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Toronto

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Ombudsman Toronto Report

An Investigation into the City's Process for Handling
Development Charge Complaints and
Education Development Charge Complaints

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EXECUTIVE SUMMARY

Development charges, established under provincial legislation, are fees the City charges property owners and developers when it issues a building permit.¹ Development charges help pay for new infrastructure.

Property owners and developers can dispute a development charge by submitting a complaint based on one or more of three specified grounds.

The provincial legislation states that a "council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing," and that the council may then "dismiss the complaint or rectify any incorrect determination or error..."

A member of the public complained to Ombudsman Toronto after he was denied a hearing concerning a development charge. He said that the City had failed to notify him that his building permit was ready for pickup and in the meantime, the development charges he owed had gone up by approximately \$11,000. He told us that he had applied for a hearing to complain about this, and that City staff had initially told him he would get a hearing, but then later told him he would not. We began an Enquiry to find out why.

City staff told us that the complainant's allegation was not a proper development charge complaint. They did not believe that it fell into any of the three grounds specified in the provincial legislation. As a result, they did not grant him a hearing before the Executive Committee of City Council (the body that holds hearings on this issue in Toronto).

When deciding whether or not to send a complaint to a hearing, staff are essentially deciding whether complainants will have access to an appeal body. This raises serious questions of administrative fairness. As a result, our Enquiry led to a systemic Investigation to examine how the City handles these complaints, including the process by which they do or do not result in a hearing.

Significant Findings

The City receives very few development charge complaints, relative to the number of building permits it issues. However, we found that the City's current process for handling development charge complaints lacks consistency and transparency. The process needs improvement to ensure that it is fair for those who do complain.

Our findings included the following:

- Staff's authority to screen development charge complaints in order to decide whether to bring them to a hearing is unclear

¹ Not all building permits require a development charge payment. There are exemptions set out in the relevant legislation.

- There is no written procedure to administer the complaints process
- There is no written procedure specific to development charge complaint hearings
- The City has not produced any publicly-available information about the complaint handling process
- Staff are not advising complainants of their appeal options in writing

Ombudsman Toronto Recommendations

As a matter of basic procedural fairness, each complainant must know how the process for development charge complaints works, and how they can make their best case.

We recommended that Corporate Finance, the City division with primary responsibility for development charge complaints, take the following steps:

- Draft a written procedure to guide staff in the administration of the development charge complaint process
- Ask legal counsel to conduct a fresh review of the screening practice (where staff decide whether or not a complainant should be granted a hearing), and to confirm that the practice is compliant with all relevant law
- Assuming staff's authority to screen complaints is confirmed, set out the process they follow when determining whether or not to bring a matter forward to a hearing
- Set out a development charge complaint hearing procedure in writing
- Post information on the City's website on the process for handling development charge complaints, the hearing process, and the right of appeal to the Ontario Municipal Board ("OMB")
- In any case where there is a right to a hearing before Executive Committee, advise the complainant, in writing, of this fact
- Advise all complainants in writing of their right to appeal to the OMB from the City's handling of their complaint
- Send a letter to the complainant to apologize for giving him conflicting information about his right to a hearing and to express Corporate Finance's commitment to improving the system so that the process will be clearer in future

Corporate Finance accepted all the recommendations. Ombudsman Toronto will monitor implementation until it is complete.

INTRODUCTION

1. On July 28, 2016, we launched an Investigation into the City's process for handling development charge complaints made under the *Development Charges Act* and the *Education Act*.
2. Development charges are fees paid by property owners and developers "at the time a building permit is issued to help pay for new or upgraded infrastructure as a result of growth."² In the City of Toronto, property owners and developers pay both "Development Charges" (levied under a City bylaw) and "Education Development Charges" (levied under a bylaw adopted by the Toronto Catholic District School Board).
3. Under provisions of the *Development Charges Act*³ and the *Education Act*,⁴ property owners and developers can dispute the development charges that the City has levied for a building permit, by submitting a complaint based on enumerated grounds.
4. The legislation states that a "council shall hold a hearing into the complaint and shall give the complainant an opportunity to make representations at the hearing."⁵
5. The council may then "dismiss the complaint or rectify any incorrect determination or error..."⁶
6. While conducting an Enquiry into a complaint to Ombudsman Toronto, we learned that the City was not bringing forward all development charge complaints for a hearing, despite the fact that the legislation appears on its face to require Council to hold a hearing. We began an Investigation to examine how the City handles these complaints, including the process by which they do or do not result in a hearing.
7. In carrying out our Investigation, we interviewed staff from seven divisions, as well as staff at the Toronto Catholic District School Board. We also performed significant legal and cross-jurisdictional research and requested and reviewed numerous documents from Toronto Building, Corporate Finance and the City Clerk's Office.

² City of Toronto website, "Development Charges 101:"
<<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=cfa3924dcf752410VgnVCM10000071d60f89RCRD&vgnextchannel=a90b285441f71410VgnVCM10000071d60f89RCRD>>. Not all building permits require a development charge payment. There are exemptions set out in the relevant legislation.

³ *Development Charges Act*, 1997, s. 20.

⁴ *Education Act*, s. 257.85.

⁵ *Development Charges Act*, 1997, s. 20(4). There is a comparable provision for education development charge complaints: *Education Act*, s. 257.85(5).

⁶ *Development Charges Act*, 1997, s. 20(6); *Education Act*, s. 257.85 (7).

8. We received excellent cooperation from City staff when carrying out our interviews. Also, the Corporate Finance Division provided the documents we requested in a timely manner.
9. We did not initially believe we had received all the requested documents from the City's Toronto Building Division, including copies of internal staff emails and case notes from their IBMS software. We followed up with an additional request, and were assured that the documentary record provided was complete. After requesting additional documents directly from staff and reviewing email records received from Corporate Finance, however, we determined that Toronto Building had not, in fact, provided a complete documentary record in response to our request.
10. City divisions have a legal obligation to provide the documents that Ombudsman Toronto requests. This is imperative for us to fulfil our obligation to conduct a full, thorough and fair Investigation. We plan to follow up with Toronto Building to ensure that the division understands this obligation and has processes in place to comply fully with it in future.
11. In the end, we were satisfied that we had received all the necessary documents.

EXAMPLE COMPLAINT

BUILDING PERMIT APPLICATION

12. In the summer of 2013, Mr. D applied for a building permit. He received a notice from Toronto Building identifying several deficiencies with his plans and listing the amount of development charges he would have to pay.
13. He had his plans changed to address the deficiencies, and resubmitted them by the end of the summer.
14. He claimed that he did not hear back from Toronto Building for approximately six months, and he alleged that during that time, the development charges he owed had gone up by approximately \$11,000.⁷
15. He believed that by the time Toronto Building contacted him, his building permit had been ready for issuance for several months. He argued that Toronto

⁷ Development charges increase over time. According to the City's Development Charges pamphlet (December 2013): "Development charges imposed under the By-law are adjusted annually, without an amendment to the By-law on February 1 of each year, commencing February 1, 2014, in accordance with the most recent annual change in the Statistics Canada Quarterly Capital Expenditure Price Statistics, Catalogue Number 62-007-X.

Adopted development charges rates will be phased-in over the period November 1, 2013 to February 1, 2016."

<https://www1.toronto.ca/City%20Of%20Toronto/Corporate%20Finance/Developmental%20Charges/Files/pdf/D/DevChargesPhamplet_final_accessible.pdf>.

Building had erred by failing to notify him earlier that it was ready. He claimed that if Toronto Building had notified him, he would have picked up his permit earlier, and would have paid the lower development charges.

16. Toronto Building staff confirmed to us that the permit was ready for issuance by the end of the summer of 2013, pending payment of the outstanding charges and fees.
17. Staff told us that the Chief Building Official is obligated by law to collect the required development charge prior to the issuance of a building permit. They state that Toronto Building staff correctly determined the amount of the development charge payable and that they properly communicated this amount to the applicant.
18. Toronto Building staff noted that Mr. D had been involved with 10 development applications and building permits between 2001 to 2017, and they believed he had a detailed knowledge of the development approval framework. Staff also pointed out that information on development charge indexing and rate increases is available online.⁸
19. They believed that Mr. D may have made a conscious choice not to have his building permit issued earlier.
20. During our Enquiry, we reviewed Toronto Building's notice system. What we felt was missing was a reliable mechanism to communicate to applicants that the building permit review process had concluded and the permit was ready to be issued upon payment of the applicable development charges and other fees.
21. Toronto Building staff advised us that they have now adopted an electronic permit processing system. When a permit application is ready for issuance and related charges and fees have not yet been paid, Toronto Building's computer system now automatically sends an email notice to the applicant.
22. This automated notification system was not in place when Mr. D submitted his application. We are, however, satisfied that Toronto Building has now adopted a much improved notification system that may avoid future misunderstandings about when permits are ready.
23. As a result, we focussed our Investigation on the process by which City staff decided not to grant Mr. D a hearing to make representations on his complaint about the development charge, and how they notified him of that decision.

⁸ For example, under the City Finances, Development Charges website:
<<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=a90b285441f71410VgnVCM10000071d60f89RCRD&vgnnextfmt=default>>.

COMPLAINT TO THE CITY

24. In July 2014, Mr. D paid his charges and received his permit. He then submitted a development charge complaint to the City.
25. A lawyer from Legal Services Division replied to Mr. D's complaint in writing, advising:

...there was not a mistake or incorrect calculation as required by section 20 of the *Development Charges Act*. Toronto Building Division could not issue the building permit until all fees and charges were paid, which did not take place until July 31, 2014. The Development Charges By-law provides that it is the date of permit issuance that determines the date upon which development charges are calculated.

On the basis of the above, the City properly calculated the amount of development charges payable on the date of permit issuance, and accordingly it is our position that there is no basis for complaint under section 20 of the *Development Charges Act*.

26. Mr. D pursued this matter further with Legal Services Division, with the assistance of his Ward Councillor's office. The City lawyer told the Councillor's office that if Mr. D requested a hearing because he was still not satisfied, then staff would be asked to submit a report to Executive Committee (the committee which holds development charge complaint hearings⁹).
27. Mr. D requested a hearing, but staff ultimately decided not to grant it. In an email to the Councillor's office, the lawyer from Legal Services Division advised:

Staff have determined that [Mr. D's] complaint has no merit under section 20 of the Development Charges Act. We have considered the circumstances and determined there are no grounds to put this matter before Executive Committee.

COMPLAINT TO OMBUDSMAN TORONTO

28. Mr. D complained to Ombudsman Toronto that staff had refused to bring the matter forward to a hearing.
29. His complaint raised the question of whether a formal hearing was the appropriate forum in which Mr. D could make his argument and where City staff could present their position, including the reasons they believed the development charges had been properly levied.

⁹ We were provided with a copy of a delegation of authority from City Council to the Policy and Finance Committee, the predecessor to the Executive Committee, from June 2000: <<http://www.toronto.ca/legdocs/2000/agendas/council/cc/cc000607/pof7rpt/cl006.pdf>>.

30. We therefore gathered information to determine whether staff had the authority to deny Mr. D a development charge complaint hearing, and what their process was for making that determination.

DEVELOPMENT CHARGE COMPLAINT PROCESS

31. Toronto Building staff calculate and collect development charges on behalf of the City (under the City's Development Charges By-law¹⁰), and on behalf of the Toronto Catholic District School Board (under the Board's own Education Development Charges By-law¹¹).

32. A property owner or developer must pay these charges before Toronto Building will issue a permit.

33. According to the legislation,¹²

A person required to pay a development charge, or the person's agent, may complain to the council of the municipality imposing the development charge that,

- (a) the amount of the development charge was incorrectly determined;
- (b) whether a credit is available to be used against the development charge, or the amount of the credit or the service with respect to which the credit was given, was incorrectly determined; or
- (c) there was an error in the application of the development charge by-law.

34. Typically, the property owner or developer would address their complaint to the City Clerk's Office, and staff from that office then distribute the complaint to a number of divisions.

35. Development charge complaints are then handled by staff from Toronto Building, Corporate Finance and Legal Services. Different witnesses provided different information about the role of each division, as discussed later in this report.

36. Staff do not have any written procedures to guide how they handle development charge complaints, or to delineate which staff members are responsible for what aspect of complaint handling.

37. Staff explained to us that when they receive a development charge complaint, staff from Toronto Building, Corporate Finance and Legal Services review the complaint to determine whether, in their view, the development charges were properly levied.

¹⁰ Toronto Municipal Code, Chapter 415, Article I.

¹¹ Toronto Catholic District School Board Education Development Charges By-law 2013 No. 178, and Toronto Catholic District School Board Education Development Charges Amending By-law 2015 No. 186.

¹² *Development Charges Act, 1997*, s. 20(1). A similar provision exists in s. 257.85 (1) of the *Education Act*.

38. Staff then attempt to resolve the complaint. This could involve identifying and acknowledging an error and issuing a refund of charges, or advising the complainant that the bylaw has been correctly applied (and the reasons why they believe this to be the case) and requesting that the complainant withdraw the complaint.
39. Staff will correspond with complainants in writing, and will sometimes meet face to face with complainants and/or their legal counsel in an attempt to resolve the matter without going to a hearing.
40. In cases where staff believe that the complaint falls within one of the three grounds of complaint under the *Development Charges Act*, and they have been unable resolve the matter informally, they will submit a written report, signed by the Deputy City Manager and Chief Financial Officer, to Executive Committee for a hearing.
41. Staff told us that if they do not believe that the matter falls within the three listed grounds of complaint, then they will not bring it forward for a hearing, and they may request that the complainant withdraw the complaint.
42. Under the *Development Charges Act* and the *Education Act*, complainants/parties can appeal the decision of a council to the Ontario Municipal Board (OMB).¹³
43. Complainants/parties can also appeal to the OMB if "council of the municipality does not deal with the complaint within 60 days after the complaint is made."¹⁴

OVERVIEW OF COMPLAINTS

44. Staff advised that between January 1, 2000 and March 7, 2017, Toronto Building collected development charges 24,691 times. This works out to an average of 1,436 charges per year.
45. The City receives a very small number of complaints. We requested and reviewed copies of complaints received since 2013. Staff provided 17 complaints. The City received 4 complaints in 2016¹⁵; 6 complaints in 2015; 6 complaints in 2014; and 1 complaint in 2013.

¹³ Section 22(1) of the *Development Charges Act, 1997* states: "A complainant may appeal the decision of the council of the municipality to the Ontario Municipal Board by filing with the clerk of the municipality, on or before the last day for appealing the decision, a notice of appeal setting out the reasons for the appeal." A similar provision exists in the *Education Act* at s. 257.87 (1).

¹⁴ Section 22(2) of the *Development Charges Act, 1997* states: "A complainant may also appeal to the Ontario Municipal Board if the council of the municipality does not deal with the complaint within 60 days after the complaint is made." A similar provision exists in the *Education Act* at s. 257.87 (2).

¹⁵ This was the number of complaints at the time of our document request. By the end of 2016, the City had received a total of 6 complaints.

46. These complaints had a number of different bases, including:
 - Allegations that delay on the part of City staff resulted in an increase in development charges;
 - Allegations that City staff had misclassified the type of property being renovated (e.g. one complainant alleged his property was already mixed commercial/residential, and that he should not have to pay additional development charges for the non-residential portion); and
 - Allegations that a building was previously a triplex, not a duplex (as claimed by the City), and so the complainant should receive additional credits towards his developments charges.
47. Of the 17 complaints we reviewed, only two resulted in a hearing before Executive Committee. Seven complaints concluded without a hearing. Eight complaints were still in process when we requested documentation.
48. Staff had screened out three complaints, believing that they did not fall within the three grounds listed in the *Development Charges Act*. As a result, they were not brought to Executive Committee for a hearing.
49. Four additional complaints did not result in a hearing:
 - Two were marked "closed," where staff refunded the money claimed;
 - One was marked "resolved," where staff believed the bylaw had been properly applied and requested that the complainant withdraw the complaint; and
 - One was marked "dismissed," where the complainant initially signalled an intention to complain, then withdrew following discussions with staff.
50. In the case of Mr. D, staff considered his allegation to be a complaint about administrative or operational processes of Toronto Building, unrelated to the application of the Development Charges By-law.
51. Since staff did not believe that Mr. D's complaint was a proper development charge complaint, they followed their stated practice by not bringing the matter forward to a hearing.
52. It is not clear, however, that staff have always consistently followed this practice. One senior staff member, in an internal email, noted that "we have provided an airing at [Executive Committee] for items that were not technically s. 20 in the past."
53. One of the few complaints to go before Executive Committee in recent history involved an allegation that "on account of various administrative delays by the City, a building permit could not be drawn or issued prior to the increase in

development charge rates that came into effect on February 1, 2014."¹⁶ The complainant in that case was claiming a refund of \$988,797.

54. At the hearing for that complaint, Executive Committee recommended:
1. City Council accept the complaint dated June 18, 2014 filed pursuant to Section 20 of the Development Charges Act, 1997 regarding 545-565 Sherbourne Street.
 2. City Council direct that a refund from Development Charges Reserves for the difference from the amount be paid to the complainant.
55. At City Council, Council deleted these recommendations and adopted the following decision:
- City Council authorize the appropriate City Officials to execute an agreement, in a form satisfactory to the City Solicitor and the Deputy City Manager and Chief Financial Officer, providing for a credit against development charges paid or to be paid in respect of the development of the property known municipally as 545, 555 and 565 Sherbourne Street, such credit to be in an amount equal to the Parks and Recreation and Roads components of the development charges paid or payable in respect of such development, to a maximum of \$948,269.75 and to be paid from the respective development charge reserve funds.
56. Staff told us that this was not in their view a "proper" development charge complaint (i.e. it did not fall within one of the three enumerated grounds). When we asked why it had gone to Executive Committee, staff told us that this had been a decision of senior management.
57. We asked why staff are deciding whether or not a complaint falls within one of the three grounds, as opposed to allowing the ultimate decision-maker (City Council) to make this decision. They responded via email: "whether a complaint fits under s 20 is a legal matter that staff are qualified and responsible to make."
58. There was some confusion among staff about who is responsible for making this decision, as among the various divisions involved. The City Solicitor clarified that Legal Services' role is to provide legal advice to Corporate Finance in the context of a solicitor-client relationship, and that Legal Services does not have decision-making power in this process.
59. Our Investigation also revealed some confusion about who communicates the decision to the complainant, and how.
60. In the case of Mr. D, a lawyer from the Legal Services Division initially sent the rejection letter; Mr. D subsequently entered into email correspondence and

¹⁶ Quoted from the Staff Report, EX44.55, Development Charge Complaint - 545-565 Sherbourne Street, heard by Executive Committee on August 20, 2014.

telephone conversations with the Director of Strategic Initiatives & Intergovernmental Finance (at Corporate Finance). The Director prepared an additional written response for Mr. D, but the written record indicates that he did not send it, and instead advised Mr. D over the phone that staff would not be bringing the matter forward to a hearing.

PROPOSED STAFF REPORT ON EXISTING PRACTICE

61. While we were gathering information on the example complaint, we asked staff under what authority they were screening complaints.
62. In response, staff suggested they would prepare a report to Council "in order to ensure that Council is aware and satisfied with how these matters are conducted." We then began our Investigation, in order to conduct a thorough review of the matter so that Council would be presented with the best possible information.
63. During the course of our Investigation, staff proposed to bring the staff report forward to Executive Committee to have Council direct and authorize staff to:
 - a) Continue to assess and determine whether or not a development charge complaint filed with the City is within the scope of Section 20 of the *Development Charges Act, 1997*; and
 - b) Submit reports to the Executive Committee for matters that are deemed by staff to be within the scope of a Section 20 complaint that cannot be resolved at the staff level.
64. In November 2016, several days before they were planning to submit it to Executive Committee, staff provided us with a draft copy of the report for our review and comment.
65. We requested a meeting with staff and raised the fact that our Investigation was ongoing, and that the draft staff report did not address several issues of concern to us. Staff then decided to delay submitting the report to Executive Committee until the conclusion of our Investigation.

OMBUDSMAN TORONTO DISCUSSIONS WITH INVOLVED DIVISIONS

66. During the early part of 2017, we initiated several meetings with staff from Legal Services in an effort to better understand the City's position on the legal issues that arose in the Investigation.
67. We also arranged to meet with representatives from Corporate Finance, Legal Services, and Toronto Building to discuss our preliminary findings and recommendations.

ANALYSIS, FINDINGS & RECOMMENDATIONS

STAFF AUTHORITY TO SCREEN DEVELOPMENT CHARGE COMPLAINTS IS UNCLEAR

68. We recognize that there are several complex legal issues relevant to the process that the City should follow when handling development charge complaints.
69. One is the issue of whether staff have the legal authority to screen complaints (i.e. to determine that the complaints do not fall within the three grounds of complaint under the *Development Charges Act* and the *Education Act*, and so refuse to bring them forward to a hearing).
70. When we requested greater detail from staff on the source of their authority to screen out development charge complaints, we were not given a clear or detailed explanation.
71. When deciding whether or not to send a complaint to a hearing, staff are essentially deciding when complainants will have access to an appeal body. This raises serious questions of administrative fairness. Furthermore, since the development charge complaint process originates from provincial law, it is important for staff to be sure that they are authorized to perform a screening function, and to know the source of that authority.
72. For instance, the *Statutory Powers Procedure Act* (SPPA) "provides a uniform, minimum procedural code that applies to all statutory tribunals in Ontario required to hold hearings,"¹⁷ and includes procedural requirements regarding the dismissal of a proceeding without a hearing.¹⁸
73. The analysis is further complicated by case law which may be interpreted to suggest that, despite the mandatory language in the legislation, there may be no positive obligation to hold a hearing because of the opportunity to appeal.
74. Ombudsman Toronto takes no position on this legal issue.
75. In light of the questions raised by this Investigation, however, we recommend that Corporate Finance ask legal counsel to conduct a fresh review of the screening practice (where staff decide whether or not a complainant should be granted a hearing), and to confirm that the practice is compliant with all relevant law, including the *City of Toronto Act*, the *Development Charges Act*, the *Education Act*, and the *Statutory Powers Procedure Act*. **(Recommendation 1)**

¹⁷ The Annotated Statutory Powers Procedure Act, Second Edition, Julie Maciura and Rebecca Durcan (Thomson Reuters), p. 1.

¹⁸ The *Statutory Powers Procedure Act*, s. 4.6.

NO WRITTEN PROCEDURE TO ADMINISTER THE COMPLAINTS PROCESS

76. There is no up-to-date documentation of the City's process for handling development charge complaints, or setting out who has what roles and responsibilities among the three divisions involved (we did receive one document prepared in 2006 briefly setting out the complaint handling process that was followed at that time, but we were told it has not been updated since).
77. This creates the real possibility of an inconsistent process and/or decision-making, and that complainants will be provided inaccurate or conflicting information by different staff members.
78. The need for such a procedure is evident from the situation faced by Mr. D, who was initially told by staff that he would be granted a hearing for his complaint. After internal discussions among staff, however, he was told that he would not, in fact, be granted a hearing. A clear written process would help to avoid such a situation in the future.
79. As discussed above, staff acknowledged that they have not consistently screened out complaints: they provided a hearing in the past for at least one complaint that they believe did not technically qualify as a development charge complaint.
80. A written procedure will ensure that the decision-making process is as predictable, consistent and transparent (and therefore as fair) as possible.
81. Staff from Corporate Finance should work with all relevant divisions to draft a written procedure to guide them in the administration of the development charge complaint process. **(Recommendation 2)**
82. Assuming staff's authority to screen complaints is confirmed pursuant to Recommendation 1, the written procedure should clearly set out the process they follow when determining whether or not to bring a matter forward to a hearing. The written procedure should include examples of matters that staff do and do not consider to fall within the three enumerated categories.
(Recommendation 3)

NO WRITTEN PROCEDURE SPECIFIC TO COMPLAINT HEARINGS

83. At present, hearings are held before Executive Committee, which makes a recommendation to City Council for a final determination. We were advised that the hearing is conducted pursuant to the requirements of Municipal Code Chapter 27, Council Procedures.¹⁹

¹⁹ Municipal Code Chapter 27 (Council Procedures), § 27-19, Statutory hearings.

84. In practice, the hearing of a development charge complaint closely resembles Executive Committee's consideration of any other agenda item. Staff from the City Clerk's Office explained that complainants may submit written arguments in advance, or provide written submissions at the hearing. The complainant has the opportunity to depute (make an oral presentation to committee which is typically limited to 5 minutes). Members of the Executive Committee may ask questions of the complainant, and of staff.
85. While we do not have evidence to suggest that the current process fails to allow complainants an adequate opportunity to be heard, which is a key requirement of administrative fairness, a written procedure specific to development charge complaints would help to ensure that hearings are conducted in a consistent manner every time Executive Committee holds a hearing. Such a written procedure does not currently exist.
86. We note that several other City adjudicative bodies have extensive and detailed rules of procedure specific to them. These include the:
- Toronto Local Appeal Body;
 - Property Standards Committee;
 - Toronto Licensing Tribunal;
 - Caution and Muzzle Notice Review Tribunal; and
 - Sign Variance Committee.
87. Staff from Corporate Finance should work with other relevant City divisions to set out a development charge complaint hearing procedure in writing. This procedure should include the following details:
- how complainants can present evidence, submit written arguments and/or make oral submissions;
 - how and when complainants can access staff's written arguments (which are found in the staff report); and
 - an overview of how the hearing is conducted.

In developing this written procedure, staff should also consider including information on what role, if any, the *Statutory Powers Procedure Act* plays in structuring these hearings.²⁰ **(Recommendation 4)**

NO PUBLICLY-AVAILABLE INFORMATION ABOUT THE COMPLAINT PROCESS

88. There is currently no information available online through the City's website about either the complaints handling process or the hearing process, or the fact that complainants may appeal to the OMB in certain circumstances. In the interest of public transparency, all of this information should be readily available.

²⁰ The *Statutory Powers Procedure Act* sets out procedural requirements for hearings, including the right to legal representation (s. 10); rules on how witnesses may be examined (s. 10.1); and rules of evidence (s. 15).

89. The City has produced a pamphlet on development charges, but it makes no mention of the complaint process.²¹
90. The City's website should include information on the process by which development charge complaints are handled. At a minimum, the City should post online the written procedure referenced in Recommendation 2. **(Recommendation 5)**
91. The website should also include a description of the hearing process before Executive Committee, and how parties can participate in the hearing. At a minimum, the City should post online the written procedure referenced in Recommendation 4. **(Recommendation 6)**
92. The information available online should also include the fact that complainants have a right of appeal to the OMB. **(Recommendation 7)**

STAFF NOT ADVISING OF HEARING AND APPEAL OPTIONS IN WRITING

93. One file we reviewed was a complaint which staff considered to be a "proper" development charge complaint (i.e. where staff believed the complaint fell within one of the three enumerated grounds).
94. Despite this, staff advised the complainant in writing that the Development Charges By-law had been correctly applied, and requested that the complainant withdraw the complaint. Staff did not bring this matter to Executive Committee for a hearing.
95. Staff told us that the complainant in that case had orally accepted staff's explanation as to why his complaint was without merit. The closing letters do not indicate that staff advised the complainant of his right either to have a hearing before Executive Committee or of his right to appeal to the OMB. In fact, in both letters, staff requested that the complainant withdraw his complaint, which would eliminate his right to appeal.
96. The complainant in that case was communicating directly with Corporate Finance, without the assistance of a legal representative.
97. It is unclear whether the complainant understood his rights to a hearing and an appeal but nonetheless agreed that his complaint was unlikely to succeed and therefore chose not to pursue it, or whether he simply gave up because staff asked him to withdraw his complaint.

²¹ City of Toronto Development Charges pamphlet (December 2013):
<https://www1.toronto.ca/City%20Of%20Toronto/Corporate%20Finance/Developmental%20Charges/Files/pdf/D/DevChargesPhamplet_final_accessible.pdf>.

98. In any case where there is a right to a hearing, staff should advise the complainant of this fact in writing. This should happen even when staff is trying to negotiate a resolution. This will help to ensure that all complainants are making a free and informed decision about their complaint. **(Recommendation 8)**
99. In 3 of the 17 files we reviewed, staff screened out the complaint without bringing the matter forward for a hearing because they did not consider the issues to be proper development charge complaints.
100. Staff told us that they advise complainants in such cases of their right to appeal to the OMB. The draft staff report states:

If a development charge dispute is not a proper complaint, a hearing at Committee is not scheduled and the complainant is so advised, including their right to appeal the matter to the Board as provided for under the Act.
101. It may be that staff advise complainants informally of their appeal rights: for instance, the Director of Strategic Initiatives & Intergovernmental Finance (at Corporate Finance) told us that he informed Mr. D over the phone that Mr. D could appeal the matter to the OMB.
102. However, there is no indication in the closing letters for the 3 complaints mentioned above that staff advised complainants of their right to an appeal to the OMB.
103. Staff should advise all complainants in writing of their right to appeal to the OMB from the City's handling of their complaint. **(Recommendation 9)**

GAPS REGARDING EDUCATION DEVELOPMENT CHARGE COMPLAINTS

104. We found no evidence that City Council has expressly delegated authority to Executive Committee to hold hearings into education development charge complaints. Under the provincial legislation, a council is required to hold this hearing. Since in Toronto, Executive Committee is holding these hearings, the Committee's authority to do so should be clearly spelled out.
105. Further, there are some slight differences in the provincial legislation regarding how development charge and education development charge complaints are to be handled, including the fact that school boards are parties to education development charge complaint hearings.²²
106. Staff have not provided us with any written documentation that describes the differences between the process for development charge complaints and education development charge complaints.

²² *Education Act*, s. 257.85 (4).

107. In order to ensure that staff are fulfilling their obligations under the *Education Act*, this process should be clearly laid out.
108. The systemic recommendations made above with respect to development charge complaints apply equally to education development charge complaints. **(Recommendations 1-9)**
109. Additionally, staff from Corporate Finance should seek legal advice to ensure that all necessary delegations of authority are in place regarding education development charge complaints. **(Recommendation 10)**
110. Further, the written procedure (from Recommendation 2) should clearly lay out the process staff follow when handling education development charge complaints, including the requirement to notify school boards about complaint hearings, and about the right of school boards to participate as parties to the hearing. **(Recommendation 11)**

EXAMPLE COMPLAINT

111. We recommend that Corporate Finance send a letter to Mr. D, apologizing for the conflicting information he was given about his right to a hearing before Executive Committee, and underscoring Corporate Finance's commitment to improving the system so that the process is clearer in the future. **(Recommendation 12)**

CONCLUSION

112. The *Development Charges Act* and the *Education Act* provide a mechanism for property owners and developers with complaints about development charges to be heard.
113. These acts provide that municipal councils are the first line of complaint – a forum where complainants can make their case.
114. As a matter of administrative fairness and public accountability, the entire complaints handling process should be clear, predictable and transparent.
115. This means that complainants should know what to expect: including how to make a complaint, who will be dealing with their complaint, what the steps are in the complaint-handling process, when a hearing will or will not be held, and what to expect from a hearing.
116. City staff should also be clear about their powers and responsibilities in this process: including knowing which staff are responsible for communicating with complainants, whether staff have the authority to screen complaints, and if so, how this process should function. They should ensure that they take a consistent approach with all complainants.

117. The City's current process for handling development charge complaints needs improvement. Shortcomings in the current process include a lack of written procedures to guide staff in their decision making, a lack of clarity about staff's authority to screen complaints, and a lack of consistency when deciding whether to grant complainants a hearing.
118. The City should strive to be a model for all Ontario municipalities in how it handles development charge complaints. The implementation of our recommendations will improve the overall fairness of the City's development charge complaint handling process by providing enhanced clarity, consistency, transparency and accountability.

RECOMMENDATIONS

119. Based on the evidence and our findings, we make the following recommendations:

CLARIFYING AUTHORITY TO SCREEN COMPLAINTS

1. In light of the questions raised by this Investigation, we recommend that staff from Corporate Finance ask legal counsel to conduct a fresh review of the screening practice (where staff decide whether or not a complainant should be granted a hearing), and to confirm that the practice is compliant with all relevant law, including the *City of Toronto Act*, the *Development Charges Act*, the *Education Act*, and the *Statutory Powers Procedure Act*.

WRITTEN PROCEDURE FOR THE COMPLAINTS HANDLING PROCESS

2. Staff from Corporate Finance should work with other relevant divisions to draft a written procedure to guide them in the administration of the development charge complaint process.
3. Assuming staff's authority to screen complaints is confirmed pursuant to Recommendation 1, the written procedure should clearly set out the process they follow when determining whether or not to bring a matter forward to a hearing. The written procedure should include examples of matters that staff do and do not consider to fall within the three enumerated categories.

WRITTEN PROCEDURE FOR DEVELOPMENT CHARGE COMPLAINT HEARINGS

4. Staff from Corporate Finance should work with other relevant City divisions to set out a development charge complaint hearing procedure in writing. This procedure should include the following details:
 - how complainants can present evidence, submit written arguments and/or make oral submissions;

- how and when complainants can access staff's written arguments (which are found in the staff report); and
- an overview of how the hearing is conducted.

In developing this written procedure, staff should also consider including information on what role, if any, the *Statutory Powers Procedure Act* plays in structuring these hearings.

PRODUCING PUBLIC INFORMATION ON DEVELOPMENT CHARGE COMPLAINTS

5. The City's website should include information on the process by which development charge complaints are handled. At a minimum, the City should post online the written procedure referenced in Recommendation 2.
6. The website should also include a description of the hearing process before Executive Committee, and how parties can participate in the hearing. At a minimum, the City should post online the written procedure referenced in Recommendation 4.
7. The information available online should also include the fact that complainants have a right of appeal to the OMB.

ADVISING COMPLAINANTS OF THEIR HEARING AND APPEAL OPTIONS IN WRITING

8. In any case where there is a right to a hearing before Executive Committee, staff should advise the complainant, in writing, of this fact. This should happen even when staff is trying to negotiate a resolution.
9. Staff should advise all complainants in writing of their right to appeal to the OMB from the City's handling of their complaint.

EDUCATION DEVELOPMENT CHARGE COMPLAINTS

10. Staff from Corporate Finance should seek legal advice to ensure that all necessary delegations of authority are in place regarding education development charge complaints.
11. The written procedure (from Recommendation 2) should clearly lay out the process staff follow when handling education development charge complaints, including the requirement to notify school boards about complaint hearings, and about the right of school boards to participate as parties to the hearing.

EXAMPLE COMPLAINT

12. Corporate Finance should send a letter to Mr. D, apologizing for the conflicting information he was given about his right to a hearing before Executive

Committee, and underscoring Corporate Finance's commitment to improving the system so that the process is clearer in the future.

REPORTING BACK

13. Corporate Finance should report quarterly to Ombudsman Toronto on the implementation of these recommendations until implementation is complete.

CITY RESPONSE

120. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, Ombudsman Toronto provided Corporate Finance, Toronto Building and Legal Services with copies of a draft Investigation report containing preliminary findings and recommendations, in order to allow them to make representations in response to the draft.
121. Staff from Ombudsman Toronto and the three divisions met to discuss the draft Investigation report. Ombudsman Toronto then finalized the report, taking into consideration the divisions' representations.
122. By letter of June 9, 2017 the Executive Director of Corporate Finance informed Ombudsman Toronto that he, the City Solicitor, and the Deputy Chief Building Official agreed with and supported the Investigation's recommendations. On behalf of Corporate Finance, he committed to collaborating with relevant divisions to implement all of the recommendations by the end of 2017.
123. A copy of the Executive Director's letter, with attached chart outlining Corporate Finance's response to each recommendation and timeline for implementation, is attached as Appendix A.
124. Ombudsman Toronto will monitor Corporate Finance's progress in implementing the recommendations.

(Original signed)

Susan E. Opler
Ombudsman

APPENDIX A – RESPONSE FROM CORPORATE FINANCE



Joe Farag
Executive Director, Corporate Finance

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June 9, 2017

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

Dear Ms. Opler:

Re: Ombudsman Toronto Report: An Investigation into the City's Process for Handling Development Charge Complaints and Education Development Charge Complaints

Thank you for meeting with us to review and discuss the above-captioned report. I have consulted the City Solicitor and the Deputy Chief Building Official in the preparation of this response. We collectively agree with and support your recommendations with a view to improve transparency, accountability, and compliance with all relevant laws in the matter.

Your recommendations relating to developing written processes and procedures that guide staff in their jobs, and inform and set expectations for complainants are acknowledged. These are in accordance with key Divisional objectives of documenting processes and procedures as they relate to our various services. As recommended, Corporate Finance will collaborate with relevant divisions to prepare detailed information with respect to development charge and education development charge complaint handling processes and procedures; these will be made available online as well as in written communication with complainants. In the matter of the example complaint, Corporate Finance will send a letter of apology to Mr. D.

I appreciate the opportunity to comment on this matter and thank you for the thorough and comprehensive report. I have attached a table with comments and target completion schedule for each of the recommendations.

Sincerely,

Joe Farag
Executive Director

c: Roberto Rossini, Deputy City Manager & Chief Financial Officer
Wendy Walberg, City Solicitor
Mario Angelucci, Deputy Chief Building Official and Director, Toronto Building
Robert Hatton, Director, Strategic & Intergovernmental Initiatives, Corporate Finance

Attachment: Corporate Finance response



**An Investigation into the City's Process for Handling Development Charge Complaints
and Education Development Charge Complaints**

Rec #	Section	Recommendation	Agree	Comments	Timeline
1		In light of the questions raised by this investigation, we recommend that staff from Corporate Finance ask legal counsel to conduct a fresh review of the screening practice (where staff decide whether or not a complainant should be granted a hearing), and to confirm that the practice is compliant with all relevant law, including the <i>City of Toronto Act</i> , the <i>Development Charges Act</i> , the <i>Education Act</i> , and the <i>Statutory Powers Procedure Act</i> .	Yes	Corporate Finance will continue to consult and work with City Legal to ensure that all complaint handling processes and procedures, including the screening practice, are compliant with relevant law.	Q3 2017
2		Staff from Corporate Finance should work with other relevant divisions to draft a written procedure to guide them in the administration of the development charge complaint process.	Yes		
3	119	Assuming staff's authority to screen complaints is confirmed pursuant to Recommendation 1, the written procedure should clearly set out the process they follow when determining whether or not to bring a matter forward to a hearing. The written procedure should include examples of matters that staff do and do not consider to fall with the three enumerated categories.	Yes	Corporate Finance will collaborate with other City divisions in preparing <ul style="list-style-type: none"> written procedures for the administration of development charge complaints comprehensive information package to address the matters identified written procedures for the conduct of development charge complaint hearings. 	Q4 2017
4		Staff from Corporate Finance should work with other relevant City divisions to set out a development charge complaint hearing procedure in writing. This procedure should include the following details: <ul style="list-style-type: none"> how complainants can present evidence, submit written arguments and/or make oral submissions; how and when complainants can access staff's written arguments (which are found in the staff report); and 	Yes		

Rec #	Section	Recommendation	Agree	Comments	Timeline
		<ul style="list-style-type: none"> an overview of how the hearing is conducted. <p>In developing this written procedure, staff should also consider including information on what role, if any, the <i>Statutory Powers Procedure Act</i> plays in structuring these hearings.</p>			
5		The City's website should include information on the process by which development charge complaints are handled. As a minimum, the City should post online the written procedure referenced in Recommendation 2.	Yes	Written procedures will be posted online and will include details concerning <ul style="list-style-type: none"> development charge complaint administration development charge complaint hearings at Executive Committee complainant's right to appeal to the OMB 	Q4 2017
6		The website should also include a description of the hearing process before Executive Committee, and how parties can participate in the hearing. At a minimum, the City should post online the written procedure referenced in Recommendation 4.	Yes		
7		The information available online should also include the fact that complainants have a right of appeal to the OMB.	Yes		
8		In any case where there is a right to a hearing before Executive Committee, staff should advise the complainant, in writing, of this fact. This should happen even if staff is trying to negotiate a resolution.	Yes	Complainants will be advised in writing of their right to appeal to the OMB	Immediate
9		Staff should advise all complainants in writing of their right to appeal to the OMB from the City's handling of their complaint.	Yes		
10		Staff from Corporate Finance should seek legal advice to ensure that all necessary delegations of authority are in place regarding education development charge complaints.	Yes	Corporate Finance will seek any necessary delegation of authority as advised by City Legal regarding education development charge complaints	Q3 2017
11		The written procedure (from Recommendation 2) should clearly lay out the process staff follow when handling education development charge complaints, including the requirement to notify school boards	Yes	Corporate Finance will formalize communication protocols with the school boards in matters relating to education development charge complaints	Q4 2017

Rec #	Section	Recommendation	Agree	Comments	Timeline
12		<p>about complaint hearings, and about the right of school boards to participate as parties to the hearing.</p> <p>Corporate Finance should send a letter to Mr. D. apologizing for the conflicting information he was given about his right to a hearing before Executive Committee, and underscoring Corporate Finance's commitment to improving the system so that the process is clearer in the future.</p>	Yes	Corporate Finance will send a letter of apology to Mr. D.	Q3 2017
13		Corporate Finance should report quarterly to Ombudsman Toronto on the implementation of these recommendations until implementation is complete.	Yes	Reporting will be developed in consultation with Ombudsman Toronto	Immediate