



**LOBBYIST REGISTRAR'S
REPORT
ACTION REQUIRED**

**REPORT ON AN INQUIRY INTO LOBBYING ABOUT
REQUEST FOR PROPOSAL 9144-13-7160**

Date:	December 6, 2013
To:	City Council
From:	Lobbyist Registrar
Wards:	All
Reference Number:	

SUMMARY

This is a report by the Lobbyist Registrar on an inquiry conducted to determine whether Mr. Praveen Kumar contravened § 140-41A of the Lobbying By-law by emailing a member of Council on three occasions in July 2013 about Request for Proposal 9144-13-7160 for Professional Services, Information & Technology Services (the RFP). Chapter 140 of the Toronto Municipal Code (the Lobbying By-law), § 140-41A provides:

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

As a result of the Inquiry, the Lobbyist Registrar found that Mr. Kumar had contravened § 140-41A by communicating about a procurement process to a member of Council with whom communications were not permitted by the applicable procurement policies and documents.

The Lobbyist Registrar found that the exemption for ward constituent communications did not apply, since the emails concerned a particular procurement process and not a general neighbourhood or public policy issue. In addition, the Registrar adopted the view taken by the City Solicitor in a previous report to Council that the restrictions on application of the Lobbying By-law such as the ward constituent exemption do not apply when the subject matter of the communication relates to a procurement process.¹

¹ [City Solicitor's Report, Lobbying During a Procurement Process](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.8), page 3, CC39.8
[<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.CC39.8>]

Contravention of the Lobbying By-law is a provincial offence for which an individual is liable on a first conviction to a fine of not more than \$25,000.

Mr. Kumar stopped all communications about the RFP on July 12, 2013, when he was advised that this was not permitted. He attended a training session on the Lobbying By-law offered by the Office of the Lobbyist Registrar (OLR). There is no previous record of Mr. Kumar having contravened the Lobbying By-law. Considering all of these factors, the Lobbyist Registrar decided to take no further action against him.

RECOMMENDATIONS

The Lobbyist Registrar recommends that:

1. City Council receive this report for information.

Financial Impact

This report has no financial impact.

DECISION HISTORY

This report is made under § 3-7B of the Toronto Municipal Code and *City of Toronto Act, 2006*, s. 169 (*COTA*). *COTA*, s. 169 permits the Lobbyist Registrar to report on an inquiry to City Council, disclosing such matters as in the registrar's opinion are necessary for the purposes of the report. City Council shall ensure that reports received from the registrar are made available to the public. Toronto Municipal Code, § 3-7B requires the Lobbyist Registrar to report directly to Council on investigations and inquiries conducted by her.

COMMENTS

Background

On July 3, 2013, Mr. Praveen Kumar sent an email to a Manager in the City's Purchasing and Materials Management Division (PMMD) complaining about a requirement in Request for Proposal 9144-13-7160 for Professional Services, Information & Technology Services (the RFP) that Mr. Kumar felt discriminated against small businesses.

Mr. Kumar was not satisfied with the reply he received from PMMD. He wrote again on July 9, 2013 to the PMMD Manager who had replied to his email, with a copy to the member of Council for his ward. The PMMD Manager replied, advising Mr. Kumar that he was not permitted to copy his communication to the member of Council, as this was prohibited by the City's Procurement Processes Policy and the RFP document.

Mr. Kumar replied to this email on July 11, 2013 and again copied his member of

Council. On July 12, 2013, the Director of PMMD advised Mr. Kumar again that he was not permitted to communicate about the procurement with anyone except the official point of contact. Mr. Kumar responded on the same date, again copying the member of Council. The Director forwarded the emails to the Office of the Lobbyist Registrar.

On August 19, 2013, OLR Inquiries and Investigations Counsel wrote to Mr. Kumar advising him that an inquiry was being conducted into allegations that he had breached § 140-41A by sending emails about the RFP to his member of Council. Mr. Kumar responded to Inquiries and Investigations Counsel that he had stopped all communication about the RFP on July 12, 2013 when he was advised that this was not permitted. Mr. Kumar also explained that he copied the emails to his local councillor “as I felt that I should inform him about what I felt was in-justice [sic] to small business . . . It was not a hidden thing as I copied the email openly, if I knew it is against the law, I would not have done it.”

Discussion

The Lobbying By-law, § 140-41A prohibits lobbyists from communicating about a procurement process except as permitted by applicable procurement policies and documents. From the date of the issue of an RFP until its award, the [City’s Procurement Processes Policy](#)², section 5.0, restricts all communications about the RFP to the single point of contact named in the RFP document. Section 11.0 of the Procurement Processes Policy permits a complaint about an RFP to be made to the Chief Purchasing Official, who is the Director of PMMD. The RFP document restricted all communications about the RFP to a named point of contact.

Mr. Kumar responded in his July 11, 2013 email to the PMMD Manager that he had the right to communicate with his member of Council as a constituent, and was not seeking any sort of business benefit, nor was he a vendor. Under § 140-6A, a communication by a constituent to his or her member of Council “on a general neighbourhood or public policy issue” is exempt from the Lobbying By-law. I find that the communications were about a particular procurement process and not about a “general neighbourhood or public policy issue”. The exemption provided by § 140-6 does not apply to communications about a particular procurement process.

I adopt the view expressed by the City Solicitor in a Report to Council, Lobbying During a Procurement Process³, as follows:

“In my view, a proper interpretation of the Lobbying By-law would find that subsection 140-41A prevails over any other provision in the Lobbying By-law where the subject matter of a communication is in relation to a procurement process. Specifically, the restrictions on application of the Lobbying By-law, the

²http://www1.toronto.ca/staticfiles/City%20of%20Toronto/Purchasing%20and%20Materials%20Management/Selling%20to%20the%20City/Purchasing%20&%20Material%20Management/Policies-Legislation/policy_procurement_process.pdf

³ CC39.8, page 3 (see footnote 1 above).

ward constituent exemption for example, do not apply when the subject matter of the communication relates to a procurement process.”

The City Solicitor recommended the adoption of a new subsection to § 140-41:

C. In the event of a conflict or inconsistency between Subsection A and any other provision of this chapter, Subsection A prevails.

Subsection 140-41C was adopted by Council on October 8-11, 2013 and was not in effect in July 2013. However, the reasoning of the City Solicitor quoted above would apply to this case.

The restrictions on communications about a procurement process under § 140-41A apply to “lobbyists” and not just to vendors. As a result, § 140-41A applied to the communications by Mr. Kumar, since he was communicating as a “lobbyist” about a procurement process.

In its Ontario Corporate Profile Report, Mr. Kumar is described as the officer/manager in 2ISOLUTIONS INC., a federal corporation with share. Mr. Kumar signed the emails at issue as a representative of 2i Solutions. 2i Solutions, according to its website, is an international business engaged in SAP implementation. I am satisfied based on the Corporate Profile Report and the signed emails that Mr. Kumar sent these emails acting in his capacity either as a paid employee (including a paid director) of 2i Solutions or as an unpaid lobbyist on its behalf, and that 2i Solutions is a for-profit corporation. I find that Mr. Kumar was acting as an in-house lobbyist, as defined in § 140-20A, or as a voluntary lobbyist lobbying a for-profit-corporation as defined in § 140-27, when he sent the emails at issue. Under § 140-20A, an “in-house-lobbyist” is defined as an employee, including a paid officer, who lobbies on behalf of the employer. Under § 140-27, “voluntary lobbyist” is defined as an individual or a director who lobbies without payment on behalf of or for the benefit of the interests of a for-profit entity or organization.

As a lobbyist, Mr. Kumar was prohibited by § 140-41A from communicating about the RFP except as permitted by the City’s Procurement Processes Policy and the RFP. Communications with a member of Council during the “blackout period” were not permitted by the Procurement Processes Policy or the RFP document.

In this case, the RFP was issued on July 3, 2013 and had not yet been awarded when Mr. Kumar copied three emails about the RFP on July 9, 11 and 12, 2013 to his local member of Council. The subject of the emails was a complaint about a requirement in the RFP, which he felt discriminated against small businesses, as it constituted a barrier to them. The requirement to which he objected was that responses be from firms that are SAP Partners.

When the emails were sent, communications with public office holders about the RFP were restricted to the point of contact named in the RFP. Neither the Procurement

Processes Policy nor the RFP document permitted communication about the RFP with a member of Council during the “blackout period” from July 3, 2013 when the RFP was issued, until its award on September 3, 2013.

Disposition

Contravention of the Lobbying By-law is a provincial offence for which an individual is liable on a first conviction to a fine of not more than \$25,000.

Since July 12, 2013, Mr. Kumar has complied with the requirement that he not communicate about the RFP, except as permitted. He has attended an OLR training session on the Lobbying By-law, as requested by my office. There is no record of any previous contravention of the Lobbying By-law by Mr. Kumar. Considering Mr. Kumar’s reason for sending the emails, his lack of understanding of § 140-41A, his subsequent compliance with the Lobbying By-law and attendance at an OLR training session, and the fact that he has no prior history of contravening this by-law, I have decided to take no further action.

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SIGNATURE

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