

**BY EMAIL**

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

May 8, 2023

Dear Council for the City of Brampton,

I am writing in response to complaints our Office has received regarding two motions passed by council for the City of Brampton during its August 26, 2022 special meeting. These resolutions terminated a forensic audit, as well as several Request for Proposal (RFP) audits ordered by council, before they could be completed.

Further to our attached letter from May 2022, our Office is again writing to reiterate important best practices related to third-party audits, with the aim of improving accountability and transparency in the City of Brampton.

As the Ombudsman noted in *Procuring Progress*, his report on our in-depth 2017 investigation into Brampton's procurement practices:

Financial accountability and transparency are critical to inspiring public confidence in local government...

Unless adequate and transparent accountability measures exist to demonstrate that municipal administrators have followed a fair process and obtained good value for taxpayer money, distrust can arise.

In that report,<sup>1</sup> the Ombudsman proposed several best practices aimed at improving not only Brampton's procurement practices, but also the public's trust in them. These included the establishment of a permanent, independent municipal Auditor General, as the cities of Ottawa and Hamilton had done. It is unfortunate that five years after that report, we are receiving complaints that express distrust in Brampton's procurement practices.

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<sup>1</sup> Full report available online at: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2017/procuring-progress>

## 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 assess, resolve, and occasionally, investigate complaints about municipal government administration. We are also the closed meeting investigator for more than half of Ontario municipalities. We either validate the actions taken by municipal councils, or, when problems are identified, provide constructive feedback by sharing best practices or recommendations to a municipality to improve its processes with a view to strengthening local governance and accountability. Elected municipal officials are generally responsible for setting broad public policy. We do not seek to direct municipal council decision-making or to require municipal councils to decide matters in a certain fashion.

## Background

In May and June 2022, council for the City of Brampton directed that third-party forensic audits be conducted on various matters, including the circumstances surrounding a proposed university in Brampton (“BramptonU”) and the procurement processes used for a number of specific RFPs.

Council received a report titled “BramptonU Update Report on Timelines and Activities” during a regular meeting of council on May 18, 2022. In response to this report, council directed the Chief Administrative Officer (CAO) to engage an audit accounting firm to conduct a financial forensic audit of the City’s involvement in this matter. According to the audit firm hired, the purpose of the forensic audit was to answer the following questions with respect to the BramptonU initiative:

- Was the work contracted by the City performed and were the contracted deliverables received by the City?
- Were appropriate invoicing and payment practices employed?
- Was there compliance with City policies and procedures?
- Were there any potential conflicts of interest for City staff, Councillors and/or Consultants?

While the BramptonU audit was ongoing, on June 7, 2022, council initiated a second forensic audit into the procurement processes used for a number of Requests for Proposals (RFPs).

This decision occurred in closed session and council did not provide the public with further information about the specific scope or purpose of this audit.

In August 2022, the Mayor called a special council meeting related to the status of these audits. At the meeting, council was provided with an interim draft report by the third-party firm responsible for the BramptonU audit, which contained the firm's preliminary findings. This interim report indicated that the forensic auditors had determined that some work contracted by the City may not have been performed, and some deliverables may not have been received in a timely fashion or at all. The forensic auditor also identified instances when appropriate invoicing and payment practices were not employed, and that there were potential conflicts of interest. The interim report indicated that the audit was not fully complete, and highlighted subject areas that required further review. During the council meeting at which the report was discussed, staff indicated that they were told the BramptonU Investigation was nearly complete, with three interviews remaining, but that the auditor would require additional funds to complete their work.

The Mayor brought forward a motion proposing that council receive the interim draft report as final and direct the third-party firm to cease further work on the matter. During the discussion of this motion, City staff provided council with a summary of our Office's May 2022 letter, which provided the City with best practices related to independent investigations. In that letter, we encouraged the City to ensure that all independent investigations have a clear purpose and mandate, that there is real and perceived independence in the review, and that investigators be given sufficient time and resources to complete the review. After receiving this information from staff, council nonetheless resolved to terminate further work on the BramptonU audit.

At the same meeting, council received an update regarding the ongoing third-party audit of the procurement processes used for specific RFPs. In response to this update, the Mayor introduced a motion to cancel the audits and refer the issues under review to the Integrity Commissioner. City staff told council that the matters being audited may not come within the Integrity Commissioner's authority and reminded council that the Integrity Commissioner's role is paused during the election period. The proposed motion was subsequently updated to refer the matter of the RFP reviews to the Integrity Commissioner following the election period, and the motion carried. The City subsequently referred this matter to the Integrity Commissioner. In response, the Integrity Commissioner advised the City that the issues raised in this referral did not fall within her jurisdiction, and provided the City with reasons explaining how she reached this conclusion.

## **Complaints received**

In the wake of this meeting, our Office received complaints about council's decision to cancel these forensic audits prior to their completion. Complainants expressed concern that the serious issues identified in the BramptonU preliminary report would receive no further

investigation and that there would be no accountability for individuals involved. Some expressed concern that municipal funds were spent on the audit, only to have the audit cancelled without any conclusions or improvements to municipal administration.

Some individuals also expressed concern about the lack of transparency and accountability with respect to the cancelled RFP audits. Several complained that the RFP audits were inappropriately referred to the Integrity Commissioner despite municipal funds already being spent on these audits. They also complained that the procurement practices used were unlikely to receive a proper audit, given the Clerk's warning that the issues may be outside of the Integrity Commissioner's authority to investigate.

### **Ombudsman's best practices for audits and independent investigations**

In response to the complaints we received, we reviewed relevant meeting materials including the agenda, minutes, and video recording of the meeting. We also spoke with City staff and the City's Integrity Commissioner.

Based on our review in this case, we are writing to express our Office's concern that there are unaddressed issues with respect to the BramptonU initiative and RFP procurement processes that have not been thoroughly investigated, given the previous council's decisions to cancel these audits prior to finalization. The Ombudsman encourages the City to revisit its decision to cancel these audits and take steps to ensure any outstanding concerns are comprehensively investigated and addressed at the municipal level.

We would also like to remind council of the best practices we have identified regarding independent investigations and non-competitive procurement practices. As our Office has previously noted, it is vital that third-party investigators have real and perceived independence to conduct their work in a fair and impartial manner. Specifically, investigators should be given sufficient time and resources to conduct a fulsome investigation. This leads to a better, more thorough investigation and increases the public's confidence in the investigative process and its findings. Contrary to these best practices, council voted to cancel multiple ongoing forensic audits prior to their completion. While the RFP matters were referred to the Integrity Commissioner for review, she confirmed that the complaints were not within her authority and no further action was taken.

Our Office strongly urges council to carefully review the best practices shared in our May 2022 letter when considering any future third-party investigations. Implementing these best practices will increase the public's confidence in council's decision-making, and help the City ensure the effectiveness, transparency, and accountability of its independent reviews.

In addition, we encourage council to review the Ombudsman's 2017 report, *Procuring Progress*, which made 15 best practice suggestions to improve the accountability and

transparency of the City's procurement processes, including that the City appoint a permanent, independent auditor general. Under section 223.19(1) of the *Municipal Act, 2001*, municipalities can appoint an auditor general who "reports to council and is responsible for assisting the council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations."

The report also noted that some of the City of Brampton's procurement practices and contracting decisions led some members of the public, as well as members of council, to lose trust in the City. Five years later, our Office continues to receive complaints expressing distrust in those processes. Best practices that the Ombudsman suggested in *Procuring Progress* remain unimplemented by the City, and the recent procurement-related allegations regarding BramptonU and various RFPs point to the continuing need for an independent auditor. The Ombudsman maintains and stands by these best practices, and our Office encourages council to revisit his suggestions from *Procuring Progress* and to consult with other municipalities, such as Toronto and Ottawa, regarding best practices for municipal auditors general.

## Conclusion

As a result of the October 2022 municipal election, a number of changes have occurred regarding the composition of council for the City of Brampton. In the circumstances, our Office strongly urges council to seriously consider the important best practices we have highlighted in order to enhance transparency and accountability in its procurement practices and improve the public's trust in this aspect of its financial administration – including the establishment of a permanent auditor general.

Sincerely,



Robin Bates  
Senior Counsel  
Ontario Ombudsman

## 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