
REPORT TO COUNCIL

ON AN INQUIRY INTO LOBBYING

BY A FORMER SENIOR PUBLIC OFFICE HOLDER

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INTRODUCTION

This is an inquiry into whether Kevin Mark Maloney (Mark Maloney), a former senior public office holder, breached Chapter 140 of the Toronto Municipal Code (the Lobbying By-law) by:

- Placing a public office holder in a conflict of interest, in breach of § 140-45B;
- Lobbying during the one year post-employment period, in breach of § 140-9A; or
- Lobbying about a procurement process when not permitted to do so, in breach of § 140-41A.

The Registrar determined that Mr. Maloney had breached all of the above provisions.

While registered as a consultant lobbyist, Mr. Maloney was employed by a member of Council to work on the same issue for which he was registered. Mr. Maloney did not advise the councillor of his lobbyist registration. His conflicting roles as a registered consultant lobbyist and staff of a member of Council, working on the same issues in both capacities, placed the councillor in an apparent conflict of interest, contrary to § 140-45B.

Mr. Maloney breached both §§ 140-9A and 140-41A by communicating with a City employee who was not the designated point of contact about a procurement process during the “blackout period”. Mr. Maloney did not advise the City employee that he was a former senior public office holder or that he was a registered consultant lobbyist. When his employment with the councillor ended, Mr. Maloney was prohibited as a former senior public office holder from lobbying for 12 months by § 140-9A. As a registered lobbyist, he was prohibited from communicating with the City employee about the procurement during the “blackout period” by § 140-41A.

FINDINGS

1. Mr. Maloney was employed by a member of Council from September 19, 2012 until June 30, 2013 to work on the issue of Expo 2025.
2. Before, during and after the period of his employment with the councillor, Mr. Maloney was registered as a consultant lobbyist to lobby on behalf of a client union local about Expo 2025.
3. Mr. Maloney did not inform the member of Council who employed him, nor was the councillor aware that he was registered as a consultant lobbyist.

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4. Mr. Maloney breached § 140-45B, which provides:

B. Lobbyists shall not place public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.

Mr. Maloney's registration as a consultant lobbyist while employed for a member of Council, working on the same issue as that for which he was registered (Expo 2025), created an appearance of conflict of interest for the councillor.

5. In July 2013, after his employment contract with the councillor ended and while he was still registered as a consultant lobbyist to lobby about Expo 2025, Mr. Maloney communicated with the General Manager, Economic Development and Culture Division about the procurement process for an Expo 2025 feasibility study.
6. Mr. Maloney did not advise the General Manager, nor was the General Manager aware that Mr. Maloney's employment by the member of Council had ended or that he was registered as a consultant lobbyist.
7. As a registered lobbyist, Mr. Maloney was restricted from communicating about a procurement process except in accordance with applicable procurement policies and documents. Section 140-41A provides:
- A. Lobbyists shall not communicate in relation to a procurement process except as permitted by applicable procurement policies and procurement documents.*
8. Mr. Maloney's communications with the General Manager about the feasibility study procurement in late July 2013 breached the restrictions in the City's Policy on Procurement Process, section 5. Under this policy, communications are restricted to a single named point of contact from the time procurement is issued until its award. As a result, his communications breached § 140-41A.
9. Mr. Maloney was a former senior public office holder by virtue of his employment by a member of Council. As a former senior public office holder, he was prohibited from lobbying for 12 months after his employment ended. His communications with the General Manager about a procurement for the Expo 2025 feasibility study in July 2013 after his employment had ended on June 30, 2013, breached § 140-9A, which provides:
- A. Former senior public office holders shall not lobby current public office holders during the 12 months after the date he or she ceased to hold office or ceased to be employed as a senior public office holder by the City or a local board (restricted definition), or ceased to hold office as a member of the Board of Health.*

DISPOSITION

1. Mr. Maloney's subject matter and consultant lobbyist registrations have been revoked (closed) under § 140-36B of the Lobbying By-law.
2. Mr. Maloney has been cautioned with respect to the restrictions on lobbying that apply to former senior public office holders. The 12-month period when lobbying is prohibited under § 140-9A has now expired.
3. Mr. Maloney has attended a lobbyist training session provided by the Office of the Lobbyist Registrar (OLR).
4. In these circumstances, no further action is taken.

THE INQUIRY PROCESS

On August 1, 2013, the Director of Purchasing and Materials Management (PMMD) copied the Lobbyist Registrar on an email he sent in reply to questions about a procurement process from a former senior public office holder.

The Lobbyist Registrar commenced an inquiry to determine whether Mr. Maloney, a former senior public office holder, had breached the requirements of § 140-9A by lobbying within 12 months after the end of his employment; lobbied about a procurement process in breach of § 140-41A; or placed a public office holder in a conflict of interest contrary to § 140-45B.

Inquiries and Investigations Counsel gathered relevant information and on August 28, 2013 sent a Notice of Inquiry setting out the allegations to Mr. Maloney together with an opportunity to respond to the allegations. On September 13, 2013, Mr. Maloney requested and was granted an extension to reply to the allegations contained in the Notice of Inquiry. On September 30, 2013, Mr. Maloney responded to the Notice of Inquiry.

On September 30, 2013, Counsel summonsed and interviewed the Director, Purchasing and Materials Management Division (PMMD) under oath. On November 12, 2013, Counsel summonsed and interviewed a member of Council under oath. On November 14, 2013, Counsel summonsed and interviewed Mr. Maloney under oath. On February 28, 2014, Counsel summonsed and interviewed the General Manager of Economic Development and Culture under oath.

On November 27, 2013, Counsel wrote to the Director, Business Development and Global Markets for a consulting firm, requesting information. On December 4, 2013, Counsel interviewed the Director by telephone.

On February 19, 2014, Counsel wrote to the president of a union local to request relevant information. On March 4, 2014, the union local president provided information

to Counsel. On March 21, 2014, Counsel requested clarification of certain information provided by the union local president. On May 2, 2014, Counsel again requested clarification of certain information provided by the president. On June 19, 2014, the president provided the requested clarification.

On June 17, 2014, the Lobbyist Registrar provided her proposed findings, facts and disposition in this inquiry to Mr. Maloney, together with an opportunity to respond. Mr. Maloney provided his response on June 27, 2014. His response has been included in this report at page 9.

FACTS

Mr. Maloney's lobbyist and subject matter registrations

1. On May 8, 2012, Kevin Mark Maloney (Mark Maloney) registered as consultant lobbyist number 19365C under the business name "Urban Consulting". He also registered subject matter registration number SM18091 to lobby on behalf of a client, a union local, in relation to "attracting a major tourism event in the waterfront and portlands area of the city". The proposed end date for the subject matter was May 8, 2013.
2. The OLR closed SM18091 on October 24, 2013. Mr. Maloney's consultant lobbyist registration was closed on March 13, 2014. In SM18091, Mr. Maloney reported 23 emails, 2 telephone calls and 7 meetings with 8 members of Council and 2 of their staff as well as the General Manager of the City's Economic Development and Culture Division in May and June 2012.

Mr. Maloney's attempts to close his registration

3. Mr. Maloney attempted to close SM18091 on February 26, 2013. A Registry Advisor wrote to Mr. Maloney on February 27, 2013, thanking him for his request to close his registration and asking him to confirm that no public office holders were lobbied regarding this matter. Mr. Maloney replied that he had attempted to add reports of lobbying activities to his registration. A Registry Advisor replied with information about how to report his communications, and offered assistance. No reply was received from Mr. Maloney.
4. On May 10, 2013, a Registry Advisor wrote to Mr. Maloney again about SM18091, because the proposed period for lobbying on this matter had ended on May 8, 2013. The Advisor provided information on how to update and close the registration, and offered assistance, stating:

If you need assistance to update and close/update your subject matter registration, please contact the Lobbyist Registry at 416-338-5858. We will be happy to walk you through the process over the telephone.

No reply from Mr. Maloney was received.

5. On October 22, 2013, a Registry Advisor wrote to Mr. Maloney again, following up on the February 27, 2013 email in which he was required to confirm in writing that no public office holders were lobbied regarding SM18091. On October 23, 2013, a Registry Advisor wrote to Mr. Maloney that on February 26, 2013 he had attempted to report communications with 10 public office holders, but on the same day he had cancelled all communications he had reported. The Advisor asked him to update his registration and re-enter the communications, and offered assistance. Mr. Maloney replied on October 23, 2013 that he was attempting to update his file with communications from 2012 as requested and did not intend to cancel anything. He simply wished to update and close his registration. On October 24, 2013, the OLR closed Mr. Maloney's subject matter registration.
6. On November 28, 2013, Mr. Maloney attended a training session on the Lobbying By-law provided by the OLR.

A related registration in which Mr. Maloney appeared as a client of a consultant lobbyist

7. On June 13, 2012, Mr. Philip A. Gillies, a registered consultant lobbyist, registered SM18204 to lobby about the "Expo 2025 proposal". Mr. Maloney was named as the client in the registration. The union local named as a client in Mr. Maloney's registration SM18901 was named as a financial contributor in SM18204.
8. Mr. Gillies wrote to the OLR on October 24, 2013 regarding this subject matter stating:

I wish to clarify the status of the Expo 2025 subject matter on my registration, particularly as pertains to some confusion regarding Mr. Mark Maloney.

When I originally registered this subject matter, it was with the thought that I might obtain some paid consulting work on the file at some point in the future. This never happened. I want to make clear that any and all work I have done on this matter during the last two years has been done as a citizen volunteer, and not as a paid lobbyist.

I erred in listing Mr. Mark Maloney as the "client" on this registration. In fact Mr Maloney has been the coordinator of an all-volunteer committee. Mr. Maloney has never been, and is not now, my client with respect to this or any other business with the City of Toronto. I should have corrected my registration in this respect some time ago, but only requested delisting of this subject matter yesterday.

9. The OLR closed SM18204 on June 12, 2014.

Mr. Maloney's contact with a consulting firm

10. In or around March 2012, Mr. Maloney contacted the Director, Business Development and Global Markets for a consulting firm to discuss a new proposal by

a group interested in bringing Expo 2025 to Toronto. The Director told OLR Inquiries and Investigations Counsel that she understood that Mr. Maloney was working for a union; and that Mr. Maloney had never worked for the consulting firm in any capacity, including as a consultant lobbyist.

Mr. Maloney's lobbying activities in May and June, 2012

11. Mr. Maloney confirmed under oath the information in SM18091. In May and June 2012, he lobbied for his client, a union local, for a specific motion related to Expo 2025 that went to Council in June 2012:

I was a volunteer for actually a couple of years prior to doing this for the [union local], so, yeah, I went from volunteer to actually working for that specific motion, and then back to volunteering.

12. The union local president confirmed that Mr. Maloney lobbied on their behalf, as stated in SM18091.
13. On June 6, 7 and 8, 2012, Council adopted resolutions requesting a staff report on the feasibility of hosting World Expo 2025 ([Member Motion MM24.13](#))¹.

Mr. Maloney's employment with a member of Council

14. On September 19, 2012, Mr. Maloney was hired as a contract employee in a member of Council's office. The contract ended on June 30, 2013.
15. The councillor and Mr. Maloney stated under oath that Mr. Maloney was hired mainly to work on bringing Expo 2025 to Toronto.
16. Mr. Maloney did not tell the councillor that he was a registered lobbyist and the client of a registered lobbyist. The councillor stated under oath that she did not know that Mr. Maloney was a registered lobbyist for the union local.

Post-employment communications about the Expo 2025 feasibility study

17. Mr. Maloney stated under oath and the councillor confirmed that after his employment ended on June 30, 2013, he continued to work as a volunteer for the councillor on the Expo 2025 issue. During this period, he was not working for the union local or anyone else. He was not being paid by anyone to lobby.
18. On July 30, 2013, the City sent Notice of Assignment #9144-11-7001Cat2MC19-27 to the firms in the City's Roster for Category 2, Management Consultants, established by REOI 9144-11-7001. The Notice included a Letter of Invitation to submit a Response on a Feasibility Study Assignment for the Economic

¹ <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.MM24.13>
<http://www.toronto.ca/legdocs/mmis/2012/mm/bgrd/backgroundfile-47993.pdf>

Development and Culture Division, a Statement of Work for the Feasibility Study, which related to the 2024 Olympics and 2025 World Expo.

19. In or around July 2013, Mr. Maloney contacted the General Manager, Economic Development and Culture (the General Manager) to ask about the procurement process and bidders for a feasibility study related to Expo 2025. He asked if the consulting firm he had contacted was on the list of possible consultants. The General Manager became concerned about the nature of the questions and referred Mr. Maloney to the Director, Purchasing and Materials Management Division (the Director, PMMD). At the time of these communications, the General Manager thought Mr. Maloney was still an employee of the councillor. He was not aware that Mr. Maloney's contract of employment had expired.

- On July 3, 2013, Mr. Maloney sent an email to staff in Economic Development and Culture stating:

Here's what [the General Manager] had sent [to the councillor] in June.

. . .

We are just trying to clarify dates & next steps:

- 1) *The dates, and timing and process of the RFQ going out?:
What date is it expected to go in July? . . .*

- On July 23, 2013, Mr. Maloney sent an email to the General Manager, asking about the target date for issuing an RFQ and indicating that a consulting firm with which he had spoken was interested:

I have had an inquiry from a consulting firm potentially interested in the RFQ that is expected.

Because of people's vacations and travel schedules that they have to work around, how will the RFQ going out? Is it through an existing city list of firms that the City already has, in house, or is it issued through the Merx system, or through another channel (and if so, what one?)

Are you still targeting July 29 for issuing?

- On July 31, 2013, Mr. Maloney wrote to the General Manager with a list of questions concerning the RFQ process and the process for choosing the list consulting firms who were eligible to bid on the RFQ to conduct a feasibility study for Expo 2025. The General Manager replied that there was a roster of consultants, which did not include the particular consulting firm about which Mr. Maloney inquired. The General Manager also advised:

*All questions are to be directed to the Proposal call lead who is . . . copied.
I'm asking him to contact you to answer your questions below. The Councillor can also contact the head of PMMD*

- The Director, PMMD advised Mr. Maloney:

I was looking through the email chain and saw a mention of a consulting firm asking questions. Since we are in a black out period of the procurement process, anyone asking questions should be directed to the official point of contact or myself. Any communication from a third party to the Councillor's office about the procurement could be a violation of the lobbyist by-law.

- Mr. Maloney replied to the Director, PMMD:

The company has not asked

They did not ask these questions. There has been no lobbying whatsoever.

. . .

I am the one asking the question, and it is simply based on their past record of work done on this issue.

And as you can also see, I did also ask that these questions be appropriately directed to the Procurement office for a response

. . .

. . . I am . . . asking the question on my own, as a community volunteer, and am no longer working on a part-time basis for the Councillor. My contract finished in June.

All work on this is now strictly on a voluntary basis, and I am not asking (nor was I asking) on behalf of the Councillor.

- The General Manager wrote to the Director, PMMD:

. . . I did not know he was no longer working for the Councillor. If I had known I would have dealt with this is a bit differently. My suggestion is that [the designated staff contact for the procurement] follow up with him.

- On August 1, 2013, Mr. Maloney sent an email to the Director, PMMD, asking:

In particular why [the consulting firm] was/is not on the City's list? Simply based on their past work, knowledge and level of expertise, that . . . is a serious and glaring omission. . . . what other firms were on the prior "longer" or "full" "pre-determined roster" and were left off this RFQ process, as well? Who made that decision, and why?

As someone who is a community stakeholder and has helped assist the whole Expo initiative I want to see the best possible expertise considered, evaluated, and then engaged.

...

For the past year and a half we have had a very positive and serious group of people from the community (and from different levels) engaged on the issue, contributing their views, and very supportive of the City of Toronto taking a serious look at what the possibilities, benefits, issues, challenges, and the legacies would be for the City, GTA, Ontario and for Canada, and they ALL have been supportive of doing the required study and due diligence.

But I do want to be able to go back to everyone and say yes, we are going to get the best possible advice, knowledge, and expertise and I cannot, at this point, say that.

- On August 1, 2013, the Director, PMMD replied to Mr. Maloney that a Roster for Management Consulting Services had been established through a Request for Expression of Interest (REOI) issued on February 11, 2011. The Roster allows for staff from the City Manager's Office to make a determination to issue a Statement of Work to small subsets of the Roster, as was done for the feasibility study related to Expo 2025. The Director continued:

Finally, because you have now clarified that you are no longer working with the City and the Councillor's office, I have to remind you that when asking questions about this procurement, you must only address the official point of contact . . . or myself and not copy any other City staff or elected official.

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

...

As part of PMMD's protocol, I have also advised the Lobbyist Registrar of your communication.

MR. MALONEY'S RESPONSE

Mr. Maloney responded to the proposed findings, facts and disposition in this report on June 27, 2013. His response is as follows:

The Lobbyist Registry performs a useful and important function and I appreciate the guidance that they gave given me.

I would like to clarify just a few points that are not necessarily reflected in the report from staff.

First of all, the topic and issue at hand that caused this report, was above all a community endeavor ... to bring forward a possible major community project, Expo 2025, a World's Fair for Canada, an initiative that would bring the largest number of visitors to Toronto in its history, and allow the city to advance its plans, goals, and targets in the areas of economic development, jobs, proactive planning, tourism, arts and culture, and developing its waterfront into a clean green community, post-Expo.

That said there was is no one single company, business, sector, or entity that was seeking to benefit out of all of this, or from any lobbying of City Council. It was a project to benefit the community as a whole, bringing 40 million visitors to the site and allowing the city and province and Waterfront Toronto to have the catalyst event, rationale, and kick-start to actually carry out and accomplish its goals to improve the waterfront ... and all of which are Council-approved goals.

An all-volunteer community group has been in existence since 2010 and what the Registrar's report does not show is that literally thousands of hours of voluntary time have been donated by dozens of volunteers and from a wide cross-section of the community, all working cooperatively with the city, and to try and better the community.

In my own case, the only reason I ever registered in to lobby in the first place was because the process to get the Expo file started once again at the City level (after a failed bid in 2006) involved getting the City Council to fund a comprehensive feasibility study. That required council approval, and . . . the head of the [union local] was unable for reasons of work, travel, and scheduling to meet with councillors, so he asked me my help since I had done a prior major study for them on the rehabilitation of social housing.

Just so that you understand the process on this file, I went from being a community volunteer, to a single paid consulting assignment in 2012, back to being a community volunteer again, then working for the city on part-time basis, then back to being a community volunteer again.

I registered to complete the part-time consulting assignment in connection with the Council vote, and that part-time assignment took place in May and June 2012. What happened then is that the work was completed, the council vote had taken place, there was no further work to be carried out, and the summer came along and I simply forgot to close the file and to de-register from the Lobby Registry following the council vote.

I then went back to being a community volunteer on the project again, and then was asked several months later to work for the City on a part-time basis. But by that time I had simply forgotten that I was still in the official Registry, since that project for the [union local] was long since over and I was volunteering again. It's a good lesson that I have now learned: when your consulting lobby assignment is over, one needs to de-register and close the file at once.

In the matter of contacting a city official re: a procurement matter the error was inadvertent and unintentional. The background and the context are as follows ...

In 2012 and in 2013 our volunteer community group had met with the city on the project on several occasions, and also asking each time about what would be the timing regarding the issuance of an RFP. From our end we were operating at that time with the understanding that it would be a publicly issued RFP, issued on a public site, such as

the widely known MERX procurement system, where such a Request is publicly posted for all to see, and consider, and companies can choose to get the RFP documents, specs, and materials and they can then decide on whether they wish submit a bid to the City by the closing date that is specified.

All along we had always sought, in fact, to encourage the widest, best, and most qualified number of bidders possible to carry out the City feasibility study, and in any community, public, and information meeting we held, we referred to the fact that the City would be coming put with a public Request proposal, and to watch for it, and then bid if they company or group met the overall professional expertise and criteria.

What we did not know (and had never been told by staff along the way) is that that was NOT the process and course of action that would be followed by the City. What the City had chosen to do instead is issue an RFQ (request for quotations) from an internal list of consulting firms that had already been pre-qualified and vetted by staff, as potential bidders.

Our group did not know that, and also were not familiar with City procurement policies (because none of us had ever dealt with procurement matters at the City before), thus when we asked for and were given the list of firms who had submitted an expression of interest in the project (prior to the actual closing submission date for a bid) and the major firm that had done all the work for the City on the prior Expo bid in 2006 was not on that list, we thought "that's really odd" and simply called staff ...

We erred on two counts ...

1.) First of all, I had by then left the part-time City position and I was back to being a volunteer on the project again, and did not realize that I fell under the prohibition of calling someone on staff at the City about any matter since that fell under the category of lobbying. We were simply asking the staff we had been dealing with for months on this very issue why a company that was well qualified (due to all its prior expertise) had not made the list of possible firms who might made a formal bid. We were not lobbying for the company, and at no time did anyone ask us to call staff. We genuinely wanted to make sure that the City would obtain the best possible crop of bids.

2.) Secondly, one is also not supposed to call any member of staff once a procurement process has started. Again, because we did not know the process, and that it was not an open bid, but a pre-qualified bid process, an error was made on both counts. That has since been corrected and I have taken the lobbyist training course offered by the Registrar, so I know the error of my ways. But, as mentioned, the errors were made due to an unfamiliarity with the process and were not intentional. In fact, once we were explained the facts and why the company we were inquiring about had not made the list, we agreed with the City and said so in writing.

In closing, if I might offer one suggestion, it is that when there is the next set of overall reforms of the Lobby Registry, I believe you should make it mandatory for all new registrants to take the Lobby Training Course, and that you provide regular ongoing courses (and charge for them as well.) Had I known all of the above, and from the very beginning, I would not have made the errors I did. As I said, a valuable learning experience.

Mark Maloney

DISCUSSION

Mr. Maloney placed the member of Council who employed him in a conflict of interest

As a registered lobbyist, Mr. Maloney was subject to the provisions of the Lobbyists' Code of Conduct, including:

§ 140-45

- A. *Lobbyists shall avoid both the deed and the appearance of impropriety.*
- B. *Lobbyists shall not place public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.*

Conflict of interest is defined as the presence of competing loyalties or tension between public and private duties. It may be real or apparent. In her *Report, Toronto Computer Leasing Inquiry; Toronto External Contracts Inquiry* (2005, Volume 2, Good Government, pages 38-39), Madam Justice Denise E. Bellamy wrote that "conflict of interest is essentially a conflict between public and private interests":

Conflicts of interest confuse decision-makers and distract them from their duty to make decisions in the best interests of the public, which can result in harm to the community. The driving consideration behind a conflict of interest rules is the public good. In this context, a conflict of interest is essentially a conflict between public and private interests.

Mr. Maloney was registered as a consultant lobbyist to lobby about bringing Expo 2025 to Toronto when he was hired by a member of Council to work on the very same issue. His roles as a lobbyist and staff of member of Council created a conflict between his client's private interests and his duty as staff of a member of Council to serve the public interest on the Expo 2025 issue. He failed to disclose his status as a registered lobbyist to the councillor. This had the effect of creating a conflict of interest within the councillor's office, which reflected upon the councillor by compromising the ability of her office to perform its public duty on the issue of Expo 2025. His conflicting public and private roles created an apparent conflict of interest for the councillor for whom he was working. This was an unacceptable position in which to place the councillor, which could have been avoided at the outset by Mr. Maloney if he had disclosed his lobbyist registration to the councillor and if he had disclosed his status and sought advice from the OLR.

I note that the OLR tried more than once in the period from February to October 2013 to help Mr. Maloney update and close his registration. He did not try to close his registration before February 2013, by which time he was already in the employ of the councillor. He failed to respond to at least one email from an OLR Registry Advisor offering assistance with his registration. Mr. Maloney did not advise the OLR of his

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status as a former senior public office holder, nor did he ever indicate this fact in his registration.

Mr. Maloney breached the Lobbying By-law's restrictions on lobbying by a former senior public office holder and lobbied about a procurement during the "blackout period"

As a former senior public office holder whose employment ended on or after February 11, 2008 Mr. Maloney was subject to § 140-9A, which provides:

- A. Former senior public office holders shall not lobby current public office holders during the 12 months after the date he or she ceased to hold office or ceased to be employed as a senior public office holder by the City or a local board (restricted definition), or ceased to hold office as a member of the Board of Health.*

Under § 140-1, a "senior public office holder" includes any person on the staff of a member of City Council. Mr. Maloney was a "senior public office holder" by virtue of his contract of employment for a member of Council. When his employment contract ended on June 30, 2013, the provisions of § 140-9A applied, prohibiting him from lobbying for 12 months.

Under § 140-9A of the Lobbying By-law, a senior public office holder whose employment ends is prohibited from lobbying at the City for 12 months after the date the employment ends. This is a "cooling off period" designed to ensure that former senior public office holders do not use inside knowledge or relationships with other public office holders to exert undue influence. Mr. Maloney lobbied the General Manager within 12 months after the end of his contract of employment, contrary to § 140-9A, when he communicated with the General Manager about the procurement for the feasibility study in July 2013.

As a registered lobbyist, Mr. Maloney was subject to the provisions of the Lobbyists' Code of Conduct, including:

§ 140-41

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

The City's Procurement Processes Policy, section 5.0 provides that from the time of the issuing of a procurement until its award, all communications must be made to an official point of contact named in the call. This is commonly referred to as the "blackout period".

The procurement process for the Expo 2025 feasibility study was in a "blackout period" from July 30, 2013 when it was issued, until its award. Mr. Maloney emailed the General Manager on July 31, 2013 with questions about the procurement process. Mr. Maloney was a registered lobbyist when he communicated with the General Manager about the feasibility study procurement during the "blackout period" on July 31,

2013. This was a breach of section 5.0 of the City's Procurement Processes Policy and § 140-41A.

I find that Mr. Maloney's intent in asking questions of the General Manager about the feasibility study procurement was as a volunteer on behalf of the councillor. He referred to previous correspondence made on the councillor's behalf. I do not find that Mr. Maloney was acting for his client, the union local in asking these questions. I find that Mr. Maloney was not authorized to act on behalf of the consulting firm he mentioned in his email to the General Manager, though he may have been acting as a volunteer on their behalf.

When he communicated with the General Manager about the procurement for the feasibility study in July 2013, Mr. Maloney was a registered lobbyist communicating with a public office holder about a procurement that was in a "blackout period" in breach of § 140-41A; and he was a former senior public office holder who lobbied the General Manager in breach of § 140-9A. The General Manager was not aware that Mr. Maloney was a registered lobbyist and a former senior public office holder. Mr. Maloney failed to disclose his status as a former senior public office holder and registered lobbyist to the General Manager with whom he communicated about the feasibility study procurement. This was an unacceptable position in which to place the General Manager. The breaches of the Lobbying By-law related to Mr. Maloney's communications about the procurement could have been avoided had Mr. Maloney disclosed his status to the General Manager.

Conclusion and Disposition

In conclusion, Mr. Maloney has been found to have breached the Lobbying By-law, §§ 140-9A, 140-41A and 140-45B. He lobbied while he was a former senior public office holder within the 12-month period after the end of his employment contract. He lobbied about a procurement during the "blackout period" when communications with public office holders were restricted to a buyer who was named as the single point of contact. He placed a member of Council, who was unaware of his lobbyist registration, in a conflict of interest.

Mr. Maloney failed to disclose his status as a registered lobbyist and the client of a registered lobbyist to the member of Council who employed him. He failed to disclose his status as a senior public office holder and as a former senior public office holder to the OLR. He failed to disclose to the General Manager whom he lobbied that he was a former senior public office holder, a registered lobbyist and the client of a registered lobbyist.

Although he made several attempts to close his registration, and had communications with the OLR during the period of his employment, Mr. Maloney did not follow up, did not respond to OLR emails offering assistance and did not disclose to the OLR his status as a senior public office holder and then former employee of a member of Council. Had he done so, the OLR would have been able to address the situation, and

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the Lobbying By-law violations and conflict of interest in which he placed the member of Council could have been avoided.

The Lobbying By-law § 140-36B provides:

- B. The Registrar may suspend or revoke a return or other document submitted to the Registrar under this chapter that is subsequently found to not comply with the requirements of this chapter or to contain information or a statement that is inaccurate or no longer accurate.*

The Registrar has revoked (closed) Mr. Maloney's lobbyist and subject matter registrations because the registrations have been subsequently found not to comply with the requirements of §§ 140-9A, 140-41A and 140-45B, and contained inaccurate information.

Mr. Maloney stated under oath that he was not familiar with the Lobbying By-law and did not intend to breach its provisions. He attended an OLR lobbyist training session in November 2013. His response to this inquiry indicates that he has taken to heart the need for compliance with the Lobbying By-law. The 12-month period when Mr. Maloney was prohibited from lobbying as a former senior public office holder has now passed. In these circumstances, I conclude that further action is not necessary.

Mr. Maloney is permitted to register as a lobbyist and to lobby City public office holders. If he wishes to register again, he should seek advice from the OLR, be familiar with and comply with the Lobbying By-law at all times in the future.

This report is made as it is in the public interest, to inform public office holders and the public of the facts and outcome of this inquiry.

Respectfully submitted,

Linda L. Gehrke,
Lobbyist Registrar
City of Toronto