



Ombudsman
Toronto

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Ombudsman Toronto Report

An Investigation into the City of Toronto
Parks, Forestry and Recreation Division's
Handling of a Park Permit

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EXECUTIVE SUMMARY

Ombudsman Toronto began its enquiry after media reports that the City had "booted" a sport program for toddlers from a park because of noise and safety complaints from neighbours.

The City's Parks, Forestry and Recreation Division ("PF&R") had granted a park permit to a company offering sports programs for young children. The park had not been used in this way before. Almost immediately, neighbours living near the park complained to City staff and their local Councillor about noise, traffic, parking and safety concerns. One person complained that the company was using the park outside of the permitted times.

In response to these complaints, PF&R quickly decided to revoke the permit and relocate the program to another, larger park in the area, without consulting the company or investigating the complaints.

The information we initially gathered about this case raised broader systemic questions about PF&R's permit processes, so we began an investigation to examine them in more detail, and to consider any necessary recommendations for improvements.

We looked at:

- how PF&R approves new uses in parks
- how it handles complaints
- how it makes and communicates decisions to revoke or alter a permit.

Significant Findings

In managing this permit, we found that PF&R, in its effort to focus on customer service, overlooked the need for fairness. It immediately accepted and acted on the complaints of the neighbours of the park without canvassing or considering the perspectives of the company or program participants. It did not investigate the validity of the complaints. It did not consult with the company before it revoked the permit and relocated the program.

Our findings included the following:

- Had PF&R done more to properly assess the permit application during the initial approval process, the complaints about the use of the park and/or the need to cancel the permit might well have been avoided.
- There is no process for handling permit violations, and no clear understanding of the range of possible penalties.
- PF&R's Complaints Policy does not address complaints about park use; it deals only with complaints about staff conduct. Staff had no written procedures or guidelines for handling complaints about park use.
- There is no process for handling and communicating decisions to cancel, relocate or alter park permits.

- PF&R staff did not keep adequate records of their communications with the company and members of the public, and did not properly document the reasons for canceling and relocating the permit.
- Many PF&R staff were either unaware of relevant policies or disagreed on their application.

Ombudsman Toronto Recommendations

PF&R handles a very large volume of permits across all its parks and recreational facilities. In most cases, things go smoothly, but occasionally problems can arise.

To ensure fairness and accountability, PF&R's permit process should be more transparent. Clearer policies and procedures to guide staff responsible for addressing complaints or permit violations are necessary. Affected parties should have an opportunity to be heard.

We recommended that PF&R:

- develop a clear and uniform process for assessing permit applications for new uses of City parks
- develop a process to identify and handle suspected permit violations
- develop a range of possible responses and/or penalties in the case of a confirmed permit violation, and publish those on its website
- amend its Complaints Policy to clarify that it applies to all complaints, not just those about PF&R staff, and to ensure that it sets out a clear investigative process for reviewing complaints
- develop a process ensuring that permit holders have the right to be heard and are given the reasons for any cancellation, relocation or alteration of a permit
- require appropriate record keeping
- ensure that all staff are appropriately trained on PF&R's policies and procedures.

PF&R accepted all the recommendations. Ombudsman Toronto will monitor their implementation until it is complete.

INTRODUCTION

1. In the summer of 2016, the media reported that the City of Toronto had relocated a commercial sports program for toddlers from a park after local residents complained. The media cited a number of reasons for this, including complaints about noise, the small size of the park, encroachment on the private space of neighbouring residents, and safety concerns.
2. Ombudsman Toronto began an enquiry on its own motion. We gathered information from the City's Parks, Forestry & Recreation Division ("PF&R") and then decided to initiate an investigation into the process used to approve the permit at the park, and the subsequent decision by PF&R to cancel the permit.
3. PF&R had issued a permit to Sportball (the "company") to operate a sports program for toddlers in Lynndale Parkette (the "Park"), a small park in Scarborough, during the summer of 2016. When neighbours began to complain about the suitability of the program in their neighbourhood park, PF&R quickly cancelled the permit and issued a new one for a different park. The company was not given an opportunity to address any of the complaints brought forward by residents before PF&R decided to cancel the permit.

OMBUDSMAN TORONTO INVESTIGATION

4. Our investigation began with notice to the City Manager on July 28, 2016.
5. Ombudsman Toronto interviewed a number of City employees, as well as parents with children registered in the program, representatives from the company, one of the neighbour complainants, and staff from the local Councillor's office. The investigator also reviewed relevant documentation, applicable by-laws and policies, and completed a site visit to the Park.
6. PF&R staff provided excellent co-operation throughout our investigation.

THE ISSUES

7. Our investigation examined the following issues:
 - The process used for determining whether a commercial park permit should be allowed in a park for the first time;
 - PF&R's process for dealing with complaints related to permit use, and its specific handling of resident complaints about the company's Park permit in this case; and
 - PF&R's decision to cancel the Park permit.

BACKGROUND

THE PARK

8. The Park is a small park in Toronto's east end, just under 0.4 hectares in size. It is triangular in shape, without direct road access. Approximately 30 homes back on to the park, about ten on each of its three sides. Local streets in the direct vicinity have unrestricted street parking. The Park has an area of large oak trees in the centre, with cut grass surrounding it on all sides. A larger area of cut grass is located along the south side, and three pedestrian pathways access the Park.
9. According to PF&R, the Park does not have sports facilities or associated amenities. In the winter, the local community hosts a public natural ice rink at the Park, which is approved by PF&R but operated and maintained by the neighbourhood. For each of the last ten years, PF&R has issued a permit at the Park for a local school to host an annual summer picnic for approximately 200 people. PF&R confirmed that no other permits had been issued for the Park prior to this past summer.

THE COMPANY (PERMIT HOLDER)

10. The company runs commercial franchised sport programming for children 12 and under, with more than 500 locations in Canada, the US, and Singapore. It has held a number of commercial park permits across the City since at least 2009. For the summer of 2016, the company applied for the first time for a park permit in the east end of Toronto to run a program for toddlers and pre-school children between 18 months and four and half years old.

CITY PARK PERMITS – POLICY AND PROCESS FRAMEWORK

TORONTO MUNICIPAL CODE, CHAPTER 608, PARKS

11. The City regulates park use through Chapter 608 of the *Municipal Code*. Under Article IV, section 608-17, organized sports or activities which take place in a City park require a permit. The Code also notes that anyone contravening the by-law commits an offence, and is liable to a fine under the *Provincial Offences Act*.

PARK PERMITS

12. The City charges and regulates individuals and organizations for facility use in City parks by issuing permits. The term "facility" can include resources such as skating rinks, kitchens, rooms, tennis courts, baseball diamonds, soccer fields, cricket pitches, and parkland or greenspace (an open area of green space that

is not a designated sports field). Permits can be issued seasonally or for a one-time use.

13. Each type of facility for which a permit is required is subject to a different fee, based on its rating. For example, baseball diamonds are rated as "Premier", "A", "B", or "C", with a Premier designation commanding the highest fee. The fee also varies depending on the type of activity. A commercial organization is charged more than a group of adults using a facility for recreational purposes, and non-commercial activities for children and youth are discounted further.
14. Businesses applying for a seasonal permit must complete a *Seasonal Request for Space* application form, as well as a *Permit Account* application form. Organizations specify in their applications forms what park and facility they are requesting, the activity, the dates and times, and the number of participants.
15. PF&R is responsible for approving and administering park and recreation permits. In 2016, PF&R issued over 300,000 facility use permits. Approximately 7,300 were commercial permits for sports fields, diamonds, stadiums, dry pads, and parkland.

APPROVAL OF COMMERCIAL PARK PERMITS

16. PF&R staff advised us that commercial organizations initially contact the relevant ward/district permit officer, as outlined on the City's website, to apply for a permit. If the requested use/facility in that particular park has not been approved previously, the permit officer will contact the local parks supervisor, who is part of the Parks branch of PF&R, to convey and discuss the request. The local parks supervisor is responsible for approving the request because of their specialized knowledge of the parks in their wards. A permit officer may consult with a local parks supervisor, either by email or by phone.
17. There are no guidelines on what or how much information should be provided to the local parks supervisor.
18. PF&R's *Policy for Operating Commercial Recreation Activities in City of Toronto Open Greenspace Parkland* ("Parkland Policy") appears to apply squarely to the company's application to operate its program in the Park. The policy outlines the procedure staff should follow when "granting approval for requests to operate commercial recreation activities in city owned and/or managed open greenspace parkland."
19. The permit officer who issued and cancelled the company's Park permit (the "Permit Officer") had never seen the Parkland Policy, and their Supervisor told us it only applied to boot camps, fitness classes and yoga – not to the company and its programming. Their Manager told us it should apply to any commercial organization requesting the use of parkland (and therefore should have been

applied to the company's request to run its programs in the Park). The local parks supervisor for the Park (the "Local Parks Supervisor") had not seen the Parkland Policy before, but said it looked like the process used for special event permit approvals, a different category of permits from the one approved for the company. No one we interviewed was able to clarify under what circumstances the Parkland Policy applies. It was not used to approve this new commercial use of the parkland at the Park.

20. Senior PF&R staff advised us that PF&R is currently undertaking a review of its permit application process, which PF&R expects will clarify whether and how the Parkland Policy should be used in situations like this one.

HANDLING OF COMPLAINTS ABOUT PERMIT USE

21. PF&R staff told us in July 2016 that there was no policy relating to investigating complaints about permit use, and when a permit would be relocated or cancelled. In a subsequent discussion with PF&R in October, a Manager in the Management Services branch advised us that there was a general complaints policy in place, but it was their understanding that it was concerned primarily with timelines for handling complaints. They provided us with a copy of the PF&R Complaints Policy, dated December 2013.
22. PF&R's website includes information about making a complaint¹. Although less detailed than the Complaints Policy, it describes the principles that will guide PF&R when it reviews a complaint, including providing reasons to a complainant for PF&R's decision. The online complaints information states that complaint investigations will be fair, impartial and respectful to the parties involved. However, neither the online information nor the Complaints Policy outlines any obligations toward a third party subject of a complaint (in this case, the company).
23. The Complaints Policy defines a "complaint" as:

...an expression of dissatisfaction with the level of service received from a City of Toronto program or service where the customer believes that the City has not provided a service to the customer's satisfaction at the point of service delivery and a response is explicitly or implicitly expected.
24. The Complaints Policy refers to an investigation process, and the fact that PF&R tracks complaints in a "Complaint Handling System" (database). Under the policy, informal complaints include those concerns that are brought to staff through a "verbal interaction", or a matter that staff can resolve without escalation. These types of complaints do not require an investigation and do not

¹ See "Complaints Procedure for Parks, Forestry & Recreation" at <https://goo.gl/h5xl2g>.

need to be logged in the Complaint Handling System, although the policy suggests that it is "good practice for staff to keep their own records related to informal complaints and associated outcomes."

25. Every other complaint, including those in writing (such as by email) or any complaint that "requires an investigation" is considered a formal complaint. Concerns that are received from the Mayor's office, a Councillor, or are addressed to the General Manager of PF&R are also treated as formal complaints. All formal complaints are to be logged in the Complaint Handling System.

26. The Complaints Policy reads:

All personnel in contact with customers and complainants shall:

- a) be trained in complaints handling;*
- b) comply with any complaints-handling reporting requirements determined by the organization;*
- c) treat customers in a courteous manner and promptly respond to their complaints or direct them to the appropriate individual; and*
- d) show good interpersonal and good communication skills.*
- e) be aware of their roles, responsibilities and authorities in respect of complaints, be aware of what procedures to follow and what information to give to complainants, and*
- f) report complaints which have a significant impact on the organization.*

27. While the Complaints Policy requires staff to use the database to track formal complaints, a number of PF&R employees informed us that they do not do this. One Supervisor said that it was an extra layer to go through and noted that the Complaint Handling System is not user friendly. Another Manager said that there is no tracking system, and that IT was currently working on a system – a "glorified spreadsheet" – but without a known release timeframe.

28. The Permit Officer had not been trained on either the Complaints Policy or the Complaint Handling System, and told us that they were not aware of either one.

HANDLING OF PARK PERMIT VIOLATIONS

29. According to the Permit Officer, if a permit holder has used a facility (including parkland) outside of the approved time period, the permit holder is charged an additional fee for the time used and given a warning. A note is placed on the permit holder's file, and further violations can result in PF&R refusing to issue future permits.

30. A Manager in the Management Services branch of PF&R, described a slightly different approach to deal with permit violations. They also said that the permit holder would be warned that further violations could result in PF&R refusing to issue future park permits. However, it was their understanding that organizations are not billed for activities conducted outside of their permit times. That said, both the Manager and Permit Officer agreed that Municipal Licencing & Standards ("MLS") can also be contacted to investigate and issue a ticket under the Municipal Code, where a contravention has been established.

CANCELLATION AND/OR RELOCATION OF PERMITS

31. Technically, permits are not relocated: if a PF&R permit is going to change location – whether because of permit violations, complaints, facility maintenance or any other reason – the original permit must be cancelled and a new one issued. Throughout our investigation, however, PF&R staff referred to the cancellation of the Park permit and issuance of a new permit in another location as a "relocation".
32. We asked PF&R staff about the existence of any policies or procedures to guide it with respect to when, and under what circumstances, a permit may be cancelled, or "relocated". We were told that there were none. A Manager in the Management Services branch and the Permit Officer pointed out that a commercial park permit allows PF&R to cancel a permit at any time.
33. The Manager referred us to the wording on the back of the permit, which states:

The Permit Holder understands and agrees that the General Manager, at his or her sole discretion, may cancel the Permit at any time and for any reason. In the event of such cancellation, the City shall not be responsible for any losses, damages or expenses whatsoever suffered by the Permit Holder. The General Manager, at his or her sole discretion, may deny future permits for reasons including, but not limited to, the failure of the Permit Holder to comply with any Federal, Provincial or Municipal laws, by-laws, policies and regulations, and any other conditions that may be imposed by the General Manager.

PF&R'S ACTIONS: GRANTING, THEN CANCELLING, THE PARK PERMIT

PF&R DECIDES TO ISSUE A COMMERCIAL PERMIT IN THE PARK

34. In October 2015, the company applied to use parkland space at a different east-end City park (the "first location") for the summer of 2016. The Seasonal Application requested the use of the first location on Monday evenings, between 5:15 and 8:00 pm, and Sunday mornings, from 9:00 to 11:45 am. Initially, the

company submitted these requests to a central district permit office, since the company had had previous dealings with a permit officer at that location.

35. The company then followed up with the central district permit office in early July 2016, seeking permit approval for additional time at the first location to operate its program on Tuesday evenings. Since the first location was not within that permit officer's district, they referred the company to the Permit Officer, responsible for the first location and the Park, but did not pass on the company's application forms to the Permit Officer.
36. Following a telephone conversation with the company, the Permit Officer issued a permit for the first location on July 6, 2016. The permit allowed the company to operate its programs in the first location on Monday evenings over the summer.
37. After the first location permit was issued, the company asked the Permit Officer if its program could be moved to the Park, because some of the registered families from the neighbourhood had suggested it as a more suitable location. The company told us that the Park was better because it was not bordering on a street, and there was shade for the children.
38. In response to the company's request, the Permit Officer emailed the Local Parks Supervisor, asking if the company's programming would be appropriate for the Park. The Permit Officer told the Local Parks Supervisor that the company was seeking approval to run programs on Monday evenings between 5 and 7 p.m., for children between two and three years of age. In their email reply, the Local Parks Supervisor thought the company's proposal would be an appropriate use, as long as no amplification (microphones, music, and the like) was used. The Permit Officer confirmed that there would be no amplification, stating, "if there are houses around, I think the neighbours will get a kick out of watching the little ones trying to be athletes out there."
39. On July 7, the Permit Officer asked the company for details on dates, times and the number of potential participants for its Park program. In addition to its request to change locations, the company also asked that the permit specify different days and times than those initially requested. In a telephone conversation with the Permit Officer, the company asked for permission to run its programming on Sunday mornings, Tuesday mornings, and Tuesday evenings. While a Monday evening permit had been requested for the first location, the new request for the Park did not include any Monday sessions.
40. The Permit Officer approved the change from Mondays to Tuesdays, and the addition of Sundays, but did not communicate this change to the Local Parks Supervisor to see whether this would affect their decision to approve the Park

use. The Permit Officer cancelled the permit for the first location, and issued a new permit for the Park.

41. The company was given a permit to run its program in the Park on the following days and times:

- Tuesdays, 10:45 – 11:45 a.m.
- Tuesdays, 5:15 – 7 p.m.
- Sundays, 10 – 11:30 a.m.

During our investigation, however, the company confirmed that it was in fact using the Park outside of the permit times. The program times posted on its website were:

- Mondays, 5:15 – 7 p.m.
- Tuesdays, 10 – 11:45 a.m.
- Sundays, 9 – 11:30 a.m.

42. The company told us that this was due to a clerical error resulting from its staff monitoring a large number of permit requests each season. The company confirmed that in fact, the Tuesday evening classes had been switched to Monday evenings, and the start times for the morning classes on Tuesday and Sunday had changed, and that this information had not been correctly provided to PF&R.

NEIGHBOURHOOD COMPLAINTS AND PF&R'S RESPONSE

43. The company told us that a resident approached the morning class on Sunday, July 10 – the first class at the Park – to complain about the noise. The company spoke to the Permit Officer about the noise complaint, and emailed the Permit Officer on July 13, stating that the company had asked the coach to tone down his "upbeat personality". The company's email said that the parents of the children were "amazed" that the neighbour had asked them to quiet down. In the email, the company also informed the Permit Officer that the coach would not use a whistle during the first session on Sundays.
44. The Permit Officer is unsure when they received notice from the local Councillor's office that it had been fielding complaints about the Park's use; however, they believe it was likely on July 13 as they were out of the office on July 11 and 12, and the decision to relocate was made on July 14. The Special Assistant to the Councillor confirmed that they called the Permit Officer on July 13, to advise that the Councillor's office had received a number of complaints about the Park permit. During the call, the Permit Officer and the Councillor's Special Assistant agreed that the Councillor's office would instruct complainants who phoned them to contact the Permit Officer directly with their complaints.

45. The Permit Officer recorded the complaints in the following manner, but did not note the dates and times that the Permit Officer received them:²
- a. [name and phone number] no sidewalks safety
 - b. [name, address, and phone number] lots of young kids
 - c. [name and phone number] 3X's Sunday
 - d. [name, address, phone number] no sidewalks - safety etc.
 - e. [first name and initial, address, phone number]
 - f. [name] spoke with did not take down her #
46. The Permit Officer told us that PF&R did not investigate the complaints.
47. Most staff we spoke with agreed that some sort of investigation should have been conducted. A Supervisor in the Parks branch stated:
- We spend an awful lot of time sort of jumping from one thing to another and it's not the right way to deal with a complaint. You need to look at what's behind it, what were the actions of everybody, what did everyone do that contributed to it. Then, if you can, find a way to either resolve it or mitigate it. To me moving the permit holder would be a really drastic action that you take later because there's just all those other impacts.
48. The Supervisor added that:
- You would also need to take into consideration – if complaints are coming from other members of the public – ...you'd have to weigh that hopefully by having someone on the ground, either [MLS] or Parks staff to actually see the permit in action; be there and be able to judge for themselves what it is. I think that's the most important. To be able to determine what to do about a permit one way or the other you need to be there when the permit is taking place and be able to judge the conditions...So sometimes there's nothing more helpful than just having eyes on the ground.
49. On the morning of July 14, the Permit Officer emailed two 311 Supervisors asking them to arrange for an MLS by-law officer to visit the Park to observe the Tuesday morning or evening classes in response to the complaints received. At the time, the Permit Officer was not aware that there were in fact no evening classes scheduled for Tuesdays, although the approved permit had classes scheduled on Tuesdays from 5:15 to 7 p.m.
50. Both 311 Supervisors told us that they were away from the office on vacation when the Permit Officer emailed them. They told us that they are not usually

² Personal information redacted.

contacted directly by PF&R with by-law enforcement requests. Neither one had forwarded the request to MLS.

51. The Permit Officer's Supervisor told us that when requesting the assistance of MLS to investigate possible by-law violations, staff should email 311 through its general email enquiry line. However, according to a Customer Service Manager, staff should contact MLS directly for enforcement help. There is no written policy or procedure for staff to follow on how to enlist MLS to investigate alleged by-law contraventions.
52. In this case, the Permit Officer did not follow up with 311 or MLS before cancelling the Park permit, and MLS did not receive any request from PF&R to investigate a possible by-law contravention by the company.
53. The Permit Officer believes they spoke with the company on the phone about one or more of the complaints they received. However the Permit Officer cannot recall what they told the company, and there is no record to verify this or to help determine what information they may have shared with the company about the complaints. For its part, the company cannot recall how much information it received about the complaints from the Permit Officer, but believes it was simply told that PF&R and the Councillor's office had received numerous complaints and that PF&R would help it find a different park.

PF&R's Decision to Cancel the Park Permit

54. The Permit Officer spoke to and exchanged emails with one of the neighbourhood complainants on July 14. The complainant's email to the Permit Officer asserted that the Park was "tiny" and reported that the company was using the Park outside of its permit times. It also stated that speeding cars are generally a problem in the area, and that Mondays and Sundays are prime times in the neighbourhood for traffic, parking, and community use of the Park.
55. In an email response, the Permit Officer stated that PF&R had not been aware of the company operating outside of the times on the permit, and said the Permit Officer was "actively looking for another location for them."
56. The Permit Officer told us that they also did not realize that each booking had two or three classes per time slot. They had understood from informal discussions with the company that there would be a limit of ten children per booking period, rather than ten per class. However, each class of approximately 45 minutes to an hour had potential enrollment of ten children, and each booking period on the permit covered at least two classes. The company's original Seasonal Application from October 2015 indicated the number of participants would be "12 per hour", rather than per booking period, but the Permit Officer did not see the application before approving the Park permit.

57. After notifying the complainant that they would be looking for another location for the company, the Permit Officer sent the company a July 14 email, stating:

...we have been fielding numerous calls from the neighbourhood residents around [the Park] and were forwarded the attached schedule for [the company] at [the Park]. We did not realize that you were using Mondays there. I am going to look to see if we have another location with [sic] would work for you. Please give me a call when you have a moment.

58. The Permit Officer advised us that they made the decision to "relocate" the permit. They stated that permit officers are delegated this authority, but was not sure where the authority for the delegation originated. They explained that the decision to cancel the Park permit was based on:

1. the complaints;
2. the company's use of the Park outside of its permitted times; and
3. the Councillor's involvement in having rerouted the complaints to the Permit Officer.

59. The Permit Officer also said they were concerned that although the company limited enrollment to ten children per class, the classes were scheduled back to back. This meant that there might be as many as 20 children, with parents, switching over between classes at the same time.

60. When PF&R cancelled the permit, it did not know how many children were actually enrolled and participating in the company's program at the Park.

61. The Permit Officer's Supervisor told us that the Permit Officer consulted with them during the decision-making process. They advised that although the complaints brought the matter to PF&R's attention, it was not the complaints, in their view, that led to the cancellation but rather the number of participants listed on the permit. They explained that they imagined that caregivers' cars parked on the road would force neighbourhood kids riding bikes or walking into the middle of the road, leading to a safety risk. However, in a July 21 email to their manager, the Supervisor stated that in addition to the parked cars posing a safety issue, "the coaches were blowing whistles at 9 am on Sunday mornings and the homes that surround the park did not like this."

62. Neither the Permit Officer nor the Supervisor visited the Park, nor did they investigate or critically analyze the complaints. They did not know whether program participants and caregivers had been walking or driving to the Park, and did not know the actual number of participants enrolled. They told us that, "in a situation like [the Park], I can definitely see why some residents would be upset, you know, their personal backyard park being changed."

63. The Permit Officer's Supervisor told us that they did not know how big the Park was, having looked at pictures of the streets surrounding the Park only after the decision to cancel the permit was made. They thought that, if a preschool sports program were allowed in the Park again, parents might be asked to park in a specific area to minimize the perceived risk to pedestrians. They did not say why the company was not given this option before the decision to cancel the permit was made.
64. Significantly, the company told us that it was not given an opportunity to address any of the concerns raised in the complaints to PF&R. Regarding the noise complaint made directly to the company, it, had promised on July 13 to eliminate whistles and had asked the coach to temper his enthusiasm. No further sessions were held at the Park. On July 14, PF&R decided to cancel the Park permit without consulting the company.
65. PF&R did not place a warning on the company's file or charge the company for the sessions that took place outside of the permit hours, actions which the Permit Officer told us are usual practice when a permit holder operates outside of permitted times.
66. No one at PF&R consulted with the Local Parks Supervisor before the decision to cancel the permit was made. They were not aware that the company had been approved for a permit on Sundays or Tuesdays, as they had only been consulted about the company's use of the Park on Monday evenings. They only learned about the cancellation five days after the decision was made, when the Permit Officer contacted them to discuss a new permit for the company in a different location.
67. The Permit Officer's July 19 email to the Local Parks Supervisor said, "we had complaints from the residents around [the Park] re the booking of 'their' [Park] regarding the Tots Program being run there."
68. The Local Parks Supervisor emailed the Permit Officer in response:
- ...you can change the group to [the first location] but why would we move the tots program. It is not the residents (their) park it is a city park and it is fine when one of the neighbours wants a picnic permit or an ice rink for their use but as soon as someone else wants to use it they want them out. How disruptive can a tots program be? [sic]
69. Five days earlier, on July 14, 2016, the Permit Officer had decided to cancel the company's permit at the Park. A new Park permit was issued to cover the sessions that had already occurred at the Park, and another for the remaining Tuesday mornings of the summer at the first location. The Permit Officer did not

charge the company for the additional time that it had used outside of the permit at the Park. Their email to the company stated, "I'm sorry that this did not work out at [the Park] for all of us."

70. The new permit for the first location was for Tuesday mornings between 10 and 11:45 a.m. The cost to the company rose from \$8.88 to \$19.05 per hour, because of the difference in the fee for use of the parkland at the Park (a "C" rated facility) and the fee for use of the parkland at the first location (a "B" rated facility).
71. The company decided to book its Sunday morning and Monday evening classes at a Toronto District School Board ("TDSB") property. The City does not issue permits at TDSB facilities.

PUBLIC REACTION TO THE PERMIT CANCELLATION AND PF&R'S RESPONSE

72. Following PF&R's decision, the company emailed its customers in the Park program about the cancellation and relocation to the first location and TDSB facilities. The initial email contained several mistakes of fact, including misinformation about a City Councillor living near the Park, a suggestion that there was a petition being circulated complaining about the program, and the threat of fines if the company returned to the Park. None of this information was accurate (although City staff did advise us that MLS could have fined the company had it continued to use the Park without a permit).
73. The company told us that once it learned from the Councillor that the information in its email about the Councillor was inaccurate, it, emailed parents to correct the error.
74. The Permit Officer reported receiving calls from three complainants after the Park permit was cancelled, thanking the Permit Officer for the change.
75. The company told us that PF&R's permit officers are "phenomenal" and that it has a wonderful relationship with them, including the Permit Officer involved in the cancellation. The company felt that the permit officers are "supportive of organizations like us" and that they "do good work in making sure programming happens". However, it also expressed disappointment that the neighbourhood complaints had not been looked into. It stated:

...there have been issues...where neighbourhoods don't want kids, and when 3 or 5 or 8 kids are pushed out of a park...I just wish they [PF&R] could investigate it properly.

The company said that although the City likely meant well, the cancellation "upset [the company's] families tremendously" and noted that the company had

to work quickly to split its programs between two locations, namely the first location and the TDSB property.

76. Some staff told us that they believed the impact of cancelling the permit was minimal, as it only resulted in moving the program 500 metres to another local park. However, this failed to consider the impact on the participants of the class – toddlers. A parent whose 2 year old child was enrolled in the program stated that the decision should have considered the perspective of everyone, not just the complainants:

People who have little people know that kids don't adjust well to change, so they know they don't want to have to change the location [again]. That can really throw some kids off. [The City] didn't think about their audience, that's for sure.

The impact of the permit cancellation on the program participants was not considered, and neither the participants nor the company were consulted for their perspective or to canvass potential solutions before the decision to cancel the Park permit was made.

77. On July 21, 2016, media articles reported that a group of toddlers had been "booted" from a City park. Other media outlets picked up the story, stating that toddlers had been "forced to move" and "turfed" from, and "thrown out" and "kicked out" of the Park. Some City residents contacted the local Councillor by phone, email and Twitter to convey their disagreement with the decision to cancel the Park permit, expressing emotions ranging from disappointment to anger.
78. PF&R's public relations manager and the Councillor responded.
79. Public statements made by PF&R communications' staff cited noise and safety concerns as the reasons for the cancellation. A PF&R spokesperson told one newspaper:

I wouldn't say that we've made any determination about what kind of noise or behaviour is appropriate for that park... We never got to that level of analysis...

Our first approach is always to balance those needs and find a solution that works for everybody, which I think is what happened in this case.

80. In another article, the same communications staff stated "[t]here isn't any road access to this park so...neighbours were finding that [class participants] were parking right in front of [complainants'/neighbours'] homes and [dealing with] congestion". The City clarified with us that this did not mean that cars were

blocking driveways or otherwise parking illegally, as street parking is allowed in the area. The City also clarified that it did not have any information about whether any alleged increase in traffic and parking in the neighbourhood had any connection to caregivers and children attending the Park program.

ANALYSIS AND FINDINGS

81. As noted above, this story of a park permit was one of thousands that the City handles each year. What went wrong in this case, however, highlighted some shortcomings in PF&R's processes.
82. Our investigation was not about whether the company and its participants should or should not have been granted a permit at the Park, or whether the permit should or should not have been cancelled. Instead, it was about how those decisions were reached and communicated.
83. It is a fundamental principle of administrative law that discretion must be exercised fairly. Many of the City's divisions are faced with similar issues daily: they have the discretion to issue and revoke permits, and make innumerable other decisions on wide and far-reaching matters. The analysis in this investigation is not only applicable to PF&R's handling of permits; it addresses the fairness principles that apply to all of the City's various permit processes, and to its broader decision making powers.
84. PF&R may have had valid reasons for cancelling the Park permit, given that the company used the Park at times outside of those permitted and beyond what had originally been contemplated when the permit was granted. Further, the number of participants per booking period exceeded the numbers that PF&R had understood to be enrolled in the Park program. Neighbours may have had valid concerns about safety and traffic due to the presence of the company's program. All of this is unclear, however, since their complaints were never investigated.
85. Following receipt of the complaints, PF&R summarily decided to cancel the Park permit very quickly without any investigation, depriving the company and its clients of any opportunity to address the neighbours' concerns.
86. Commenting on PF&R's response to this matter, a Customer Service Manager said:

I know the customer service focus is at the heart of many of these issues, not just this one but many of the complaints that we sometimes get, is just people trying to make people happy. And sometimes doing the right thing the wrong way.

87. We agree. PF&R's handling of the complaints, although well-intentioned, was not fair. Fairness to the company and its participants was lost in PF&R's genuine but misguided and narrow focus on customer service and quickly "fixing" the situation.

PERMIT APPROVAL PROCESS FOR THE NEW USE OF A FACILITY

88. PF&R staff agree that the local parks supervisor is the person best situated to review and approve an application for a new use for City parkland. In order to consider such an application, however, they must be given sufficient information to make an informed decision. In this case, the Local Parks Supervisor was unaware that in addition to its request to change venues (from the first location to the Park), the company sought permission to add programming for Sunday and Tuesday, which was not included in the original permit application for the first location.
89. Had this information been shared with them, the Local Parks Supervisor said that they would likely not have approved the Sunday class, although they believed that the proposed weekday sessions were still appropriate. They told us that they would not have approved Sunday mornings at the Park because an early morning weekend sports program for kids could be disruptive to the homes surrounding the Park.
90. It is very possible that, if PF&R had done more during the initial approval process to properly assess the appropriateness of the Park, the complaints about the company and/or the need to cancel the permit might have been avoided altogether.

PERMIT VIOLATIONS

91. PF&R had no written policy or process for dealing with a permit holder that operates outside the terms of its permit. When we raised this, staff cited the conditions printed on the back of the permit as PF&R's authority to take whatever steps it deems necessary to address a permit violation.
92. Staff said they usually place a warning on the permit holder's file when a violation is brought to their attention. The Permit Officer told us that a permit holder could be levied the relevant permit fee for time spent using a facility outside of the permit hours, as well as receiving a warning. In this case, the company was not warned about its unauthorized use of the Park, or charged extra, and none of the other measures cited by staff to address this type of breach were taken.
93. How staff go about engaging the assistance of MLS enforcement staff to probe possible by-law breaches is not clear.

94. One supervisor advised us that staff should email 311 through its general enquiry address. Another suggested that staff should be contacting MLS directly with their request. Without a policy or protocol in place, there is no consistency in approach. This leaves a greater opportunity for things to go awry, as they did in this case.

PERMIT COMPLAINT HANDLING

95. The PF&R Complaints Policy applies to complaints about the delivery of services by the Division. It appears to have been designed to deal exclusively with complaints about PF&R service delivery, not with complaints about other issues falling under PF&R's authority.
96. The definition of "complaint" under the Complaints Policy is narrow and specific to complaints where PF&R "has not provided a service to the customer's satisfaction at the point of service delivery."
97. The Complaints Policy should have been applied in this situation, since the complaints, in part, related to PF&R's decision to approve the Park permit. Aside from the Customer Service Manager, however, staff we questioned were either unaware of PF&R's Complaints Policy or did not apply it. This is despite the fact that the Complaints Policy expressly requires that staff "be aware of their roles, responsibilities and authorities in respect of complaints."
98. Even if the Complaints Policy had been better known by staff, its narrow scope relating only to complaints about PF&R's service delivery could have caused confusion as to whether it should have applied in this case. At least one complaint related to the company using the Park outside of the permit times, which staff might have believed was not relevant to PF&R service delivery.
99. PF&R does not currently have a clear policy to address complaints that do not relate directly to PF&R's "service delivery".
100. We found that PF&R's Complaint Handling System (the database used to log and track all formal complaints), which is also referenced in the Complaints Policy, was unknown to staff or admittedly not used because it was seen as unwieldy.
101. On its face, PF&R's Complaints Policy clearly defines roles and responsibilities for staff, and timelines for the assignment and resolution of complaints. With regard to the investigation stage of the process, the policy states:

Every reasonable effort should be made to investigate all the relevant circumstances and information surrounding a complaint...The level of investigation should be commensurate with the seriousness, frequency of occurrence and severity of the complaint.

102. This is a sound approach. Regrettably, however, it was not followed here. PF&R accepted the validity of complaints at face value without delving deeper.
103. Even had PF&R concluded that the complaints had merit, it should have considered possible ways of addressing the problems by means less drastic than cancelling the Park permit. This was not done.

DECISION TO CANCEL THE PARK PERMIT

104. The decision to cancel the Park permit was made quickly. The Permit Officer first received complaints and a call from the Councillor's office on July 13, 2016. The decision to cancel the Park permit was made the very next day. This despite the company's commitment that it would ensure that noise was kept to a minimum.
105. The company was not given an opportunity to hear, address or refute the complainants' or PF&R's concerns. As a matter of administrative fairness, the company should have been given an opportunity to hear and respond to the community's complaints before PF&R made its decision.
106. PF&R staff responding to the complaints of increased traffic and unsafe roadway conditions at the Park did not conduct a site visit. They had never seen the Park. When a complainant described the Park as "tiny", suggesting that the space was not appropriate for the approved programming, staff were at a disadvantage. When we showed the Permit Officer pictures of the Park after the fact, they were surprised. It was larger than they had imagined, and been led to understand by the complainants.
107. PF&R based its decision in part on the number of participants in the program without actually confirming with the company what those numbers were. PF&R did not ask the company for its registration numbers, or whether the number of participants per class could be capped to keep attendance at ten per timeslot as stated on the permit.
108. The Councillor's office did not seek to provide direction to PF&R staff on how it should address the complaints. Nonetheless, the Permit Officer felt that the Councillor's involvement created a perception that the residents' concerns needed to be resolved quickly.

109. Familiarity with PF&R's complaints process and training on complaint handling would have allowed the Permit Officer to fairly manage the complaints, and the expectations of the various affected parties. Knowledge of PF&R's Complaints Policy would have enabled the Permit Officer to clearly articulate the process for handling complaints, to the complainants and to staff in the Councillor's office. Proper communication of the process and expectation-management would have afforded PF&R sufficient time to conduct a proper review and collect the necessary information to make an informed, reasoned and fair decision.

COMMUNICATING PF&R'S DECISION TO AFFECTED PARTIES AND THE PUBLIC

110. The company was told that PF&R would find it a new location. PF&R did not give the company clear reasons for this, or make a record at the time of the reasons for this decision.
111. We were given various explanations for the permit cancellation decision by various PF&R staff members. They included parking, safety and the involvement of the Councillor. Ultimately, staff did not really seem to know the reason for the decision. It was not documented anywhere.
112. When the complaints came in, no one contacted the Local Parks Supervisor, who, given their knowledge of the area and the Park, would have undoubtedly contributed relevant information about the Park's layout and the reasonableness of the concerns raised. Such information would have helped staff to address the complaints armed with facts.

RECORD KEEPING

113. The Permit Officer's contemporaneous written record of the complaints lacked detail. One note was missing the caller's full name; several entries did not include a phone number or address for the complainant. A second set of more detailed notes was prepared only after the decision to cancel the Park permit was made and after we had requested information.
114. The company informed us that PF&R reported to it that there had been "numerous complaints" about the program, but no detail was provided. PF&R confirmed that it had some discussion with the company about the complaints, but what it told the company and when those discussions took place remains unclear, as the available record is incomplete.
115. Despite a Complaints Policy that requires logging of formal complaints on the Complaint Handling System, this was not done.

116. Best practice suggests that anyone looking into a complaint should make contemporaneous notes of all discussions, phone calls, and actions related to it. The notes should be legible and contain relevant dates and times. The information recorded should also include a summary of the issue(s), along with the action taken or proposed³. This was not done.

CONCLUSIONS

IMPROVE APPROVAL PROCESS FOR NEW FACILITY USES IN PARKS

117. The practice of seeking approval from the local parks supervisor for a proposed new use in a park is a sound one. They have the most knowledge and understanding of the parks in their area. However, when making the decision to approve or deny a new park use, the local parks supervisor must be equipped with full and up to date information about the application in order to make an informed decision.
118. PF&R should develop a clearer process for considering an application for a new facility use in a City park. This should ensure that permit officers give the local parks supervisors enough relevant information to make an informed and considered decision. Such information should include, at a minimum: accurate dates and times requested for the facility's use, number of participants and age range, activity, and applicant organization's status (commercial or non-profit status, for example).
119. This will best allow PF&R to fairly consider all perspectives, including those of the permit applicant and of other park users and neighbours, in assessing the application.
120. The information provided to the local parks supervisor regarding a new commercial use for a park, brief reasons for the decision and other relevant information related to the approval request should be recorded.
(Recommendation #1)

CLARIFY PROCESS FOR HANDLING PARK PERMIT VIOLATIONS

121. Currently, PF&R does not have a consistent process for dealing with park permit violations. As noted above, staff agreed that a warning could be placed on the permit holder's file, outlining that further violations could result in future permit refusals, but this was not done here. Staff were unclear if permit holders are charged fees for time used outside of a permit. The method of engaging MLS to investigate possible by-law contraventions was uncertain.

³ New South Wales Ombudsman. *Investigating Complaints: A manual for investigators*. June 2004. https://www.ombo.nsw.gov.au/data/assets/pdf_file/0010/4213/Investigating-Complaints.pdf

122. PF&R should develop a clear process outlining how permit violations can be identified, including a system for enlisting the assistance of MLS, and for keeping appropriate records of its own staff's investigations into alleged permit violations.
123. This process should also address measures available to staff in the Management Services branch when a permit violation is confirmed. This might include an obligation or discretion to issue warnings and/or to charge fees for time exceeding the permit. This will ensure that staff dealing with permit violations have a clear and common understanding of what (if anything) they are required to do, and what options they have. **(Recommendation #2)**
124. In order to ensure transparency, PF&R should post these measures on its website so that the public will understand what action will or may be taken in the case of a permit violation. **(Recommendation #3)**

IMPROVE COMPLAINT HANDLING PROCESS

125. PF&R's Complaints Policy was designed to address complaints about PF&R's service delivery to the public. It does not address how PF&R will deal with complaints about other matters that may fall under its authority. The requirement in the Complaints Policy that PF&R conduct investigations that are fair, impartial and respectful to all parties involved does not expressly apply to such complaints. It should.
126. Although the complaints in this case related at least in part to PF&R's original decision to approve the Park permit, PF&R did not follow the Complaints Policy.
127. PF&R should amend the Complaints Policy to make it applicable to all complaints PF&R receives, whether they concern PF&R service delivery or other matters falling under the Division's authority.
128. The Complaints Policy should set out a simple and clear process for staff to follow, including a process for documenting and investigating complaints, and allowing all affected parties – including complainants, permit holders, or other third parties – to be heard. Additionally, PF&R should explore ways to make the Complaint Handling System more accessible and easy to use for staff. **(Recommendation #4)**

ENSURE THE OPPORTUNITY TO BE HEARD

129. PF&R reserves the right to cancel park permits for any reason. This provides discretion for it to cancel a permit and propose relocating it. As a matter of administrative law, however, this discretion must be exercised fairly. When such

a step is contemplated, a permit holder has the right to know the reason for the proposed cancellation of the permit, and to make representations before the decision is made. When cancellation occurs, brief reasons should be provided to the permit holder.

130. PF&R staff should create a protocol to inform permit holders when their permits may be cancelled, and to give them an opportunity to be heard. The protocol should also provide that brief reasons must be given to a permit holder for any decision to cancel or otherwise alter a permit. This protocol should apply in the case of any proposed permit cancellation or alteration, whether because of alleged permit violations, complaints, facility maintenance, or for any other reason. **(Recommendation #5)**

REQUIRE BETTER RECORD KEEPING

131. Throughout the permit process in this case – approval, complaints, cancellation and relocation – records were not properly kept. The company's permit requests were dealt with on the phone without PF&R staff making sufficient notes; complaints to PF&R were not properly documented; communications with the company were not noted. Critically, PF&R was unsure what reasons, if any, were given to the company for the cancellation of its permit and relocation to another park.
132. PF&R should as a matter of policy require that its staff create and retain adequate records when making any decision that affects a member of the public, including any requests, complaints, investigations and decisions about permit applications, approvals, cancellations and changes. **(Recommendation #6)**

PROVIDE TRAINING

133. PF&R staff were either unaware of relevant policies, or provided conflicting evidence about when those policies should be applied.
134. PF&R staff should be fully trained on PF&R policies and processes that apply to their work. Training records for each employee should be kept. **(Recommendation #7)**

RECOMMENDATIONS

135. The City must uphold principles of accessibility and transparency, and ensure accountability for its decisions. The public expects that PF&R's processes for handling permit requests will be consistent and fair.
136. Therefore, in consideration of the evidence gathered in this investigation and our findings, we make the following recommendations:
 1. PF&R should develop a clear, uniform process for local parks supervisors to follow when assessing applications for new facility uses in City parks. This process should:
 - i. ensure that permit officers provide adequate information to local parks supervisors;
 - ii. require that a record be kept of the information provided, the decision reached, and the reasons for that decision; and
 - iii. be available to the public on PF&R's website.
 2. PF&R should develop an internal process to identify and handle suspected permit violations, which should include:
 - i. basic investigation of alleged permit violations, including an opportunity for the permit holder to provide information; and
 - ii. circumstances in which the assistance of MLS should be requested, and how this request should be carried out.
 3. PF&R should consider the range of responses/penalties available to it in the case of a confirmed permit violation, and publish those on its website.
 4. PF&R should amend its Complaints Policy to:
 - i. clarify that it applies not only to complaints about PF&R service delivery, but to complaints about anything under PF&R's authority; and
 - ii. set out a simple and clear process for staff to follow in dealing with complaints, including the investigation process and the right of individuals affected to be heard.
 5. PF&R should develop a process to ensure, in any case where it is proposing to cancel, relocate or alter a permit for any reason, that:
 - i. it allows affected parties an opportunity to be heard; and
 - ii. it provides brief reasons for the decision to all affected parties.
 6. PF&R should ensure that its policies and processes for permit handling include appropriate requirements for record keeping, and should, in addition to specific requirements for record-keeping in those policies,

establish requirements for when staff should document interactions and decisions involving members of the public.

7. PF&R should develop a program to ensure all staff are trained on all policies and processes that apply to their work. Training records should be kept.
8. PF&R should report to Ombudsman Toronto quarterly on the status of the implementation of all of these recommendations, until Ombudsman Toronto is satisfied that implementation is complete.

PF&R'S RESPONSE

137. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, Ombudsman Toronto provided PF&R with a copy of a draft investigation report containing preliminary findings and recommendations, in order to allow PF&R to make representations in response to the draft.
138. Representatives from Ombudsman Toronto and PF&R met to discuss the draft investigation report and to allow PF&R to provide comments on the preliminary findings and recommendations.
139. By letter of May 8, 2017 to the Ombudsman, the General Manager of PF&R responded to the draft report and confirmed her agreement with the investigation's recommendations. On behalf of PF&R, she committed to implementing all of them, the majority by the third quarter of 2017.
140. A copy of the General Manager's letter, with attached chart outlining PF&R's response to and timeline for the implementation of each of the eight recommendations, is attached as Appendix A.
141. Ombudsman Toronto will monitor PF&R's progress in implementing the recommendations.

(Original signed)

Susan E. Opler
Ombudsman

APPENDIX A – RESPONSE FROM THE GENERAL MANAGER OF PF&R



Janie Romoff
General Manager

Parks, Forestry and Recreation
Giuliana Carbone, Deputy City Manager

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May 8, 2017

Susan Opler
Ombudsman
City of Toronto
375 University Ave., Suite 203
Toronto, Ontario M5G 2J5

Dear Ms. Opler,

Re: Ombudsman Toronto Report: An Investigation into the City of Toronto Parks Forestry and Recreation Division's Handling of a Park Permit.

Thank you for meeting with us to review your report "An Investigation into the City of Toronto Parks Forestry and Recreation Division's Handling of a Park Permit".

Parks, Forestry and Recreation processes over 308,000 permits per year which account for over 10.6 million permit hours. We strive to balance swift customer service with the need to apply policies and processes within the constraints of technology.

Your report is timely as the division is in the process of replacing the Registration and Permitting software. Work is underway to improve business processes, create a knowledge base for staff, simplify online information access, and to clarify policies, procedures and staff training in line with recommendations 1 through 6 of the report.

We have attached the table below to outline our comments on the specific recommendations. We acknowledge your observations and agree with your comments and recommendations.

I appreciate the opportunity to comment on this matter and thank you for comprehensive review and report.

Sincerely,

Janie Romoff
General Manager, Parks, Forestry & Recreation



Rec. #	Section	Recommendation	Agree	Comments	Implementation Timelines
1	135	PF&R should develop a clear, uniform process for local parks supervisors to follow when assessing applications for new facility uses in city Parks	Yes	A process will be developed in consultation with Parks and Recreation branches that is uniform and easy to understand and will be published on the web site.	Q3 2017
2	135	PF&R should develop an internal process to identify and handle suspected permit violations.	Yes	An internal process will be developed and communicated by the end of Q2 2017	Q2 2017
3	135	PF&R should consider the range of responses/penalties available to it in the case of a confirmed permit violation, and publish those on its website.	Yes	There will be a review of the range of responses/penalties for permit violations and a process will be posted on the PF&R web site.	Q1 2018
4	135	PF&R should amend its complaints policy.	Yes	This initiative is under way.	Q3 2017
5	135	PF&R should develop a process to ensure, in any case where it is proposing to cancel, relocate, or alter a permit for any reason it provides a reason for the alteration and an opportunity for affected parties to be heard	Yes	This process will be incorporated into customer service practices.	Q3 2017
6	135	PF&R should ensure that all its policies and processes for permit handling include appropriate requirements for record keeping.	Yes	PF&R will establish requirements for staff to document interactions and decisions within the permit process.	Q3 2017
7	135	PF&R should develop a program to ensure all staff are trained on all policies and processes that apply to their work and training records should be kept.	Yes	This is already under way and will be complete by Q4 2017.	Q4 2017
8	135	PF&R should report to the Ombudsman Toronto quarterly on the status of the implementation of these recommendations.	Yes	Reporting will be developed in consultation with the Ombudsman's office.	Ongoing.