Amendment to Toronto Municipal Code, Chapter 3, Accountability Officers regarding the records retention process for the records of the Accountability Officers

Date: April 21, 2017
To: Executive Committee
From: City Manager
Wards: All Wards

SUMMARY

This report responds to City Council's request to bring forward any required amendments to Toronto Municipal Code, Chapter 3, Accountability Officers ("Chapter 3") to address the records of Accountability Officers in a manner that adequately addresses the principles of Toronto's accountability framework including independence and transparency.

This report recommends that City Council amend Chapter 3 to clarify the roles of the Accountability Officers in the establishment of the records retention schedules for those records associated with their actions under Part V of the City of Toronto Act, 2006 (COTA), referred to as 'Accountability Records'.

It is proposed that Accountability Officers' recommend directly to City Council the establishment of records retention schedules for Accountability Records while administrative and transitory records kept by Accountability Officers continue to be subject to the comprehensive retention schedules that govern City Records, as contained in Toronto Municipal Code, Chapter 217, Records, Corporate (City) ("Chapter 217").

RECOMMENDATIONS

The City Manager recommends that:

1. City Council amend Toronto Municipal Code, Chapter 3, Accountability Officers substantially as set out in Attachment 1 to this report, delegating authority to the Accountability Officers (Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman) to:

- a. recommend directly to City Council the establishment of record retention schedules for records related to each Accountability Officers' exercise of the powers and duties under Part V of the City of Toronto Act, 2006, subject to the approval of the City auditor; and
 - b. clarify the application of Toronto Municipal Code, Chapter 217, Records, Corporate (City) for the administrative and transitory records of Accountability Officers.
2. City Council amend the definition of "division head" contained in Toronto Municipal Code, Chapter 217, Records, Corporate (City) to delete the inclusion the Accountability Officers (Auditor General, Integrity Commissioner, Lobbyist Registrar and Ombudsman) in the definition.

FINANCIAL IMPACT

There are no financial implications resulting from the implementation of the recommendations in this report.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

City Council, at its August 25, 26, 27 and 28, 2014 meeting, requested the City Manager, in consultation with the City Clerk and the Accountability Officers, (the Integrity Commissioner, the Ombudsman, the Lobbyist Registrar and the Auditor General), to review the records management requirements and responsibilities of the Accountability Officers in the context of the revised Chapter 217, "Records, Corporate (City)" and bring forward any required amendments to Municipal Code, Chapter 3, "Accountability Officers," through the Executive Committee.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM32.7>

COMMENTS

COTA requires that the Accountability Officers perform their duties in an independent manner that preserves the secrecy of matters that come before each officer. Currently, Chapter 3 requires the Accountability Officers to implement the requirements of the revised Chapter 217 in respect of their records. However, staff have addressed that records that relate to the core function of the Accountability Officers' roles should not be addressed in Chapter 217. Currently, Chapter 3 does not adequately address the retention of the Accountability records of Accountability Officers, which are subject to the confidentiality provisions of COTA and are independent from the City. A more comprehensive records retention approach for Accountability Officers is required to ensure this independence is preserved.

The City Manager's Office, in consultation with the City Clerk, City Solicitor and the Accountability Officers, has considered the implications of the revised Chapter 217 for the records of the Accountability Officers. This report recommends that amendments be made to Chapter 3 to enable Accountability Officers to assign record retention schedules for Accountability Records and apply Chapter 217, as appropriate, to administrative and transitory records.

Records retention schedules are created under the COTA. Retention schedules establish the duration of retention of records, the location and owner of the records, nature and scope of records and the final disposition of records once they reach the end of their lifecycle – destruction or permanent archival retention.

At present, the City's Auditor General, Integrity Commissioner, Lobbyist Registrar or Ombudsman (collectively, the "Accountability Officers") are treated as Division Heads for purposes of records retention in Chapter 217. The current framework does not adequately address their status as independent officers of City Council or address the unique nature of their records. The proposed delegation recognizes the independence of the Accountability Officers, as set out in Chapter 3.

The proposed amendments to Chapter 3 require the Accountability Officers establish records retention schedules for Accountability Records independently but will be subject to approval by the City's external auditor and a suitable internal review process established by each Accountability Officer. This approach is consistent with the approach to all record retention schedules approved by City Council and required by COTA.

To be consistent with the changes proposed to Chapter 3, it is also proposed Chapter 217 also be amended to remove reference to Accountability Officers as "Division Heads". Administrative and transitory records will continue to be subject to the retention periods set out in Chapter 217 but with modifications necessary to the disposition rules, given the nature of the records and recognizing the independence of the Accountability Officers.

CONTACT

Todd Orvitz, Director, Corporate Policy, Strategic & Corporate Policy, 416-392-6783, todd.orvitz@toronto.ca

Cory Lynch, Solicitor, Legal Services, 416-397-5331, cory.lynch@toronto.ca

Ulli S. Watkiss, City Clerk, City Clerk's Office, 416-392-8010, uwatkis@toronto.ca

Beverly Romeo-Beehler, Auditor General, Office of the Auditor General, 416-392-8461, bromeob@toronto.ca

Valerie Jepson, Integrity Commissioner, Office of the Integrity Commissioner, 416-397-7770, valerie.jepson@toronto.ca

Cristina De Caprio, Lobbyist Registrar, Office of the Lobbyist Registrar, 416-338-5858,
cristina.decaprio@toronto.ca

Susan E. Opler, Ombudsman, Ombudsman Toronto, 416-392-7061,
susan.opler@toronto.ca

SIGNATURE

Peter Wallace
City Manager

ATTACHMENTS

Attachment 1 – Proposed Amendments to Toronto Municipal Code, Chapter 3,
Accountability Officers