



LOBBYIST REGISTRAR'S REPORT ACTION REQUIRED

Report on a Prosecution for Breach of the Lobbying By-law

Date:	May 30, 2013
To:	City Council
From:	Lobbyist Registrar
Wards:	All
Reference Number:	

SUMMARY

On April 17, 2013, a corporate lobbyist pleaded guilty in the Ontario Court of Justice to the provincial offence that the corporation, on January 12, 2012, being a lobbyist, illegally communicated in relation to a procurement process when not permitted to do so. This was a breach of § 140-41A of the Lobbying By-law. A breach of the Lobbying By-law is a provincial offence. The court imposed a fine of \$750.00. This is the first time the City has obtained a conviction under the *Provincial Offences Act* for breach of the Lobbying By-law. The prosecution was commenced by the Office of the Lobbyist Registrar (OLR) and conducted by the City's Legal Services Division, Prosecutions.

RECOMMENDATIONS

The Lobbyist Registrar recommends that:

1. City Council receive this report for information.

Financial Impact

This report has no financial impact.

DECISION HISTORY

The Toronto Municipal Code, Lobbying, § 3-7B provides that an accountability officer reports directly to Council on investigations and inquiries conducted by the accountability officer.

COMMENTS

The Office of the Lobbyist Registrar conducted an investigation into reports by City staff that a lobbyist, Mr. John Collie, acting on behalf of the corporation of which he was president, Rescue 7 Inc., had communicated with members of Council and the Mayor about an active procurement process.

The information gathered in the investigation showed that the communications occurred during the period after the procurement was issued and had not yet been awarded. According to the City's Procurement Processes Policy and the RFP (Request for Proposal), during this period, all communications except with the staff contact person designated in the RFP were strictly prohibited. The Lobbying By-law, § 140-41A, also prohibits such communications, as follows:

140-41. Compliance with policies restricting communication

A. Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.

The following facts were established by the investigation:

1. On December 13, 2011, the City's Purchasing and Materials Management Division issued an RFQ (Request for Quotes) on behalf of Emergency Medical Services (EMS) for the purchase of automated external defibrillators (AEDs).
2. The RFQ instructed all bidders to direct any questions they may have regarding the RFQ to the Buyer who was designated in the RFQ. The City's Procurement Processes Policy prohibits communications during this period except with the designated staff contact person.
3. Rescue 7 Inc. represented by Mr. Collie (the lobbyist) wished to bid in the procurement, but their product did not meet the specifications for AEDs in the RFQ. During December 2011 and January 2012, the lobbyist sent several emails about the RFQ to the Mayor's Office in an attempt to be included in the RFQ. The Mayor's Office forwarded these emails to the City's Purchasing and Materials Management Division (procurements).

4. Procurements staff warned the lobbyist on December 23, 2011 that contacting anyone other than the designated procurements staff regarding the RFQ might result in the rejection of the lobbyist's potential bid.
5. On December 29, 2011, procurements staff wrote to the lobbyist that all communications about a call must be to the official point of contact named in the call; and that Section 5 of the City Procurement Processes Policy strictly prohibits communication with any other City staff, City official or member of Council with respect to any call from the time it is issued until the time of the award. Therefore, sending an email about the RFQ to the Mayor's Office was a violation of the City's Policy and the Lobbying By-law. In addition, the letter warned the lobbyist that lobbying contrary to the Lobbying By-law is an offence for which a person is liable to a maximum fine of \$25,000.00 on a first conviction and \$100,000.00 on each subsequent conviction.
6. The lobbyist persisted in communicating with public office holders even after being warned twice not to do so by procurements staff. On or about January 12, 2012, the lobbyist sent emails about the RFQ to the Mayor and seven councillors.
7. Procurements staff were made aware of these communications and contacted the Office of the Lobbyist Registrar to report a potential violation of the Lobbying By-law. OLR Inquiries and Investigations Counsel wrote to the lobbyist on January 19, 2012 stating that the OLR was investigating alleged illegal communications by the lobbyist during the RFQ process. That letter re-iterated the restrictions in the City's Procurement Processes Policy and Lobbying By-law on lobbying during a procurement process, and that a breach of the Lobbying By-law is a provincial offence.
8. In an email dated January 26, 2012 to OLR Inquiries and Investigations Counsel, the lobbyist acknowledged that he had contacted the Mayor's Office after he had been warned by procurements staff that to do so was a violation of the Lobbying By-law. In his response to Inquiries and Investigations Counsel, the lobbyist stated that he contacted the Mayor's Office because the Purchasing Division had not answered his concerns about the limiting of the RFQ to particular AEDs.

Breach of the Lobbying By-law is a provincial offence for which the court may impose a maximum fine of \$25,000.00 on a first conviction and \$100,000.00 on each subsequent conviction.¹ The Lobbyist Registrar determined that there were reasonable and probable grounds to believe that offences had occurred, being the breach of Lobbying By-law's prohibition on communications during a procurement process.

¹ Chapter 140, Toronto Municipal Code (Lobbying), § 140-47.

The email communications by the lobbyist to public office holders during the period after the RFP was issued and before it was awarded were clearly related to the procurement process. These communications were prohibited by the City's Procurement Processes Policy and, therefore, breached § 140-41A of the Lobbying By-law. While the City's Procurement Processes Policy sets out a process for complaining about a procurement process, it does not permit communicating with the Mayor or members of Council. Complaints about a procurement process may only be made to designated staff in the Purchasing Division.

This was an appropriate case in which to lay charges under the *Provincial Offences Act* for communicating about a procurement process in breach of § 140-41A. There were several clearly documented instances of breach of § 140-41A by the lobbyist in relation to the RFP. The lobbyist had persisted in communicating or attempting to do so with public office holders after being warned twice by City procurements staff that this was a breach of the Lobbying By-law and a provincial offence.

On June 29, 2012, OLR Inquiries and Investigations Counsel swore an information under the *Provincial Offences Act* against Mr. John Collie and Rescue 7 Inc., stating that he had reasonable and probable grounds to believe that on or about January 3, 2012 and January 12, 2012 Mr. Collie and Rescue 7 Inc., being lobbyists, communicated in relation to a procurement process when not permitted to do so by the applicable procurement policies and procurement documents, contrary to § 140-41A.

The City Prosecutor advised and assisted the OLR in laying charges and conducted the prosecution.

On April 17, 2013, Rescue 7 Inc. pleaded guilty to the charge that on January 12, 2012, being a lobbyist, Rescue 7 Inc. communicated in relation to a procurement process when not permitted to do so by the applicable procurement policies and procurement documents. The remaining charges were withdrawn. Since this was a first offence for the defendant corporation and there were no aggravating factors, the court imposed a fine of \$750.00 plus the Provincial Victim Fine Surcharge for a total payable of \$825.00.

CONTACT

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SIGNATURE

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