

Report on Outstanding Matters Related to City's Accountability Offices

Date: April 30, 2018
To: Executive Committee
From: Interim City Manager
Wards: All

SUMMARY

This report responds to a number of outstanding City Council directions related to the City's Accountability Officers, including matters relating to Dr. Lorne Sossin's 2015 Review of Toronto's Accountability Offices Report.

As amendments to the *City of Toronto Act*, including Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017* come into effect, the impact on the Offices of the Integrity Commissioner and Lobbyist Registrar will continue to be monitored by the City Manager's Office. The City Manager will report to City Council with recommended changes arising from these amendments as required.

RECOMMENDATIONS

The City Manager recommends that:

1. City Council amend Toronto Municipal Code Chapter 140, Lobbying, by:
 - a. clarifying that no lobbyist or client of a lobbyist, or any parent, subsidiary, affiliate, officer or employee of any lobbyist or client of a lobbyist shall directly or indirectly offer, provide or bestow entertainment, gifts, meals, trips or favours of any kind to a public office holder.
 - b. deleting §140-3C(3) and replacing it with the following: "Persons making representations:
 1. On behalf of employee or labour groups, when representing employees of the City or a local board (restricted definition) in a manner permitted by a collective agreement or relationship protocol; or
 2. On behalf of employee or labour groups, when representing employees of the City or a local board (restricted definition) and communicating about

the negotiation and administration of collective agreements or a relationship protocol."

c. making housekeeping amendments to ensure the "blackout period" in Chapter 140 references the updates made to Municipal Code Chapter 195, Purchasing by adding reference to Chapter 195 of the Toronto Municipal Code, Purchasing to §140-5 and §140-41.

2. City Council receive for information, as requested by City Council (EX13.2), the following definition of not-for-profit organization: "A not-for-profit organization is a club, society, or association that is organized and operated solely for social welfare, civic improvement, pleasure or recreation, or any other purpose except profit."

FINANCIAL IMPACT

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

The Interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting of December 9, 2015, City Council adopted with amendments the City Manager's report item EX10.3, Review of the Functions of Toronto's Accountability Offices, and requested the City Manager undertake a review and report on the benefits, risks and financial implications of a general hotline, and report prior to the end of the current Council term on the process to appoint one person as both Integrity Commissioner and Lobbyist Registrar in 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.3>

At its meeting of March 31 and April 1, 2016, City Council adopted with amendments report EX13.2, Follow-up Report on Amendments to Toronto Municipal Code, Chapter 140, Lobbying ("Lobbying By-law"). Council requested the City Manager, in consultation with the Lobbyist Registrar and the City Solicitor, to review the requirements for labour unions, Fire Services, Toronto Paramedic Services, the Toronto Police Service and their associations to register, and report to the Executive Committee with amendments to Toronto Municipal Code Chapter 140, Lobbying, as required.

City Council also requested the City Manager, in consultation with the Lobbyist Registrar and the City Solicitor, to include in the report to the Executive Committee a definition of a "Not-for-Profit" organization (recommendation 3).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX13.2>

COMMENTS

Toronto's Accountability Framework

The *City of Toronto Act, 2006* (COTA) requires the City to appoint an Auditor General, Integrity Commissioner, and Ombudsman and to establish a Lobbyist Registry, and provides authority to appoint a Lobbyist Registrar. Toronto City Council established the functions for an Auditor General (AG) in 2002, an Integrity Commissioner (IC) in 2004, a lobbyist registry and a Lobbyist Registrar (LR) in 2007, and an Ombudsman in 2008. Each Accountability Office has a unique mandate and responsibility codified in Toronto's Municipal Code, Chapter 3, Accountability Officers. Chapter 3 also sets out the Officers' term length and policy-governance framework including independence, confidentiality and accountability directly to City Council.

The Auditor General is responsible for assisting City Council in holding itself and its administration accountable for public funds and for the achievement of value for money in City operations including all City divisions, most City agencies, the offices of the Mayor and Members of Council and some corporations within the limitations established by City Council. The Auditor General operates the Fraud and Waste Hotline. The current Auditor General is appointed for a fixed, non-renewable seven year term ending December 16, 2021.

The Ombudsman works to ensure that the City treats the public fairly, and that services are provided in a fair and equitable manner for all. The Ombudsman is responsible for addressing concerns about City services and investigating complaints about administrative unfairness related to City divisions, local boards (restricted definition) and City corporations. City Council does not fall within the Ombudsman's purview. The current Ombudsman is appointed for a fixed, non-renewable seven year term ending September 11, 2023.

The Integrity Commissioner provides advice and education about the Codes of Conduct for Members of Council and local boards (restricted definition) and the Municipal Conflict of Interest Act. The IC also investigates complaints to determine whether or not there has been a violation of the Code. The current IC is appointed for a fixed, non-renewable five year term ending on September 6, 2019.

The Lobbyist Registrar promotes transparency and integrity through public disclosure of lobbying and regulation of lobbyists' conduct. The LR also provides advice and conducts inquiries and investigations to enforce compliance with lobbying requirements outlined in Chapter 140, Lobbying, of the Toronto Municipal Code ("Chapter 140"). Chapter 3, Accountability Officers, establishes a fixed, non-renewable seven year term for the LR. The current LR is appointed for a term ending September 6, 2019.

2015 Review of Accountability Offices

On direction from City Council, in 2015, the City retained Dr. Lorne Sossin, Dean of Osgoode Hall Law School, to review the City's Accountability Offices. The Offices had been functioning for a few years, and the review was seen as an opportune time to

assess how they were functioning, the maturation of the accountability framework, and any areas requiring improvement. Dr. Sossin's report highlighted that Toronto's Accountability Framework remains one of the leading examples of municipal government oversight in Canada and globally. He noted that Toronto's Accountability Offices are efficient and effective with a significant degree of shared resources and coordination. The report recommended exploring the implementation of a centralized general hotline that would build on the Auditor General's Fraud and Waste Hotline by receiving anonymous tips about wrongdoing, unfairness, or unethical activity as well as fraud and waste.

Subsequent to the release of Dr. Sossin's report in 2015, the Province of Ontario's Bill 68 – *Modernizing Ontario's Municipal Legislation Act, 2017* introduced changes to the municipal accountability landscape. The key changes in Bill 68 which affect the offices of the Integrity Commissioner and Lobbyist Registrar include:

- Expanded role for the IC to advise on matters related to the *Municipal Conflict of Interest Act* (MCIA) and to investigate, and bring applications to Court regarding allegations of failure to comply with MCIA and,
- LR enabled to impose administrative sanctions against those found to be in violation of the Lobbyists Code of Conduct and an ability to extend the limitations period for the commencement of prosecutions.

These legislative amendments will have implications for the Offices of the IC and LR. The City Manager's Office will monitor any impacts, in consultation with the AOs, and prepare recommendations for Council's consideration as required.

Information Sharing and Collaboration

The City's Accountability Offices are an important function of the City's governance framework. While the mandates of each Accountability Officer are discrete and unique, the Framework is held together by collaboration and cooperation, which is formalized in a Memorandum of Understanding (MOU) between the four Accountability Officers.

The previous IC and LR signed a MOU in 2014, in order to facilitate cooperation between those two Offices. In his report, Dr. Sossin provided an opinion that the confidentiality provisions in the City of Toronto Act could be reasonably interpreted to include other Accountability Officers. As a result, all four Accountability Officers signed a MOU in 2015.

The MOU has facilitated more effective and efficient information sharing between the Offices, and sets out a framework of co-operation among the Officers on matters of advice and interpretation, and ensures consistency, comprehensiveness and clarity among their Offices. Additionally the MOU outlines how Toronto's Accountability Officers will share information about joint or concurrent inquiries involving the same or related witnesses, documents and issues, including for public policy reasons, as appropriate while maintaining their independence. Each Accountability Officer publicly posts the MOU on their respective webpage.

Under the MOU, the Accountability Officers meet regularly in order to ensure that information between their offices is shared on a regular basis.

The City's Accountability Officers also share a number of joint protocols to support information sharing, budgeting, human resources and procurement practices. The Accountability Offices also leverage existing resources and expertise within the City in accordance with these protocols which protects their independence. For example, the offices use the City's Human Resources Division, Financial Planning Division for budget submissions and are supported by the IT Services Department in the City Clerk's Office.

All four Accountability Offices recently approved a Procurement Protocol which maintains their independence and confidentiality while leveraging the City's procurement capabilities. For example, Accountability Officers can establish joint rosters when procuring certain services. This type of protocol further strengthens collaboration among the four Officers.

The Offices continue to outreach to members of City Council and applicable local boards, City staff and the general public. This has been achieved by initiatives including establishing web and online services, producing and posting annual reports and service information, and delivering educational sessions, presentations and training.

Cross-appointment of the Integrity Commissioner and Lobbyist Registrar

As a result of the direction by City Council, City staff undertook a review of cross-appointing one individual as both IC and LR, including a review of current literature and practices in other jurisdictions, and consultations with the current and past City of Toronto ICs and LRs, as well as the IC and LRs of other jurisdictions. This work provided a greater understanding of the benefits and challenges of a cross-appointment.

While Dr. Sossin reported that appointing one individual as both IC and LR could be feasible, his analysis of the administrative and legislative functions of the two Offices concluded that "the differing nature of the legal and administrative landscape between the two Offices makes a merger or consolidation unlikely to lead to the strengthening of the functions of the two Offices or improved service to the public".

Toronto's accountability framework is unique, making comparisons with other municipalities and provinces difficult. For example, the majority of municipalities in Canada do not have a lobbyist registry or a Lobbyist Registrar. Additionally Toronto's lobbyist registry provides support for a significantly higher number of lobbyists than registries in other municipalities and some provinces. While some Canadian municipalities have one individual carry out the mandates of an IC and LR (e.g. Ottawa), as well as select provinces (e.g. Ontario), these jurisdictions have either significantly less complaints annually or do not have the requirement for pre-registration which exists under Toronto's lobbyist registry.

Consultations with current and previous ICs and LRs in Toronto, the Province of Ontario and City of Ottawa revealed:

- Few, if any benefits from having one individual perform both IC and LR roles, that are not already achieved through the MOU between the Accountability Officers.
- Having two separate Accountability Officers for the Offices of the IC and LR allows for full attention to each discrete and unique mandate.
- A cross-appointed IC and LR could potentially create a "chill effect" for complainants who want to be protected in terms of confidentiality.
- Likely no cost savings and a potential for increased staffing and operating costs to support each Office, particularly given impacts that will result from Bill 68

The expanded roles for the IC and LR resulting from Bill 68 will come into effect in March 2019. Once the amendments come into effect, the impact that these changes will have on these offices will be monitored and staff will report to Council on recommended changes to the Accountability Framework, as necessary.

Chapter 3, Accountability Officers, of Toronto's Municipal Code would need to be amended to enable a cross-appointment. Currently there is a difference between the non-renewable term lengths of the IC and LR. The IC is currently appointed for a five year non-renewable term while the LR is appointed for a seven year non-renewable term. The City Manager, City Clerk and Legal Services would need to review any possible new or significant changes required to support a cross-appointment. This would likely include significant revisions to policies to ensure proper separation is upheld between the independent functions of the IC and LR.

Based on the jurisdictional research and interviews, which included the potential for risk and impact on cost and public confidence, and Dr. Sossin's findings, City staff concluded that cross-appointing one individual as both the IC and LR is not currently recommended.

Centralized General Hotline

As directed by Council, staff undertook a review of the feasibility of implementing a general hotline to capture and disseminate complaints to the appropriate Accountability Office or City official, and determined that 311 operates effectively to provide this service.

Each Accountability Officer has responsibility to oversee independent intake processes. The MOU between the Offices facilitates appropriate information sharing including redirecting any misdirected calls or complainants to the appropriate official. All four Officers maintain websites and conduct outreach to improve awareness about their mandates and provide information about how to file an inquiry or complaint.

Toronto's Disclosure of Wrongdoing Framework is codified in Chapter 192, Public Service, which assigns duties to the City's Auditor General to operate the Fraud and Waste Hotline, an anonymous, confidential channel for the public service and the public to report wrongdoing.

Other Accountability Officers can also receive confidential, but not anonymous, allegations including those related to maladministration (Ombudsman), violations of Members Code of Conduct (Integrity Commissioner) and complaints regarding lobbying activities (Lobbyist Registrar).

A jurisdictional and literature review found that anonymous complaint hotlines are typically used to provide a secondary or additional channel for employees to report unethical behavior or confidential, and anonymous reporting for whistleblowers. For jurisdictions that have multiple accountability officers (e.g. Government of Canada), each Office generally operates and manages their own intake and complaint processes.

Currently, Toronto 311, in addition to general customer service support, directs members of the public wishing to make a complaint which falls under any of the City's Accountability Officers' mandates to the appropriate Office, acting as the secondary channel seen in other jurisdictions. To ensure the appropriate referral is made, 311 regularly reviews their information, in consultation with the Accountability Officers, to ensure it is current. New software to be implemented by spring 2019, will treat each incoming inquiry as a service call which will further assist in service tracking and reporting.

Chapter 140, Lobbying Amendments

a) Employee or labour groups obligations under Chapter 140, Lobbying

As directed by Council, City staff reviewed the requirements under Chapter 140, Lobbying, for labour unions, Fire Services, Toronto Paramedic Services, the Toronto Police Services and their associations to register lobbying activity.

In order to increase the clarity of, and more accurately reflect City Council's direction regarding lobbying registration requirements for the City's employee unions and associations, City staff recommend amending Chapter 140, Lobbying, of the Toronto Municipal Code by amending §140-3C(3) so that it reads:

Persons making representations:

- On behalf of employee or labour groups, when representing employees of the City or a local board (restricted definition) in a manner permitted by a collective agreement or relationship protocol; or
- On behalf of employee or labour groups, when representing employees of the City or a local board (restricted definition) and communicating about the negotiation and administration of collective agreements or a relationship protocol.

This amendment would clarify exempted communications for unions and associations when representing City employees and employees of local boards (restricted definition) under Chapter 140, so that only communications regarding the negotiation and administration of collective agreements or relationship protocols would be exempted. This change will allow for a clearer exemption, which is easier to understand and apply and is more in keeping with other orders of government. Within the Government of Canada and the Province of Ontario, communications regarding collective bargaining do not fall under the definition of "lobbying" in the federal Lobbying Act or in Ontario's

Lobbyists Registration Act, 1998 and so do not include an exemption to employee unions. The amendment would also allow for a broader scope of labour groups, including those already on Schedule B that do not have collective agreements with the City (e.g. COTAPSA).

b) Defining Not-for-Profit (NFP) Organizations

City Council, at its meeting of March 31 and April 1, 2016, requested the City Manager to provide a definition for "not-for-profit" organizations (EX13.2). Chapter 140, Lobbying, of the Toronto Municipal Code does not provide a definition for a NFP organization.

Staff reviewed various definitions for NFP organizations in use by jurisdiction, purpose (i.e. tax) and within the sector, and recommend that the definition of NFPs used by the Government of Canada be applied to Chapter 140, Lobbying of the Toronto Municipal Code. The federal definition reads: "A not-for-profit organization is a club, society, or association that is organized and operated solely for social welfare, civic improvement, pleasure or recreation, or any other purpose except profit."

c) Amendment Chapter 140 re bestowing favours to a public office holder

In addition to addressing Council direction concerning Chapter 140, Lobbying, City staff are recommending that an amendment be made to ss.140-42 A. of the Chapter to clarify that all persons that are either engaged in lobbying or have retained a person to engage in lobbying are not permitted to provide gifts, entertainment or any other favour (e.g. meals, trips) to public office holders. This amendment clarifies that the intention of the prohibition on bestowing favours to a public office holder applies both to the lobbyist as well as the organization that has hired the lobbyist.

d) Housekeeping Amendment - Purchasing

In 2017, City Council approved changes to Toronto Municipal Code Chapter 195, Purchasing, which in part, amended the definition of "blackout period". This report recommends adoption of these changes to Chapter 140, Lobbying, to reflect these amendments and to ensure consistency across the Municipal Code chapters.

Next Steps

Since Dr. Sossin's report was released in 2015, the Accountability Offices continue to mature, evolve and leverage existing resources within the City. This has occurred through a variety of means including the establishment of the MOU, continuous improvement to intake and complaints processes and proactive advice and consultation with City divisions, corporations and agencies. In consultation with the City Manager's Office, the Accountability Offices monitor administrative requirements on an ongoing basis, and any recommendations for amendments to strengthen the efficient and effective operation of the Offices will be made to City Council as required.

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SIGNATURE

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