



## STAFF REPORT ACTION REQUIRED

### Review of the Functions of Toronto's Accountability Offices

<b>Date:</b>	November 17, 2015
<b>To:</b>	Executive Committee
<b>From:</b>	City Manager
<b>Wards:</b>	All

#### SUMMARY

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City Council directed an external review of Toronto's accountability functions to explore options for delivering the functions in a combined or multiple role and in a way that would strengthen the functions and improve service to the public. City Council requested the City Manager to work with the Accountability Officers and report to Executive Committee on the results of the external review and on an implementation strategy. This report responds to City Council's request.

The City Manager retained Lorne Sossin, Dean of Osgoode Hall Law School at York University, to undertake an independent and objective review of the accountability functions following a Request for Proposal (RFP) process.

Dean Sossin's report confirms that the City of Toronto's accountability framework remains the leading structure of municipal government oversight in Canada, and among the leaders globally. Notwithstanding that Toronto's accountability offices function efficiently and effectively, the report identified opportunities for improvements including:

- exploring the implementation of a general hotline to function as a central tip line for reporting allegations of all forms of government wrongdoing, unethical conduct and administrative unfairness in order to capture and disseminate complaints to the appropriate Accountability Office or City official;
- improving coordination and collaboration in key areas through the execution of a memorandum of understanding across the four accountability offices; and
- appointing one person to serve as both the Integrity Commissioner and Lobbyist Registrar.

The City Manager has reviewed the recommendations from Dean Sossin's review, in collaboration with the Accountability Officers. This report puts forward an implementation strategy. The report recommends undertaking further due diligence to assess the benefits, limitations and financial implications of a general hotline and to report back once this work is complete.

The Accountability Officers have developed and executed a memorandum of understanding in order to enhance coordination and collaboration in key areas including sharing information when concurrent investigations are undertaken. To clarify and reinforce the Accountability Officers' ability to share information with each other as required to undertake their responsibilities pursuant to Part V of the *City of Toronto Act, 2006*, this report recommends a technical amendment to the Act that can be considered by the Province with the other amendments the City has requested as part of the 5-year review of the *City of Toronto Act, 2006*.

The report recommends that the City Manager initiate a recruitment process for a Lobbyist Registrar for a term ending September 2019, to coincide with the term ending for the current Integrity Commissioner. Ensuring that the terms of the incoming Lobbyist Registrar and the current Integrity Commissioner both conclude at the same time provides flexibility to City Council to make this change in 2019 and for future appointments.

The City Manager will report further, prior to the end of the terms for the Lobbyist Registrar and Integrity Commissioner, with respect to the merits of one person being appointed as both the Integrity Commissioner and Lobbyist Registrar.

## **RECOMMENDATIONS**

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The City Manager recommends that:

1. City Council request the City Manager, in collaboration with the Accountability Officers, to undertake further review on a general hotline and report further on the benefits, risks, and financial implications;
2. City Council authorize the City Manager to request the Province of Ontario to amend the *City of Toronto Act, 2006* to clarify and reinforce the Accountability Officers' ability to share information between them as required in order to undertake their responsibilities under Part V of the *City of Toronto Act, 2006*, and authorize the Mayor and City Manager to negotiate the changes as required;
3. City Council authorize the City Manager to initiate a recruitment process for a Lobbyist Registrar to be appointed by City Council for a term ending in September 2019;

4. City Council request the City Manager to report back prior to the end of the incoming Lobbyist Registrar's term with respect to the merits of appointing one person as both Integrity Commissioner and Lobbyist Registrar in future; and
5. City Council extend the term of the interim Ombudsman until a permanent Ombudsman is appointed by City Council and authorize the City Manager to initiate a recruitment process for an Ombudsman.

## **Financial Impact**

The total cost for the external review was \$52,000 and the cost was covered within the 2015 approved operating budget for the Strategic and Corporate Policy Division.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting on March 31, April 1 and 2, 2015, City Council directed an external review of the four Accountability Officers' functions to explore options, including the status quo, and outline the legal, technical and process implications of delivering Accountability Officers' functions in a combined or multiple role that may strengthen their functions and improve service to the public. City Council also requested the City Manager to work with the Accountability Officers and report to the Executive Committee in the third quarter of 2015 on the results of the external review and on an implementation strategy arising from the consultant's findings.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.MM5.10>

## **ISSUE BACKGROUND**

As an early sign of its commitment to accountable and transparent government, Toronto City Council established an Auditor General in 2002 and an Integrity Commissioner in 2004 and requested authority from the Province of Ontario to establish empowered Integrity Commissioner, Lobbyist Registrar and Ombudsman functions.

The Province of Ontario subsequently included a requirement in the *City of Toronto Act, 2006* ("COTA") for Toronto to establish an Auditor General, an Integrity Commissioner, an Ombudsman, a Lobbyist Registry and provided authority to appoint a Lobbyist Registrar (collectively the "Accountability Officers"). To meet its statutory obligations and round out the City's accountability system, City Council established a lobbyist registry and appointed a Lobbyist Registrar and an Ombudsman in 2008.

The Auditor General is responsible for assisting City Council in holding itself and its administration accountable for public funds and for the achievement of value for money in City operations including all City divisions, most City agencies, the offices of the

Mayor and Members of Council and some corporations within the limitations established by City Council. The Auditor General also operates the City's Fraud and Waste Hotline.

The Integrity Commissioner is responsible for providing advice, complaint resolution and education to elected officials (the Mayor and Councillors) and appointees of local boards on the application of their respective codes of conduct, and other by-laws, policies and legislation governing ethical behavior. The Integrity Commissioner also plays a role in investigating complaints (formal or informal) about the conduct of Members of Council, Members of Local Boards and Adjudicative Boards and in determining whether or not there has been a violation of the City codes of conduct.

The Lobbyist Registrar promotes and enhances the transparency and integrity of City government decision-making through public disclosure of lobbying activities and regulation of lobbyists' conduct. The Lobbyist Registrar's responsibilities include overseeing the lobbyist registration system, providing advice on Toronto Municipal Code Chapter 140, Lobbying, conducting inquiries and investigations, and enforcing compliance with Chapter 140 and advising City Council on lobbying matters.

The Ombudsman works to ensure that the City treats the public fairly, and that services are provided in a fair and equitable manner for all. The Ombudsman is responsible for addressing concerns about City services and investigating complaints about administrative unfairness related to City divisions, most City agencies, and City corporations. City Council does not fall within the Ombudsman's purview.

## **COMMENTS**

### **1. Third-Party Review of Toronto's Accountability Functions**

City Council directed a third-party review of Toronto's accountability functions. Lorne Sossin, Dean of Osgoode Hall Law School at York University, was retained to undertake this work following a Request for Proposal (RFP). The deliverables of the review included:

- reviewing literature and academic journals;
- researching best practices in other comparable municipal, provincial and national jurisdictions;
- consulting with current and former Accountability Officers, academia and other key stakeholders;
- reviewing the Accountability Officers' role, authority and function as established by the *City of Toronto Act, 2006*, and Toronto Municipal Code, Chapter 3, Accountability Officers; and
- preparing a report with recommendations for City Council's consideration.

The full report, *Review of the Functions of the Accountability Officers for the City of Toronto* can be found as Attachment 1 to this report.

## **2. Key Findings of the Third-Party Review**

The third-party review concluded that Toronto's accountability functions are working effectively and efficiently and that Toronto's accountability regime remains the leading structure of municipal government oversight in Canada, and among the leaders globally. The review confirmed that a significant degree of shared services and coordination has been developed across Toronto's accountability functions. The review did however, identify some key opportunities for improvement that are summarized below.

### **A. Improve Service to the Public through a General Hotline**

The Auditor General currently operates the City's Fraud and Waste Hotline which functions as a central tip line to report allegations of fraud and waste to the Auditor General for investigation and resolution. Toronto Municipal Code Chapter, 192, Public Service (the Toronto Public Service By-law), which comes into force at the end of 2015, assigns the Auditor General responsibility to lead investigations of wrongdoing which is defined in the By-law as serious actions that are contrary to the public interest including but not limited to: fraud, theft of City assets, waste, violations of the City's conflict of interest rules and breach of public trust.

The review recommends that the City explore the implementation of a general hotline which would function as an independent tip line to report all forms of government wrongdoing (broader than the forms of wrongdoing defined in the Toronto Public Service By-law), unethical conduct and administrative unfairness. Dean Sossin notes that a general hotline may be easier for the public to navigate than multiple entry points and may result in improved service to the public. This hotline would be responsible to efficiently capture and disseminate complaints to the appropriate Accountability Office or City official for action, sparing the public the frustration of being redirected if they have contacted the wrong office or have visited multiple offices to address their concerns.

### **B. Improve Coordination and Collaboration across the Accountability Functions**

The report notes that the operations of the accountability offices already harness shared services, including administrative and financial support from the City Clerk, and co-location (for the Integrity Commissioner, Lobbyist Registrar and Ombudsman) to facilitate greater collaboration and coordination. In addition, the City Manager has established formal protocols with all accountability offices with respect to human resources and the budget process.

However, the review does identify opportunities to improve coordination and collaboration in key areas including:

- **joint education and training** – the review suggests extending the existing practice of joint training and education offered by the Accountability Officers to Members of Council, City staff, and members of the public in order to leverage cost and effort;
- **raising the profile of the accountability framework** – the review noted that the current shared web portal is a good step forward and other opportunities to raise the profile and understanding of the accountability framework should be explored. This could include links and short descriptions of the other officers on their individual web sites; and
- **sharing information for concurrent investigations** – the review recommends that provisions to share information for concurrent investigations be strengthened to promote collaboration and mitigate vexatious complaints.

The report recommends that the most appropriate vehicle to enhance coordination and collaboration including the key areas described above is through the execution of a memorandum of understanding across the four accountability functions.

A memorandum of understanding between the Lobbyist Registrar and Integrity Commissioner was executed in 2014 with respect to collaboration and coordination in education and enforcement activities and the review suggests it can be used as a basis for a broader agreement between all offices. A memorandum of understanding was also recently executed in October 2015 across all four accountability offices with respect to cooperation and collaboration in the Accountability Officers' Part V duties under COTA.

### **C. Appoint one Person as the Lobbyist Registrar and Integrity Commissioner**

The report suggests that there may be some merit in appointing one person as both the Integrity Commissioner and Lobbyist Registrar but does not recommend a full merger between the two offices.

The Integrity Commissioner and Lobbyist Registrar functions are provided by one accountability official in a number of other jurisdictions and already operate with a high degree of collaboration in Toronto's context. This change would not require amendments to structure or protocols but would enable the person appointed to both offices to identify areas where efficiency and effectiveness of each office could be enhanced through greater collaboration, joint activities and shared services.

## **3. Implementation Considerations**

City Council requested that the City Manager work with the Accountability Officers on the results of the external review and on an implementation strategy arising from the consultant's findings.

This section puts forward an implementation plan for the key recommendations including (A) consideration of a centralized hotline, (B) executing a memorandum of understanding between the accountability functions to improve coordination and collaboration, and (C)

consideration of appointing one individual as both the Integrity Commissioner and Lobbyist Registrar. Section (D) discusses the appointment of an Ombudsman.

#### **A. Consideration of a Centralized Hotline**

There may be some merit with respect to the opportunity identified in the review for the City to implement a general hotline as a means for staff and the public to report all forms of government wrongdoing, unethical behaviour and administrative unfairness.

This report recommends that the City Manager, in consultation with the Accountability Officers, undertake further due diligence to assess the benefits, limitations and cost implications of moving to a general hotline. This work will be undertaken in 2016 and the City Manager will report back in time for any budget implications to be considered through the 2017 budget process.

#### **B. Execution of a Memorandum of Understanding**

The review recognizes that there is already a significant amount of shared services and coordination among Toronto's accountability functions and identifies some key opportunities to strengthen collaboration. The review suggests that the appropriate mechanism to continue to leverage shared services and coordination is through the execution of a formal memorandum of understanding between the four offices.

The Accountability Officers have already developed and executed a memorandum of understanding based on the recommendations coming out of this review. The memorandum of understanding enables the Accountability Officers to continue to leverage shared services where appropriate, undertake joint outreach, education and training and ensure that resources are used effectively to meet accountability and transparency objectives.

The review also recommends that the Accountability Officers share information and coordinate investigative activities and efforts during concurrent investigations. The Accountability Officers have already taken steps to coordinate activities during concurrent investigations. A technical amendment to the *City of Toronto Act 2006* could clarify and reinforce the Accountability Officers' ability to share information with each other to carry out their statutory mandate as set out in Part V of the Act.

This report therefore recommends that City Council authorize the City Manager to request the Province of Ontario to amend the legislation to clarify this point and authorize the Mayor and City Manager to negotiate this change with the Province as required. Requesting an amendment to the *City of Toronto Act, 2006* in this regard is timely given the Province of Ontario is currently undertaking a 5-year review of the Act.

### **C. Consideration of Appointing One Individual as both Integrity Commissioner and Lobbyist Registrar**

The current Integrity Commissioner was appointed in September 2014 for a five-year term concluding in September 2019. The current Lobbyist Registrar was appointed in 2007 with no fixed term but has recently announced her retirement effective early May 2016. Toronto Municipal Code, Chapter 3, Accountability Officers establishes a fixed 7-year term for future Lobbyist Registrars.

There may be merit in appointing one person as both Integrity Commissioner and Lobbyist Registrar. A dual appointment for these positions is in place in some jurisdictions including some Ontario municipalities. This report recommends that the City Manager be authorized to recruit a Lobbyist Registrar for a term beginning in May 2016 when the current Lobbyist Registrar retires and concluding in September 2019 at the same time as the current Integrity Commissioner. The report also requests the City Manager to report further prior to the end of the term for the Lobbyist Registrar and Integrity Commissioner with respect to the merits of one individual being appointed as both the Integrity Commissioner and Lobbyist Registrar. Ensuring the terms of the incoming Lobbyist Registrar and current Integrity Commissioner both conclude at the same time, provides flexibility to City Council to make this change in 2019 and for future appointments.

Toronto Municipal Code, Chapter 3, Accountability Officers, provides that the selection process for an accountability officer shall be conducted by an external recruitment firm and that the appointment shall be recommended to Council by a selection panel, appointed by the Mayor and chaired by the Mayor or the Mayor's designate.

If Council decides to adopt the recommendations in this report, the City Manager will retain an external recruitment firm to begin the process of recruiting a Lobbyist Registrar and the Mayor will appoint a selection panel chaired by the Mayor or his designate. It is anticipated that the selection panel will recommend appointment of a Lobbyist Registrar at the May 3 and 4, 2016 Council meeting.

### **D. Appointment of an Ombudsman**

The review concluded that the functions of an Ombudsman and Auditor General are different and a merger of these functions would not be appropriate or enhance efficiency or effectiveness. However, the review does suggest that greater collaboration between these functions would be beneficial particularly in related or concurrent investigations. Collaboration will be enhanced through the execution of the memorandum of understanding discussed earlier in this report.

City Council has appointed an interim Ombudsman until the end of the year pending the outcome of the review of the accountability functions. This report recommends that the interim Ombudsman be extended until a permanent Ombudsman is appointed by City Council.



The report also authorizes the City Manager to initiate a recruitment process for an Ombudsman and it is anticipated that the selection panel will recommend appointment of an Ombudsman at the May 3 and 4, 2016 Council meeting.

## **CONTACTS**

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## **SIGNATURE**

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Peter Wallace  
City Manager

## **ATTACHMENTS**

Attachment 1: Review of the Functions of the Accountability Offices for the City of Toronto