

Report on options available when incorrect facts or legal advice is presented to Council by an Accountability Officer

Date: May 12, 2025

To: City Council

From: City Solicitor

Wards: All

SUMMARY

This report responds to City Council's request for options available to City Council in situations where incorrect facts or incorrect legal advice is presented to City Council by an Accountability Officer.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

There are no financial implications to current or future budgets arising from this report.

DECISION HISTORY

At its meeting dated March 26 and 27, 2025, Council adopted item 2025.CC28.2 - Identifying and Addressing Pressures in the Refugee and Emergency Shelter System including a request that the City Solicitor report directly to City Council with advice on options available to City Council when there are incorrect facts or incorrect legal advice presented to City Council by the Accountability Officers.

Link to item: <https://secure.toronto.ca/council/agenda-item.do?item=2025.CC28.2>

COMMENTS

Overview of the City's Accountability Office Mandates

Each Accountability Officer's mandate is set out in Toronto Municipal Code Chapter 3, Accountability Officers, and Part V of the City of Toronto Act, 2006.

Under Section 178(1) of the City of Toronto Act, 2006, the Auditor General is "responsible for assisting City Council in holding itself and City administrators accountable for the quality of stewardship over public funds and for achievement of value for money in city operations."

The Office of the Integrity Commissioner is responsible for providing advice, education, policy recommendations, and complaint resolution to City Council, local boards, their members, and the public on the application of the City's Codes of Conduct, Municipal Conflict of Interest Act, by-laws, policies and legislation governing ethical behaviour.

The Toronto Lobbyist Registrar regulates lobbying activity in the public interest. The Toronto Lobbyist Registrar has a legislative mandate to ensure the public disclosure of lobbying activities and adherence to the Lobbyists' Code of Conduct.

Ombudsman Toronto is an independent voice for fairness, accountability, and transparency at the City of Toronto. Ombudsman Toronto identifies problems, finds practical solutions, and makes recommendations for how the City can improve its systems and service to the public.

Accountability Officer Independence

Each Accountability Officer carries out in an independent manner the duties and responsibilities of their office as set out in Part V of the City of Toronto Act, 2006, Toronto Municipal Code Chapter 3, Accountability Officers, and in the case of the Lobbyist Registrar, Chapter 140, Lobbying. Accordingly, City staff and City Council cannot direct an Accountability Officer or require the Accountability Officer to re-write or correct information contained in their report.

City Council has underscored Accountability Officer independence in Chapter 3 of the Toronto Municipal Code through provisions which tie compensation to an external review, state that there will be no performance progression increases, implement non-renewable fixed terms and require 2/3 of all members to remove someone from an accountability officer position.

In many but not all cases, Accountability Officials share information about their reports and findings for staff input prior to a report being finalized and submitted to City Council. This allows City staff to: provide input to the Accountability Officer on their report, identify incorrect or misunderstood information, assist in providing any legal analysis, and explain any concerns with the report, findings or recommendations. This process enables the Accountability Officer to understand City perspectives or issues and to refine the report before it becomes final. This is a particularly common practice for the Auditor General and the Ombudsman.

Additionally, City Council and staff have other options available and the remainder of this report discusses options available.

Options Available to Council or City Staff

If City staff become aware that an Accountability Officer's report contains incorrect facts or incorrect legal advice, City staff can submit a supplementary report to City Council on the item. In the case of legal advice, it is important to clarify that the Accountability Officers do not provide legal advice to City Council. However, if a report contains incorrect legal advice, the staff in the Legal Services Division could prepare a supplementary report that would be submitted to City Council by the City Solicitor.

Similarly, if City Council is made aware of, or is concerned that, information contained in an Accountability Officer's report is incorrect, City Council can request a report from the appropriate City staff on the issue. City Council could also request further information or clarification from the Accountability Officer. Additionally, City Council could refer the report in question back to the Accountability Officer or take no action other than to receive the report for information.

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SIGNATURE

Wendy Walberg 
City Solicitor

ATTACHMENTS

N/A