



LOBBYIST REGISTRAR'S REPORT FOR ACTION

Office of the Lobbyist Registrar – 2018 Operating Budget Request

Date: November 28, 2017
To: Budget Committee
From: Lobbyist Registrar
Wards: All

SUMMARY

This report seeks Budget Committee's recommendation for City Council to approve the Office of the Lobbyist Registrar's 2018 Operating Budget Request of \$1,644.0 thousand gross and net.

RECOMMENDATIONS

The Lobbyist Registrar recommends that:

1. Budget Committee recommend to Executive Committee that City Council approve the Lobbyist Registrar's 2018 Operating Budget Request of \$1,644.0 thousand gross and net.

FINANCIAL IMPACT

The financial impact of adopting the recommendation in this report will be an inclusion of the annual budget of the Office of the Lobbyist Registrar at \$1,644.0 thousand gross and net in the City of Toronto's 2018 Approved Operating Budget.

DECISION HISTORY

In accordance with the *City of Toronto Act, 2006* and Chapter 3 of the Toronto Municipal Code, the Lobbyist Registrar, as one of the City's four Accountability Officers, is independent and accountable to City Council. Each Accountability Officer is required to submit an annual budget request to the Budget Committee for consideration and recommendation to City Council. Therefore, this report is submitted directly to Budget Committee for consideration and recommendation to City Council. (Reference: *City of Toronto Act, 2006*, s. 168(1); Chapter 3 of Toronto Municipal Code, s. 3-10C)

COMMENTS

Mandate of the Office of the Lobbyist Registrar (OLR)

The OLR promotes and enhances the transparency and integrity of City government decision-making through public disclosure of lobbying activities and regulation of lobbyists' conduct. The OLR is responsible for: oversight of the lobbyist registration system, provision advising on Chapter 140, Lobbying, of the Toronto Municipal Code, conducting inquiries and investigations and enforcing compliance with Chapter 140, Lobbying (the By-law), and advising City Council on lobbying matters.

The OLR is one of the four independent Accountability Offices appointed by and reporting to Toronto City Council with responsibilities, powers and duties as set out in the *City of Toronto Act, 2006* (COTA). The accountability provisions in COTA are vital to the effectiveness of the City's accountability framework and to strengthen public trust in government. COTA requires the City to maintain a Lobbyist Registry (Registry) and empowers the City to appoint a Registrar.

Duties of the Lobbyist Registrar

The Lobbyist Registrar is required by the *City of Toronto Act, 2006* and Chapter 3 of the Toronto Municipal Code to execute the following duties:

1. The independent carriage of the duties and responsibilities of the office as set out in Part V of the *City of Toronto Act, 2006* and Toronto Municipal Code Chapter 3, Accountability Officers;
2. Oversight of the lobbyist registration system and the By-law, which includes interpretation and application of the By-law;
3. Review and assessment of registrations to guarantee compliance with the By-law;
4. Decision-making with respect to the refusal, acceptance, suspension or revocation of a registration;
5. Investigation of complaints regarding alleged breaches of the By-law, and where required in the public interest, the carriage of enforcement

proceedings which may include the referral for prosecution of matters pursuant to the *Provincial Offences Act*,

6. Provision of outreach and training to all stakeholders on the Lobbyists' Code of Conduct and roles and responsibilities under the By-law;
7. Publication and presentation of an annual report to City Council on the activities of the OLR in the discharge of its duties;
8. Provision of information to the public about the City's lobbying control framework and how to access the Registry on the City's website;
9. Execution of the OLR's functions within a framework that fosters independence, confidentiality and public trust; and
10. Identification of matters that crossover with the mandates and processes of other Accountability Offices and facilitating coordination, when required in the public interest.

Rationale for the Budget Request

The OLR's 2018 Operating Budget Request of \$1,644.0 thousand net represents an increase of \$490.0 thousand net or 42.5% from the 2017 Approved Operating Budget of \$1,154.1 thousand net. The majority of the OLR's 2018 Operating Budget Request consists of salaries and benefits.

The OLR's budget request of \$1,644.0 thousand net, includes a base budget request of \$35.5 thousand net, and a new or enhancement request of \$454.5 thousand net.

The base budget increase of \$35.5 thousand net includes the reversal of the prior year one-time reduction in non-payroll budget and gapping, budgetary provision for progression pay increases, benefit adjustments, economic factor adjustments for non-payroll items, and hardware maintenance costs. This is partially offset by salary budget to actual adjustments.

The enhancement request of \$454.5 thousand net is required to provide better outreach and investigative capacity and therefore, greater compliance with the By-law. Ensuring the OLR is able to meet its mandate is fundamental to supporting the City's commitment to good governance. The enhancements are critical to the OLR's ability to contribute to better Transparency, Participation, Accountability and Accessibility. The Registry and the Lobbyists' Code of Conduct are both: tools for transparency, and instruments for civic engagement. The enhancements requested to support the OLR's outreach and investigative functions are critical to supporting the disclosure of lobbying activities through the Registry, and to upholding the Lobbyists' Code of Conduct. They support the Strategic Actions identified by City Council in support of Good Governance, namely: Open Government by Design, Engage the Public, Strengthen Public Service Governance and Improve Customer Service.

The enhancements are for increased funding in these three (3) areas:

- Enhancement A – Full-time Education and Outreach position;
- Enhancement B – Junior Counsel position; and
- Enhancement C – A sum of \$250.0 thousand to cover external legal and investigative costs.

Approval of these enhancement requests will increase the total complement of the OLR by 2.0 positions from 8.3 positions to 10.3 positions.

Current Service levels are being challenged by the following factors:

- Upgrades in technology platform supporting the Registry;
- Under-resourcing within each of the two units: Inquiries and Investigations Unit (Investigations Unit) and Lobbyist Registry Unit (Registry Unit);
- New legislative amendments broadening enforcement powers;
- Year-over-year increases in Registry activity notwithstanding that staff complement has not changed from the approved FTE of 8.3 established in 2009; and
- Innovations and improvements to business processes undertaken by OLR staff.

The enhancements requested are required to ensure that service continues in an accurate, timely and efficient manner.

The sustainment of current and future service levels is at risk. The enhancements requested are required to ensure that service continues in an accurate, timely and efficient manner. The enhancements are being proposed for the reasons outlined below.

Statutory Education & Outreach Requirements (Enhancement A)

Request:

The 2018 budget request is \$95.2 thousand comprising:

- \$91.2 thousand for a permanent Education & Outreach Assistant position for part-year (9 months); and
- One-time budget of \$4.0 thousand for office furniture and computer equipment related to the staff position.
- There is an incremental impact of \$30.5 thousand in 2019 for annualization of the staff position and reversal of one-time budget for office furniture and computer equipment.

Rationale:

The OLR mandate requires that it provides training and support for registrants to achieve compliance, and facilitate ongoing registrations as required by the By-law. However, the OLR is operating without a staff resource allocated to Education and Outreach. As a result, this function has not been performed to the degree that is optimal for a regulatory body. Engaging stakeholders and the public is critical to fostering compliance. Operating without adequate resources dedicated to Education and Outreach impedes the OLR's ability to deliver its mandate successfully.

1. Repurposing of staff has occurred in order to reallocate more resources to Education and Outreach. However, this is straining the ability of the OLR to fully carry out the other functions of its mandate. For example, the complement of three Lobbyist Registry Advisors (Advisors) has been repositioned to two Advisors, with one Advisor repositioned to service the Education and Outreach function on a full-time basis. The two remaining Advisors are working at 1½ capacity in order to service the Registry. This is putting increased pressure on the remaining staff to deliver timely and accurate services, with the volume of Registry activity having increased by a projected 21% in 2017. The Advisors have implemented measures to innovate and improve service delivery by utilizing process improvement strategies, such as using technology to eliminate redundancy. However, Enhancement A is required in order to maintain the current service level amongst the Advisors. The urgent need for resources dedicated to Education and Outreach can only be addressed by an additional full-time resource.
2. There has been year over year increases to the volume of registrations and further increase in volume is anticipated. However, the current staff complement has not changed from the approved FTE of 8.3 established in 2009. Since 2010, the number of registration transactions processed annually by our office has increased by 432%, from 2,443, to a projected 12,990 in 2017; the number of registered lobbyists has increased by 60%, from 1,047, to a projected 1,677 in 2017; the number of active Subject Matters has increased by 84%, from 1,424, to a projected 2,614 in 2017.
3. The State of Good Repair Project (SOGR) is being undertaken to modernize and upgrade the technology platform which operates the Registry. A three-fold impact on Advisors' functions and operations is anticipated:
 - 3.1. Advisors' resources have been dedicated to support the execution of this upgrade. Going forward, continued deployment of Advisors' resources will be required to deliver the new Registry platform, and provide training to the public, City staff, and lobbyists on use of the new system. A significant portion of staff time and resources for both Registry advice and Education and Outreach activity must be dedicated to launching the new system.
 - 3.2. Moreover, maintenance and upgrades to the new system will require permanent dedication of staff resources to the management of the lobbyist registration system.

3.3. The impact of the new technology upgrades delivered by the SOGR to the Registry will be transformative, and will therefore require staff to dedicate time and resources to the anticipated increase in Registry activity and to adapt to new business process which will flow from the new functions created by the technology upgrades. New efficiencies are anticipated from the accessibility, ease of use, and improved capabilities for data searching and exporting. While the improvements will alleviate the Advisors' current challenges in facilitating timely and accurate customer service and compliance with current system's out-dated technology, Advisors will at the same time be required to dedicate time and resources to adopting new business processes necessary to accommodate the increased functionality of the new system. Also, because the technology upgrades are expected to achieve the desired outcome of increased transparency, and better service to the public, it is anticipated that Advisors will be handling an increased volume of Registry activity.

Statutory Investigation & Legal Requirements (Enhancements B and C)

Request:

The 2018 budget request is \$359.3 thousand comprising:

- \$105.3 thousand for a permanent Junior Counsel position for part-year (9 months)
- One-time \$4.0 thousand in office furniture and computer for this new position
- \$250.0 thousand increase in base budget funding comprising \$125.0 thousand for Legal Services and \$125.0 thousand in Investigative Expenses.

There will be an incremental impact of \$41.3 thousand for the annualization of the Junior Counsel position and reversal of the one-time budget for office furniture and computer for the new position.

Rationale:

The OLR has been under-resourced with respect to investigative resources. The result has been delays in the length of the investigative process and restrictions on the capacity to take on new matters. Enhancements B and C are required in order to ensure that the Investigations Unit can continue to be effective in supporting compliance.

Ongoing enforcement activities include: summons to witness and summons of documents, investigations and procedures under the *Provincial Offences Act*. In addition, the Investigations Unit has been pro-active in undertaking these compliance initiatives:

- Preventative initiatives have been increased to resolve matters without resort to formal inquiries;

- Increase in delivery of outreach initiatives through more training sessions, guest lectures and meetings with individual lobbyist organizations, and the creation and dissemination of educational materials for stakeholders; and
 - Provision of advice and advance opinions that prevent contraventions of the By-law.
1. The OLR is tasked with regulating the conduct of external parties. One consequence of this is that the formal inquiry process, both as written into the governing legislation and in our experience with its practical application, is particularly legalistic. For example, the OLR must issue a summons pursuant to the *Public Inquiries Act* to compel evidence. This applies to both internal and external information. Externally this method of information gathering more often than not results in the recipient retaining legal counsel. A response that while generally helpful, nonetheless, can add significant time and complexity to an inquiry. In an inquiry with many respondents and external witnesses, this effect is multiplied.
 2. With the growing awareness of the office within the lobbying community from our emphasis on outreach activities, and in large part as a result of our advanced opinion initiative, the number of cases being referred for formal inquiry has lessened. While some advanced opinions are relatively quick and informal, many require as much legal analysis as occurs in an investigation into a breach of the By-law. This attention to advanced opinions is now at the point of being performed at a detrimental cost to the formal inquiries.
 3. While the number of formal inquiries has decreased, the complexity of those referred has markedly increased. Recently initiated inquiries have presented fact scenarios and evidentiary issues that require the assistance of outside legal counsel and forensic auditors to complete. The external legal advice will be required above and beyond that of internal resources, including the requested junior counsel, as the potentially contentious nature of some of the inquiries and the attendant possibility of judicial review requires that the utmost in due diligence be taken.
 4. Monies for possible litigation related to inquiries must also be readily available. The recent example of the provision of an extra \$400.0 thousand to the Office of the Commissioner of Lobbying (Canada) for legal costs resulting from a court challenge highlights both, the need for a reserve of money to be available in the event of litigation, and the high cost of such litigation.
 5. The OLR's capacity will be further strained by the anticipated increase in volume of investigations, complexity of legal issues and possible legal challenges from two recent legislative changes:
 - 5.1. In 2016, City Council expanded the Registrar's powers by giving the Registrar the authority to impose temporary bans and conditions. The Registrar's new powers to impose temporary bans and conditions on a lobbyist's registration are expected to give rise to legal challenges from the eventual use of these new enforcement options; and

5.2. The passage of *Bill 68, Modernizing Ontario's Municipal Legislation Act, 2017* affords the OLR these two new enforcement powers:

- The extension of the limitation period for the commencement of proceedings to two years from six months; and
- The ability to impose administrative monetary penalties for breaches.

Conclusion

In conclusion, if the recommended Statutory Education & Outreach Requirements (Enhancement A) and Statutory Investigation & Legal Requirements (Enhancements B and C) are not approved:

1. The Registry Unit's ability to deliver timely, accurate and efficient services to the public will be compromised.
2. The Investigations Unit's ability to keep pace with complex investigation cases in a timely manner, with appropriate responses that uphold the OLR's mandate, will be compromised without the additional resources requested.
3. The risk to allowing both units to operate without these recommended enhancements is a decrease in compliance with the disclosure requirements in the By-law. The long term impact of decreased compliance is an increase in investigations and prosecutions. This will further strain the Investigations Unit's already limited resources. There may be delays in the amount of time in which investigations can be completed. The public may lose confidence in the OLR's ability to provide oversight.
4. Without these resources, the OLR will not be able to provide the public with the tools for transparency and civic engagement that are mandated by City Council's Strategic Actions for Good Governance. Transparency, Participation, Accountability and Accessibility will be diminished. There will be a negative impact on the City's Strategic Goals for Open Government, Citizen Engagement, Good Governance, and Customer Service.
5. Legislative amendments have expanded the OLR's enforcement powers and process. Without adequate resources for the implementation and execution of these expanded powers, the OLR cannot guarantee that the City Council's objectives for better enforcement and higher compliance will be met.
6. Without with resources requested, the OLR cannot guarantee that it can meet its mandate.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1: 2018 Operating Budget – Accountability Officers Budget Request
Overview