

**REPORT TO COUNCIL
ON AN INQUIRY**

LOBBYING IN AN ELECTION EVENT

LINDA L. GEHRKE
LOBBYIST REGISTRAR

APRIL 3, 2012

Table of Contents

INTRODUCTION	1
BACKGROUND	2
The Complaint.....	2
The Investigation.....	2
BILD	2
The Preparatory Meetings and Election Event.....	3
Responses to Draft Report.....	4
DISCUSSION	5
CONCLUSIONS	7
DISPOSITION	7
RECOMMENDATION	8

INTRODUCTION

Following an inquiry in response to a complaint from a member of the public, I found that the Building Industry and Land Development Association (“BILD”), a registered lobbyist, failed to register meetings at which this organization lobbied then-Deputy Mayor Joe Pantalone and then-Councillor Rob Ford. The meetings concerned a “Meet the Mayoral Candidates” event BILD held for its members on September 13, 2010. Mayoral candidates, Rocco Rossi, George Smitherman, Sarah Thomson, then-Councillor Rob Ford and then-Deputy Mayor Joe Pantalone were invited and attended. Individual preparatory meetings were held with each candidate in advance of this event, at which BILD discussed with the candidates questions relating to BILD’s concerns. A number of the questions related to matters on which BILD had made subject matter registrations – in other words, matters on which they were currently registered to lobby. Further, although the preparatory meetings and the September Meeting were held during an election cycle, Toronto City Council and committee meetings continued to be held.

The preparatory meeting with then-Deputy Mayor Joe Pantalone was held on April 28, 2010, and the meeting with then-Councillor Rob Ford was held on May 19, 2010. Each of the preparatory meetings was attended by a number of registered lobbyists from BILD. Between April 28 and the municipal elections in October 2010, there were four Council meetings on the following dates: May 11-12, June 8-9, July 6-8 and August 25-27, 2010. The agendas for these Council meetings included items that related to one or more of the BILD subject matter registrations.

I found that the discussions that occurred at the preparatory meetings and the event were about matters defined as “lobbying” under the Lobbying By-law (Chapter 140 of the Toronto Municipal Code). I concluded that the preparatory meetings and the election event should have been reported under BILD’s existing registrations.

Lobbying at meetings that are related to a municipal election is a novel issue. The October 2010 municipal elections are the first elections that have been held since Council adopted the Lobbying By-law in 2007. BILD was not aware that they should report these meetings.

It is in the interests of transparency that these meetings be reported. Therefore, I permitted BILD to report the registrations after the three-day time period. I instructed Office of the Lobbyist Registrar (“OLR”) staff to write to BILD, advising them that they should report the meetings as lobbying activities. BILD has complied with this request.

The Lobbying By-law does not exempt communications that occur during an election period. Given the novelty and importance of this issue, I recommend that Council request the Lobbyist Registrar in consultation with the City Solicitor, City Clerk and Integrity Commissioner to report to Council on whether and to what extent communications between lobbyists and public office holders during an election period, in the context of election debates, should be made exempt from Chapter 140.

BACKGROUND

The Complaint

The complaint was initiated by a member of the public on January 27, 2011. A January 24, 2011 article provided by the complainant stated that then-Councillor Rob Ford met with BILD on two occasions. The reported meetings concerned a “Meet the Mayoral Candidates” event BILD held for its members on September 13, 2010. Mayoral candidates, Rocco Rossi, George Smitherman, Sarah Thomson, then-Councillor Rob Ford and then-Deputy Mayor Joe Pantalone were invited and attended. Individual preparatory meetings were held with each candidate in advance of this event.

The Investigation

Inquiries and Investigations Counsel of the OLR conducted an investigation, which consisted of acquiring written confirmation of the attendees at, and the subjects discussed at the pre-debate meetings; examining the subjects to determine if they fit the definition of “lobbying” under the by-law and reviewing City Council and various City committees’ agendas for evidence that BILD communicated on those subject matters prior to the election. The OLR also gathered evidence of numerous similar events held by other organizations prior to this election.

BILD

BILD is registered as an in-house lobbyist organization. Its senior officer in its lobbyist registration is Paula Tenuta, Director, Vice President, Policy & Government Relations (Lobbyist Registration No. 11338S-2). The in-house lobbyists listed in its registrations include: Stephen Dupuis, Chief Executive Officer (Lobbyist Registration No. 11338S-1); Paula J. Tenuta, Director, Municipal Government Relations (Lobbyist Registration No. 11339H); Joseph Vaccaro, Vice President, Government Relations (Lobbyist Registration No. 11340H); Danielle Chin, Municipal Government Advisor (Lobbyist Registration No. 11341H); Leona Savoie, volunteer member (Lobbyist Registration No. 11342H); Steve Deveaux, volunteer member (Lobbyist Registration No. 11343H); Stephen Upton, volunteer member (Lobbyist Registration No. 14549H); Leith Moore, volunteer member, (Lobbyist Registration No. 14551H); and Paul Golini, Chair (Lobbyist Registration No. 16646H).

The description of BILD’s business activities in its registrations is: “Membership association/lobby on behalf of professionals related to all aspects of the building and land development industry.”

Lobbying in an Election Event

The subject matters for which BILD was registered to lobby at the time of the meetings discussed in this report included a variety of planning and development issues, including:

- SM16372, “Section 37 Agreements”;
- SM11192, “Review of City of Toronto Guidelines: ‘Green Development Standards’”;
- SM15855, “TTC Metropass as related to development applications”;
- SM15856, “Land Transfer Tax”;
- SM11191, “Review of Development Application Review Process”;
- SM15859, “Transit City”;
- SM16374, “City of Toronto Official Plan”; and
- SM13673, “Proposed New Zoning By-law”.

The Preparatory Meetings and Election Event

BILD informed Inquiries and Investigations Counsel that preparatory meetings were held with the candidates to discuss the format and the questions that would be posed at the event. Two of the candidates, then-Deputy Mayor Joe Pantalone and then-Councillor Rob Ford, were sitting members of Council.

BILD informed Inquiries and Investigations Counsel that a preparatory meeting was held with then-Deputy Mayor Joe Pantalone on April 28, 2010. BILD in-house lobbyists Joseph Vaccaro, Leith Moore, Paul Golini Jr., Stephen Upton, Steve Deveaux and Leona Savoie attended this meeting.

A preparatory meeting was held with then-Councillor Rob Ford on May 19, 2010. BILD in-house lobbyists Joseph Vaccaro, Stephen Dupuis, Danielle Chin, Steve Deveaux, Leona Savoie and Stephen Upton attended this meeting.

BILD informed Inquiries and Investigations Counsel that at the preparatory meetings, the following questions were discussed, which were to be asked of the candidates at the September event:

- 1. What our members are facing and by extension our homebuyers and business tenants are new layers of taxation. Toronto’s current administration approved the Toronto Land Transfer Tax, Section 37 Agreements, TTC Metropass Condition of Condominium Approval, Toronto Green Building Standards, to name a few. BILD opposed all of these items – as it limits the competitiveness of Toronto as a Global City. As Mayor, [are] you prepared to roll back any of these taxes, levies, fees or standards?**
- 2. As Mayor, are you prepared to resource the building department to promote better efficiency in customer service or make the necessary outsourcing decisions?**

Lobbying in an Election Event

3. **As Mayor, and as you implement your transportation plans – are you prepared to make the necessary updates to the as-of-right densities along transit hubs and corridors to reflect the population forecast, and be in keeping with the direction of City of Toronto’s Official Plan?**
4. **Over the past few years, our industry has been faced with a series of disjointed policies that lack a central direction. As Mayor, will you appoint a Chief Planner that reports directly to you and provide them with the mandate to work with BILD to improve policy documents such as the harmonized Zoning By-law and the forthcoming 2011 review of the Toronto Official Plan?**

At the time of the preparatory meetings, Toronto City Council and committee meetings continued to be held. Between April 28 and the municipal elections in October 2010, there were four Council meetings on the following dates: May 11-12, June 8-9, July 6-8 and August 25-27, 2010. The agendas for these Council meetings included items that related to one or more of the BILD subject matter registrations. BILD communicated about an Official Plan Amendment for Commercial Floor Space requirements in Mixed Use Areas to the August 25-27, 2010 Council meeting (SM16374). As well, Planning and Growth Management Committee met on May 19, June 16 and August 19, 2010. BILD submitted a report to the June 16, 2010 committee regarding an Official Plan Amendment to encourage development of Units for Households with Children (SM16374).

One hundred and fifty BILD members attended the event on September 13, 2010. Members of the media were also invited and attended. BILD in-house lobbyists Steve Deveaux and Leona Savoie, who attended the preparatory meetings, posed the four questions, quoted above, which were discussed at the preparatory meetings to the candidates. After the questions were discussed by the candidates, members of BILD were invited to speak directly with them.

BILD did not report these meetings in their lobbyist registrations at the time these events occurred.

Responses to Draft Report

I provided excerpts of an earlier draft of this report to BILD, Mayor Ford and Mr. Pantalone for their response.

BILD and Mr. Pantalone have confirmed the correctness of the facts contained in the excerpts.

Mayor Ford responded that at the preparatory meeting, he was being asked his position as a mayoral candidate on a specified list of issues. His responses to each question were in keeping with the statements and commitments set out in his campaign platform which had already been made public. The questions asked and the answers provided were the full extent of what transpired during the meeting. He did not consider the May 2010 meeting to be one in which the representatives of BILD were engaged in lobbying activities. As such, he did not inquire as to

Lobbying in an Election Event

their registration status. The meeting of September 13, 2011 was a public meeting with all mayoral candidates and the media present. It was no different than the many other debates sponsored by various groups in which he participated during the campaign, where he was asked what his position was on municipal issues. The Mayor affirmed his commitment to full compliance with the Members' Code of Conduct and in particular the regulations governing lobbyists, and the rules regarding inquiry as to registration status before agreeing to a meeting.

DISCUSSION

1. *Did BILD engage in unregistered lobbying in violation of § 140-10 of the Lobbying By-law? No.*

BILD was registered to lobby concerning the subject matters that were discussed when the preparatory meetings and election event were held.

2. *Did BILD fail to report lobbying activity contrary to § 140-21? Yes.*

Under § 140-1, lobbying is defined in part as:

LOBBY – To communicate with a public office holder on any of the following subject matters:

A. Development, introduction, passage, defeat, amendment or repeal of a by-law, bill or resolution on any matter, by Council

The Integrity Commissioner and Lobbyist Registrar issued a Joint Interpretation Bulletin, *Lobbying and Municipal Elections* (April 15, 2010), which states in part that the Lobbying By-law continues to apply during a municipal election period:

Chapter 140 of the Toronto Municipal Code (the Lobbying By-law) continues to apply when lobbying public office holders. Lobbyists must register before they lobby a public office holder and they must report their lobbying activities.

In my opinion, the discussions with members of Council at the preparatory meetings and the event constituted lobbying, and were not otherwise exempt from the by-law. The questions that were discussed at the preparatory meetings and the election event concerned matters that involved the development, introduction, passage, defeat, amendment or repeal of a by-law, bill or resolution by Council. BILD was advocating that particular decisions be made by Council on these matters through the questions BILD asked. Two of the candidates with whom these discussions were held, then-Councillor Ford and then-Deputy Mayor Pantalone, were members of Council and therefore were public office holders.

Lobbying in an Election Event

Under § 140-5B and C, Chapter 140 does not apply to:

- B. A communication on a subject matter that is submitted to or occurs during a public process related to the subject matter as follows:*
 - (1) A public meeting, hearing, consultation, presentation, open house or media event held or sponsored by the City, a local board (restricted definition), the Board of Health or a public office holder with respect to the subject matter.*
 - (2) A public meeting, hearing, consultation, presentation, open house or media event that is part of the administrative review process with respect to an application or approval under § 140-5F.*
- C. A communication that is restricted to a request for information.*

The preparatory meetings were held in private and the event was a private BILD event. Media were present by invitation at the election event. However, this was not an exempted public consultation under § 140-5B.

The communication was not restricted to a request for information. The questions posed advocated a position that BILD wished the candidates to take. For the public office holders among them, these were communications that fell within the definition of lobbying.

BILD was registered to lobby about a number of subjects at the time of the meetings and the BILD representatives who attended the meetings were registered BILD in-house lobbyists. The questions that were discussed at the preparatory meetings and the event concerned subjects for which BILD was registered. For example, Question 1 was related to BILD Subject Matter Registration SM16372, Section 37 Agreements; SM11192, Review of City of Toronto Guidelines: “Green Development Standards”; SM15855, TTC Metropass as related to development applications; and SM15856, Land Transfer Tax. Question 3 was related to SM15859, Transit City, and SM16374, City of Toronto Official Plan. Question 4 was related to SM16374, City of Toronto Official Plan and SM13673, Proposed New Zoning By-law.

All of the questions discussed fell within the definition of “lobbying” in the Lobbying By-law. All of the questions necessarily involved the development, introduction, passage, defeat, amendment or repeal of a by-law, bill or resolution by Council, its committees, boards or delegates. Some concerned subjects that are specifically listed in the by-law’s definition of lobbying, such as: development, approval, amendment or termination of a policy, program directive or guideline; and determining the model and method of delivering a service.

Lobbying in an Election Event

At the time of the preparatory meetings and the event, then-Councillor Ford and then-Deputy Mayor Pantalone were members of Council and therefore were public office holders. Council and its committees were still meeting and deciding matters about which BILD was registered to lobby at the time of the preparatory meetings.

Council and its committees did not meet after August 27, 2010. However, members of Council continued to hold office, and meetings of Council and its committees could have been scheduled up to the end of November 2010. BILD continued to maintain active subject matter registrations related to the questions posed throughout this period. The questions which were discussed at the preparatory meetings and the event were related to the subject matters about which BILD was registered to lobby. The questions posed by BILD to then-Councillor Ford and then-Deputy Mayor Pantalone advanced the goals of BILD's lobbying activities at the City.

CONCLUSIONS

I conclude that BILD lobbied public office holders through its in-house registered lobbyists at the preparatory meetings and the event. They were entitled to do so, since they were registered to lobby about the subject matters discussed at these meetings. However, they were also required to report these meetings, which they did not do.

I conclude that the senior officer of BILD contravened § 140-21D by failing to report the September event and the two preparatory meetings with public office holders Rob Ford and Joe Pantalone.

DISPOSITION

I have concluded that the preparatory meetings and the election event should have been reported under BILD's existing registrations. However, the registration of meetings by lobbyists with public office holders in relation to a municipal election is a novel issue. The October 2010 municipal elections were the first elections to be held since Council adopted the Lobbying By-law in 2007. BILD was not aware that they should report these meetings.

It is in the interests of transparency that these meetings be reported. Therefore, I have permitted BILD to report the registrations after the three-day time period. I instructed OLR staff to write to BILD, advising them that they should report the meetings as lobbying activities. BILD has complied with this request.

RECOMMENDATION

The Lobbying By-law does not exempt communications that occur during an election period. I recommend that Council request the Lobbyist Registrar in consultation with the City Solicitor, City Clerk and Integrity Commissioner to report to Council on whether and to what extent communications between lobbyists and public office holders during an election period, in the context of election debates, should be made exempt from Chapter 140.

All of which is respectfully submitted to Council this 3rd day of April, 2012.

Linda L. Gehrke
Lobbyist Registrar