

## BY EMAIL

Council for the City of Brampton  
c/o Peter Fay, Clerk  
2 Wellington Street West  
Brampton, ON L6Y 4R2

May 6, 2022

Dear Council for the City of Brampton,

I am writing in response to complaints our Office has received regarding a third-party investigation into various hiring and remuneration decisions, procurement and purchasing matters in the City of Brampton. Further to my conversation with the Clerk and interim Chief Administrative Officer, our review has identified various best practices that may assist the City when retaining independent investigators in future.

Having shared these best practices, we will not be reviewing this matter further for the reasons set out below.

### Background

In April 2021, the City received a letter from a whistleblower alleging various instances of administrative misconduct relating to hiring processes, procurement, and the conduct of senior staff, including the then-Chief Administrative Officer (CAO). The City retained Deloitte LLP to independently investigate these allegations. Deloitte was initially given 30 days to complete its review of six broad areas and various specific allegations regarding: hiring practices, procurement issues, allegations of discrimination, workplace bullying and harassment, destruction of information, and compliance with standard policy and procedure.

Ultimately, council extended the timeframe for Deloitte's investigation until September 15, 2021. The investigative report<sup>1</sup> was presented at the September 29, 2021 council meeting and commented on general observations related to the City's policies and procedures, as well as the specific allegations brought forward for investigation.

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<sup>1</sup> Available online at: <https://pub-brampton.escribemeetings.com/filestream.ashx?DocumentId=34097>

With respect to the City's general policies and procedures, Deloitte noted that certain policies and standard operating procedures that were in place at the time of the alleged misconduct lacked clarity or did not specifically address certain issues. As well, Deloitte noted that some policies and standard operating procedures were revised or updated by the former CAO contemporaneously with the alleged activity. The former CAO stated that these updates were reflective of established practice at the time or were within his authority to execute. Deloitte noted that while the City's policies do not specifically reference the CAO's authority with respect to the revision of policies and standard operating procedures, section 229 of the *Municipal Act, 2001* provides broad authority to the CAO in the administration of the City.

For other allegations related to conflict of interest, Deloitte's review concluded that the City's policies describe conflicts of interest as involving pecuniary benefits/economic interests in the hiring process. Deloitte noted that many of the allegations they reviewed did not specifically allege a financial or pecuniary interest, but involved concerns about pre-existing relationships between the parties.

With respect to specific procurement issues, Deloitte found that the City was not in compliance with its process in certain instances. The report noted that one allegation regarding a relationship between a Director and supplier was not fully investigated as the City required Deloitte to finish the review before the Director was interviewed. Deloitte's report further indicated that it was unable to fully investigate some allegations of non-compliance with City hiring processes, as well as allegations related to staff intimidation, due to the City's decision to end the review.

In addition to identifying various allegations that they were unable to investigate due to time constraints, Deloitte's report also highlighted various limitations to its investigation. Six scheduled interviews were not conducted due to time constraints, some individuals declined or were unresponsive to interview requests, and certain cell phone data was not accessed.

The individuals who contacted our Office raised concerns about the quality of Deloitte's investigation and council's decision to bring it to a conclusion before the fact gathering had concluded. In addition, complainants raised concerns about the underlying and related matters that were the subject of Deloitte's review.

Since these complaints were originally made to our Office, the then-Chief Administrative Officer and other staff members related to the allegations are no longer employed by the City.

## The Role of the Ombudsman

The Ombudsman is an independent and impartial Officer of the Ontario legislature. Our Office has the authority to address complaints about public sector bodies, including provincial governmental organizations, municipalities, school boards, and universities, as well as services provided by children's aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*. Under the *Ombudsman Act*, our Office has broad discretion to decide whether or not to investigate a complaint.

The Ombudsman's role with respect to municipalities is to review and investigate complaints about municipal government administration. We are also the closed meeting investigator for more than half of Ontario municipalities. When problems are identified, we may share best practices or make recommendations to a municipality to improve its processes, as well as to strengthen local governance and accountability. Elected municipal officials are generally responsible for setting broad public policy. We do not have the authority to direct municipal council decision-making or to require municipal councils to decide matters in a certain fashion.

Our Office receives more than 20,000 cases (complaints and inquiries) every year. Since Ombudsman oversight of Ontario municipalities began on January 1, 2016, we have received over 14,000 cases about general municipal issues. We strive to resolve cases at the earliest opportunity and informally whenever possible. The vast majority are resolved efficiently and effectively without the need for a formal investigation. Our Office has conducted six formal investigations regarding general municipal issues since 2016. This number reflects the overwhelming co-operation that we have received from municipalities.

## Best practices regarding investigations

The Ontario Ombudsman is intended to be a recourse of last resort, and in most cases, issues with municipal governance and administration are best addressed at the local level. Municipal councils have broad authority to appoint independent reviewers and local accountability officers to meet the needs of their municipality. For instance, under the *Municipal Act, 2001*, councils can appoint a municipal ombudsman to carry out a specific task or on a broader basis.

When our Office reviews complaints about local accountability officers and independent reviewers, we do not act as an appeal body. Rather, we look at such matters as whether they acted within their authority in accordance with the relevant legislation, terms of reference, and policy; considered the issues before them; followed a fair practice; obtained and considered relevant evidence; and provided sufficient reasons to support their decision based on the available evidence.

Based on our review in this case, we have identified some general best practices to help the City ensure the effectiveness, transparency, and accountability of future independent reviews.

When appointing a municipal ombudsman or third-party investigator, council is responsible for determining the scope of the reviewer's authority and responsibilities. As our Office has previously noted,<sup>2</sup> it is important for council to be as specific as possible in setting the terms of the appointment, so that council, the investigator, and the public understand the mandate, authority and investigative process to be followed. These matters are best set out in detailed terms of reference, which can establish requirements related to:

- Scope of issues to be investigated;
- Evidence collection;
- Confidentiality, including of witnesses; and
- Procedural requirements, such as reporting preliminary findings to affected parties prior to finalization.

In addition, municipalities should ensure that its local accountability officers and independent investigators have real and perceived independence to conduct their work in a fair and impartial manner. This can be established through terms of reference and through council's interactions with the accountability officer or investigator. This helps ensure the public's confidence in the results of any investigation.

In this particular case, issues arose around the ability of the investigator to complete the investigation within the time allotted. With respect to establishing timelines for investigations, municipalities should ensure that investigators have sufficient opportunity to conduct a fulsome investigation, and consider extending previously established deadlines if the investigator encounters roadblocks in the course of their work. In this case, Deloitte's report highlighted various sources of information that were not included in their report or findings due to the deadline established by council. Where possible, municipal councils should ensure that investigators have the time and resources needed to access and analyze all sources of relevant information. This leads to a better, more thorough investigation and increases the public's confidence in the investigative process and its findings.

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<sup>2</sup> Ontario Ombudsman, *Inside Job*, available online at: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2019/inside-job>

## Conclusion

In response to various allegations brought forward by a whistleblower, the City appointed an independent investigator to assess the concerns and report to council. Following the conclusion of this investigation, the then-Chief Administrative Officer and other staff members related to the allegations are no longer employed by the City. In the circumstances, we are exercising our discretion to not conduct a further review of this matter.

We wish to thank the City of Brampton for its cooperation during our review. We encourage council for the City of Brampton to carefully consider the best practices we have identified in this letter, which aim to improve the accountability and transparency of its municipal practices.

Sincerely,



Robin Bates  
Senior Counsel  
Ontario Ombudsman