
REPORT TO COUNCIL

**ON AN INQUIRY INTO COMMUNICATIONS BY A
NOT-FOR-PROFIT COMMUNITY SERVICES
SECTOR ORGANIZATION WITH PUBLIC OFFICE
HOLDERS ABOUT REQUEST FOR PROPOSAL**

No. 0513-13-7010

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Table of Contents

SUMMARY	1
FINDINGS	1
DISPOSITION	2
THE INQUIRY PROCESS	2
FACTS.....	2
DISCUSSION	8

SUMMARY

This is a report on the Lobbyist Registrar's inquiry into whether the Executive Director of Lakeshore Area Multi-Services Project Inc. (LAMP) contravened § 140-41A of the Lobbying By-law by contacting a member of Toronto City Council about a procurement process, Request for Proposal No. 0513-13-7010 (the RFP); and by publishing a blog that encouraged readers to contact members of Council on LAMP's behalf about the RFP.

The Registrar found that LAMP's Executive Director did not contravene § 140-41A when he published the blog and contacted the member of Council about RFP 0513-13-7010. The Lobbying By-law did not apply to his communications on LAMP's behalf because LAMP is a not-for-profit community services sector organization. By virtue of § 140-4, LAMP's members, staff, and officers are not considered to be lobbyists when acting in their official capacity.

Since the Lobbying By-law did not apply, the Executive Director did not breach the Lobbying By-law by communicating with public office holders and publishing a blog about the RFP. As a result, the Registrar has imposed no sanctions.

However, the Registrar found that the Executive Director's communications were subject to the restrictions on communications in the City's Procurement Processes Policy, section 5.0. This report is referred to the Director, Purchasing and Materials Management for follow-up.

FINDINGS

1. Russ Ford, Executive Director of LAMP, communicated with public office holders other than the single point of contact about Request for Proposal No. 0513-13-7010 (the RFP) and published a blog encouraging readers to do the same during the time period when the City Procurement Processes Policy and the RFP document restricted all communications to a single named point of contact.
2. In doing so, Mr. Ford was acting in his official capacity as Executive Director of a not-for-profit community services sector organization, Lakeshore Area Multi-Services Project Inc. (LAMP). As a result, he was exempt from the Lobbying By-law by virtue of § 140-4. He was not a "lobbyist" and § 140-41A did not apply to his communications about the RFP.
3. However, the communications by Mr. Ford about the RFP were subject to the restrictions on communications in the City's Procurement Processes Policy, section 5.0.

DISPOSITION

1. Since the Lobbying By-law does not apply to Mr. Ford's communications about the RFP, no sanctions may be imposed under the Lobbying By-law.
2. This report is referred to the Director, Purchasing and Materials Management, for follow-up.

THE INQUIRY PROCESS

This inquiry was commenced as a result of a report by the City's Purchasing and Materials Management Division (PMMD) to the Office of the Lobbyist Registrar that Russ Ford had communicated about a Request for Proposal to public office holders other than the single point of contact named in the RFP. At our request, PMMD provided a copy of the RFP and related documents.

On February 7, 2014, Inquiries and Investigations Counsel sent a Notice of Inquiry setting out allegations of lobbying in relation to the RFP to Mr. Ford and provided him an opportunity to respond to the allegations.

On March 3, 2014, Mr. Ford's counsel, Effie Lidakis, provided information and submissions in response to the allegations contained in the Notice of Inquiry.

The Lobbyist Registrar considered the information gathered and submissions of counsel. She wrote to Mr. Ford's counsel on April 15, 2015, setting out her proposed findings and disposition, together with the facts on which they were based. The Registrar asked Mr. Ford's counsel to provide submissions in response to her letter by May 7, 2014, if they so wished. To date, no response has been received.

FACTS

1. Request for Proposal No. 0513-13-7010 For: Toronto Preschool Speech and Language (the RFP) was issued by the City's Purchasing and Materials Management Division (PMMD) on November 22, 2013. The RFP named a single point of contact, a Senior Corporate Buyer to whom all communications by a "Proponent" were restricted.
2. On December 2, 2013, Russ Ford, Executive Director of Lakeshore Area Multi-Services Project Inc. (LAMP), wrote expressing concerns about the RFP to the member of Council serving as Chair of Toronto Board of Public Health. Mr. Ford asked that this item be put on the Board of Health agenda. The Chair wrote back to Mr. Ford on December 3, 2013 that because there was an RFP in process, in order to preserve the fairness and integrity of that procurement process the Chair had

forwarded Mr. Ford's email to the designated staff contact for the RFP. Mr. Ford replied to the Chair with copies to all members of the Board of Health, stating in part:

This tender needs to be withdrawn. Please put this back on the Board agenda.

3. The Senior Corporate Buyer who was the staff contact for the RFP wrote to Mr. Ford on December 3, 2013 (in part):

Dear Mr. Ford,

I am the official City point of contact with respect to the Request for Proposals for the Preschool Speech and Languages RFP 0513-13-7010.

I am in receipt of your email correspondence and would like to use this opportunity to remind you that no lobbying is permitted in connection with the RFP process. The City's Lobbying By-law (Chapter 140 of the City's Municipal Code) prohibits any communication with a member of City Council, a City Official or a City employee in relation to a procurement process, except as permitted by applicable procurement policies and procurement documents.

Section 5 of the City's Procurement Processes Policy states that all communication with respect to a call must be made to the official point of contact named in the call and strictly prohibits any 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 award.

Any communication made by or on behalf of a firm with respect to this RFP, other than to the official City contact named in the RFP, will be considered a violation of the City's Policy and Lobbying By-law.

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. In addition, the City's Procurement Processes Policy provides that any vendor found to be in breach of the policy may be subject to disqualification from the call or a future call or calls in the discretion of Council.

4. Mr. Ford replied (in part):

As I stated in my earlier email my concerns have nothing to do with the RFP process. Nor do my comments in any way advantage or disadvantage any one. My point is that information has come to light that in my view demands the RFP be withdrawn. The Board of Health agreed to this because TPH informed them that there would be no service reductions. That is not true so this was approved based on false information. That is not your issue, that is an issue for the Board of Health. My concerns have nothing to do with your department. The only concern I have that should concern your department is the email sent . . . to members of the Board of Health which specifically names my organization as not being a worthy candidate. How is that permitted?

If you can assure me you can get this matter on the agenda of the board of health then I will go through you and not [the Chair of the Board of Health].

5. LAMP is a not-for-profit charitable corporation that provides community services in the Lakeshore West area of Toronto.

6. Russ Ford is the Executive Director of LAMP. His job duties include:

- *Liaise with community agencies and organizations, members of the public, elected representatives, government officials and other community health centres; make public presentations on behalf of the Board of Directors of LAMP; promote mission and values of LAMP with individuals and groups.*

...

- *Provide leadership and advocate on behalf of LAMP around critical issues that affect the health of the community.*

7. LAMP did not submit a Proposal in response to the RFP. LAMP's counsel wrote to the Senior Corporate Buyer on December 16, 2013 stating:

We wish to advise you, on behalf of our client, that LAMP, has no interest, nor intends, to participate in the RFP 0513-13-7010 related to the Preschool Speech and Languages Program.

8. On January 12, 2014, Mr. Ford posted a blog on LAMP's official website, expressing objections to the RFP and asking readers to communicate with named City councillors who were members of the City's Board of Health as follows:

This is a blog that the City of Toronto does not want you to read. I had intended to write it in December but I was advised not to until certain legal actions had been undertaken. I had been threatened by the City that should I write what you are about to read, they would sue me for a minimum of \$25,000.

When I received such a notification, my mouth did go dry. That is a lot of money. The more I thought about it however, the more I became outraged by their actions. The City is trying to use a by-law not for what it was intended to be for, but to stop me from raising a legitimate issue of public policy.

To my regular readers the topic of discussion will not surprise you. It is about Toronto Public Health's (TPH) attempt at grabbing the speech and language program away from community based organizations like LAMP. It is now also about the city's abuse of its power.

As a quick review, TPH is changing the way service is delivered. Rather than through the current community based providers, TPH is reducing the number of service providers to five geographically based organizations who would then contract directly with TPH. What will then follow is a rationalization of the program delivery

model so that all children receive exactly the same service no matter where in the city they live. Differences between the specific needs of children or their family or their community will be a thing of the past. It is a one size fits all approach to providing care to children even though many have special needs like autism

TPH did not consult with the parents who use the service. They don't want to because if they did they would get no support. Time and time again parents thank the staff at LAMP for how adaptive they have been to their child's specific needs. That is how person centred care is supposed to work. The program should fit the needs of the child not the child to the needs of the program

LAMP objected for many reasons with one being cost. If we were not one of the five selected we would have to let our staff go and pay severance which we estimate to be about \$90,000. We did not see why we and other charitable organizations should be funding this misadventure.

At its July meeting the Toronto Board of Health agreed and said this reorganization could only go forward if the provincial government agreed to pay severance costs.

In December TPH which does at least in theory report to the board, put out the call for organizations to bid to be one of the five selected sites. I immediately asked TPH management if they had the agreement from the province to fund severance. They said no, but they had "assurances". In other words they had nothing more than they had in July.

I complained to the chair of the Board of Health who told me it was not uncommon to put out a request for proposals without having funding in place. They could not actually award the contract until they had the money but they could do the proposal call. While I still saw this as a violation of the intent of the board's motion it did meet the standard of the literal motion and I dropped my objection.

My concerns about severance did not escape the watchful eyes of TPH management and an internal memo was written to the members of the board not only saying they were acting appropriately but stating that LAMP would not be one of the five selected candidates

So let's be clear. We are now in a tendering process and the body that will determine who wins the tender has stated in writing that one of the current providers of the service does not have a chance of being successful. This judgement was made before we even submitted a proposal

TPH said we were too small an organization to be awarded the contract. With an annual budget of about \$12 million, LAMP is one of the largest community based organizations in the city. If we are too small then so are just about every other community organization

This admission is hardly a surprise. It is a further demonstration of TPH's antipathy towards LAMP and the community sector. That is what I have always felt but until this memo was leaked, it was only my impression

I complained to the city's purchasing department which is the body that runs the tendering process and to the chair of the board of health. I said this process was now tainted and the person who wrote the memo should be removed from the selection process. The purchasing people said they would get back to me which they have not and the chair said there will be a fairness person overseeing the process whatever that means.

I then read the proposal guidelines. What jumps out is the reduction in the number of staff who actually provide the therapy to children. What the city is increasing is management and administrative staff. They plan to fund the bureaucratic increases by reducing the number of staff who actually provide the care. In other words more money for bureaucracy less money for care.

How much care that will be lost is unclear because the city does not exactly operate in a transparent manner. Over time I have seen two sets of figures on the current staffing complement. If you compare those two sets of figures against the numbers in the proposal call, there will either be a reduction of 16 per cent or 32 per cent in speech therapists.

Reduction in service was never a consideration before. I do not believe the members of the board of health would have approved this plan if they knew it would mean such a drastic reduction in service. When I again contacted the chair about the service cut, he told me he could not talk to me because we are now in the middle of the contract process.

So hide the service cut and then for the first time disclose [sic] it in the RFP. But once the RFP is out, no discussion is allowed. That is quite a system.

The first time that TPH acknowledges the reduction in service outside of the RFP is in a memo to the board that came out after the proposal call. At the very end of the memo it states that providers have been reduced to "increase program flexibility". What incredible double speak. Following that logic why not get rid of all the speech pathologists and then you will have the most flexible program possible. You won't be providing service but whatever you do will be well controlled.

The speech and language program already has a waiting list and has been starved by the province for money. TPH had earlier stated that their changes were a good way to reduce the waiting period. What nonsense. It is just completely unethical in my opinion to fund administration on the backs of children. If you need more administration go to the provincial government, make your case and hopefully get it. But don't reduce service to meet your administrative needs.

I was then informed by the city's Purchasing department, the body that is directing the process that if I continued to try to speak to members of the board I would be considered a lobbyist and fined.

The lobbyist rules are there for good reason. They are there to ensure a fair process. They are there so a bidder can not try to get an advantage by talking up their proposal or talking down another. That is not what I was doing

I was not advantaging myself or anyone. I was demanding that this process be stoped [sic] so the board now with full kinowledge [sic] of the cuts, could determine if they still support this initiative.

So on the advice of my lawyer I was left with two choices. Bid on the contract and shut up or inform the city that we are not going to bid and free yourself to speak as any citizen can.

It was not a hard choice given the earlier memo that clearly said we would not be considered no matter the merits of our proposal.

So the letter was sent to the city indicating that LAMP is not participating in the tendering process and that is why I am now free to publish this blog

This is not the gas plants but it is still about the complete lack of transparency and accountability from the public sector. We will soon be spending money on severance to dismantle a highly successful service so TPH can gain full control over it. It is a power grab, plain and simple. It is also extremely poor stewardship of public money. The severance costs LAMP and other organizations will have to pay, no matter the source of the money, is a flagrant waste of tax dollars. If the province can come up with severance money why can't it come up with money to provide more care to the children?

LAMP is out of options. No one at either the city or the province will speak to us. I believe the province will likely give the severance money by reallocating year end surplus from another program. In that way it will be hard to trace. No one will know how much money has really been wasted

And of course the city could still decide to take legal action against me for writing this blog. My lawyer says they won't win but that does not stop them from trying. We shall see

It is now up to you. Here is a list of the members of the board of health who are city councillors. Call them. Tell them to put a stop to the contract process and have the issue, with full disclosure brought back to the board for a decision. Call your MPP as well and ask that the severance not be flowed from the province. If you live in LAMP's area that is Doug Holyday and his number is [telephone number].

Councillors on the Board of Health

Raymond Cho [telephone number]

Sarah Doucette [telephone number]

John Fillion [telephone number]

Joe Mihevc [telephone number]

Gord Perks [telephone number]

Kristyn Wong-Tam [telephone number]

DISCUSSION

The Lobbying By-law, § 140-41A, does not apply to communications about the RFP by LAMP and Russ Ford

The relevant provisions of the Lobbying By-law, Chapter 140 of the Toronto Municipal Code, are as follows:

§ 140-4. Restriction on application (not-for-profit organizations); exceptions.

A. *This chapter does not apply to members, persons on the staff of the members, or officers or employees of a not-for-profit corporation or other not-for-profit organization when acting in their official capacity, subject to the exceptions in Subsections B, C, D and E.*

...

E. *Subsection A does not apply if the not-for-profit corporation or other not-for-profit organization is communicating with public office holders with respect to a grant application, award or other financial benefit outside of the established administrative review, approval or appeal processes for the grant application, award or other financial benefit, and Article III must be complied with.*

F. *Subsection E does not apply to an organization as defined in Subsection C of the definition of “organization” in § 140-1 that is a not-for-profit community services sector organization and, for greater certainty, is not a not-for-profit organization described in Subsection C.*

§ 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.*

...

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

Subsection § 140-4 (quoted above) exempts a not-for-profit community services sector organization’s members, staff and officers from the Lobbying By-law (Chapter 140), when acting in their official capacity.

The source of § 140-4F may be found in motions adopted by City Council on December 1, 2 and 3, 2008, as follows:

1. *The non-profit community services sector be exempted from the Lobbyist Registry.*
2. *The City Solicitor be authorized to introduce the necessary Bill in Council amending Chapter 140 of the Toronto Municipal Code.*
[\(EX26.22, Lobbyist Registry – Registration of Non-Profit Community Services\)](#)¹

The clear intent of the resolutions adopted by Council was to exempt the not-for-profit community services sector from the Lobbying By-law. As explained in the background report, the reasons for exempting the not-for-profit community services sector included the vital role the sector plays in delivering services in the community on behalf of the City of Toronto; the existing transparency in the funding process; the potential “chill effect” on communications by community services with councillors; and the stress on the community services sector created by the administrative burden of registration: [Background Information \(Committee\) Registration of Non-Profit Community Services](#)².

Subsection 140-4 provides an unlimited exemption to not-for-profit community services sector organizations, consistent with the Council resolutions. By contrast, other not-for-profit organizations have a limited exemption and must register to discuss grants, awards and other financial benefits outside the application and review process.

The effect of § 140-4 is that a not-for-profit community services sector organization and its members, staff and officers acting in their official capacity are not considered to be “lobbyists”. The Lobbying By-law, § 140-41A applies to communications regarding a procurement process by “lobbyists”. By virtue of § 140-4, Mr. Ford was not a “lobbyist” when he communicated in his official capacity as Executive Director of LAMP.

I conclude that there is no conflict or inconsistency between §§ 140-4 and 140-41A. Therefore, § 140-41C does not apply. Paragraph 140-41A applies to communications by “lobbyists”. As discussed above, by virtue of § 140-4, a not-for-profit community services sector organization and its members, staff and officers acting in their official capacity are not considered to be “lobbyists” and are exempted from Chapter 140 in its entirety.

LAMP is a not-for-profit community services sector organization and for this reason is exempt from the Lobbying By-law by virtue of § 140-4. When acting in his official capacity, LAMP’s Executive Director was also exempt from the Lobbying By-law. Mr. Ford communicated with the Chair of the Board of Health and in his blog in his official capacity as Executive Director of LAMP, and was therefore exempt from Chapter 140 by virtue of § 140-4.

¹ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2008.EX26.22>

² <http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-16659.pdf>

The communication restrictions in the City's Procurement Processes Policy, section 5.0, applied to LAMP and Mr. Ford

The communication restrictions in the City's Procurement Processes Policy, section 5.0, applied to LAMP and Russ Ford. Section 5.0 states in part:

5.0 Official Point of Contact and Lobbying Prohibition

The City of Toronto is committed to the highest standards of integrity with respect to the purchase of goods and services and managing the processes by which goods and services are acquired.

*An official point of contact shall be named in all calls to respond to all communications in respect of the call from the time of issuance, during the competitive process, and up to and including the announcement of award. The official point of contact shall be the Chief Purchasing Official or designate. Should it be necessary or desirable to have contact person to respond to technical issues that person shall also be named. **All communications with respect to a call must be made to an official point of contact named in the call.** (emphasis added)*

By contrast, the RFP document by its terms restricted the communications of "Proponents". The RFP restrictions did not apply to LAMP or to Mr. Ford, when communicating on LAMP's behalf, because LAMP was not a "Proponent". "Proponent" is defined in the RFP document as meaning "a legal entity that submits a Proposal". LAMP did not submit a Proposal in the response to the RFP.

In my view, Mr. Ford was subject to the communication restrictions in section 5.0 of the City's Procurement Processes Policy. PMMD staff warned Mr. Ford that he was subject to the restrictions on communications in the City Procurement Processes Policy, section 5.0. Section 5.0 states that "[a]ll communications with respect to a call must be made to an official point of contact named in the call". The only communications permitted under the policy were those directed to the official point of contact. No other communications were permitted.

Respectfully submitted,

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City of Toronto