

**2016 Annual Report of the Integrity
Commissioner**

Commissioner's Remarks

This was my fourth year as Integrity Commissioner, Lobbyist Registrar and Meetings Investigator for the City of Ottawa.

In my first two years as Commissioner, I focussed on education and promotion of the City's Accountability Framework in general, and aspects under my jurisdiction such as the Lobbyist Registry and Code of Conduct for Members of Council in particular.

Accountability Framework stakeholders listened, embracing the measures City Council had introduced to increase accountability and transparency. Members of Council and City staff advised lobbyists of their duty to register their activity to the City's Lobbyist Registry, and the number of registered lobbyists and lobbying activity steadily increased after the Registry's September, 2012 launch.

As activity has increased, I have been taking progressive steps towards bolstering enforcement of the Lobbyist Registry By-law through measures such as compliance audits of Registry entries and targeted interventions. I have been careful not to unduly interfere in the normal activities of municipal political activity.

This year however, my Office made major strides to ensure compliance. I introduced a new enforcement mechanism in the form of compliance agreements. The agreements allow me to formally address minor contraventions of the Lobbyist Registry By-law without having to use sanctions more appropriately reserved for egregious breaches of the By-law. I entered into two compliance agreements with individuals, and two corporate compliance agreements in 2015-16.

This was a year of "firsts" with respect to compliance. In February, 2016 I issued the first temporary ban on communication between a lobbyist and public office holders. In June, I also completed my first Investigation Report in my capacity as Lobbyist Registrar. The matter that gave rise to my Investigation drew much public and media attention in the City over the spring and summer. As a result, I believe the issue created increased general awareness of the work of my Office, and the responsibilities of public holders, city staff and those who wish to do business with the City.

In my capacity as Integrity Commissioner, compliance/complaint investigation was also a major focus of the past year. My Office received more complaints this year than in any year since the Code of Conduct for Members of Council has been in place. The

increase in complaints received may be indicative, again, of a general increased awareness on the part of the public to the work of my Office. I am certain that the trend demonstrates a need to ensure that all processes of my Office must support the highest standard of fairness to all parties.

The recent Divisional Court decision *Di Biase v. Vaughan* underscores the significance of building a standard of practice that provides for the highest standard of procedural fairness. Under the scrutiny of the Divisional Court's test of the Vaughan Integrity Commissioner's investigation process, the Court rejected the submission that the Commissioner and the City of Vaughan denied the applicant natural justice and breached procedural fairness. *Di Biase v. Vaughan* draws attention, and holds to account, Integrity Commissioners' standards of practice. Furthermore, it stands as a seminal judicial review case confirming the authority of the municipal Integrity Commissioner, as that authority had been encoded in the statutory scheme governing the Commissioner.

With a mind to ensuring the highest standards of natural justice and procedural fairness exist in the processes under my jurisdiction, I have begun work on preparing a comprehensive manual of standard practices for the receipt, investigation and reporting on complaints received. A comprehensive process manual will ensure that the Office of the Integrity Commissioner, Lobbyist Registrar and Meetings Investigator, is prepared for the ongoing efficient management of complaints and compliance matters in the years to come.

Robert Marleau

Integrity Commissioner
City of Ottawa

Integrity Commissioner

MANDATE

The statutory role of the Integrity Commissioner is set out in Section 223.3 of the *Municipal Act, 2001*:

Integrity Commissioner

223.3(1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
- (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behavior of members of council and of local boards or of either of them; or
- (c) both of clauses (a) and (b).

As Integrity Commissioner, I have the powers of inquiry and delegation as well as a duty of confidentiality and reporting requirements as follows:

- I report directly to Council on matters related to the Code of Conduct and other policies, rules or procedures related to ethics for Council, the Built Heritage Sub-Committee and the Transit Commission;
- I have the power to undertake investigation into complaints alleging contraventions of the applicable code of conduct while respecting confidentiality; and
- My reports are public and I am permitted to disclose necessary information related to the findings while maintaining confidentiality. I can make recommendations to City Council relating to Code of Conduct breaches, but only Council can sanction one of its Members.

Council also has the authority to assign additional powers and duties to the Integrity Commissioner.

OVERVIEW

Upon my appointment in August, 2012, I was specifically tasked with creating a Code of Conduct for Members of Council. I did so by consulting with all Members of Council, and by working with City staff. As directed by Council and the Governance Renewal Sub-Committee, staff reviewed existing Codes of Conduct for municipalities in Ontario, across Canada and internationally, as well as those for federal and provincial governments. Staff found that, in general, there are three types of Codes of Conduct: rules-based, values-based and a hybrid of both.

In May, 2013, I brought forward a recommended Code of Conduct (“the Code”) designed to be a hybrid of a rules-based, and a values-based Code. As such, it provides both overarching principles and some precise rules designed to enhance public trust and accountability.

Since Council’s approval of the Code on May 8, 2013, I have been pleased to see other municipalities’ acknowledgement of the success of the Code, as well as of the Staff Report recommending its approval. For example, a November, 2013 City of Burlington report on matters including a review of Council compensation referenced Ottawa’s Report on the Code as such: “The May 2013 report by Ottawa staff on codes of conduct was quite comprehensive and is an excellent reference tool.”¹

Even given its success, as stated in the 2013 Staff Report recommending its approval, the Code is intended as a first step in a living, ethical framework. That framework is reviewed and renewed as part of regular governance reviews.²

In general, I can report that the Code continues to function well. As I noted in my last Annual Report, no significant changes have been made to the Code since it was enacted save for an increase in the threshold for disclosure of gifts/benefits/hospitality to \$100 approved as part of the 2014-2018 Governance Review. The \$30 threshold for tickets was maintained.

¹ City of Burlington: Staff Report to Budget and Corporate Services Committee, “Citizens Review Committee of Council Compensation, Expense Limits, Staffing Requirements” (November, 2013), p. 9 https://www.burlington.ca/uploads/20542/Doc_636035611718855499.pdf (accessed October 15, 2016).

² City of Ottawa: City Clerk and Solicitor Report to Governance Renewal Sub-Committee, Finance and Economic Development Committee and Council, “Code of Conduct for Members of Council and Gifts Registry” (April 25, 2013) p. 10 <http://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=2476&doctype=minutes&itemid=301228> (accessed October 15, 2016).

This year, I will be recommending that Council consider incorporating separate and distinct by-laws for the Code of Conduct for Members of Council and for the Complaint Protocol. The Complaint Protocol provides the process by which an individual may bring forward a complaint that s/he believes indicates contravention of the Code.

I have come to this recommendation in light of the September, 2016 Divisional Court decision *Di Biase v. Vaughan*. The decision indicates the importance of establishing the Code and Complaint Protocol as part of the statutory scheme through the creation of a separate and distinct by-law for each.

Di Biase v. Vaughan

Background of the Judicial Decision

On April 17, 2015, the Integrity Commissioner for the City of Vaughan forwarded a report to Vaughan City Council on her investigation concerning complaints received regarding Michael Di Biase, Regional Councillor and Deputy Mayor. The Integrity Commissioner had received a number of complaints regarding Di Biase's actions, including allegations of improper use of influence to further one company's business interests with the City.

On April 21, 2015, Vaughan City Council accepted the Integrity Commissioner's report and imposed the penalty recommended by the Commissioner: suspension of the Councillor's pay for 90 days.

Di Biase brought forward an application for judicial review to overturn both the Integrity Commissioner's report and recommendation, and Vaughan City Council's decision to accept the Integrity Commissioner's report. The Divisional Court's September, 2016 decision in *Di Biase v. Vaughan* dismissed that application.

The Statutory Scheme Governing the Integrity Commissioner

Di Biase v. Vaughan summarizes the statutory scheme governing the Vaughan Integrity Commissioner as follows:

“The Integrity Commissioner is subject to a statutory scheme set out in the *Municipal Act, 2001*, S.O. 2001, c. 25 (“*Municipal Act*”), the Code of Conduct, the Complaint Protocol for Council Code of Conduct (the “*Complaint Protocol*”) and the applicable City of Vaughan policies and procedures.”³

³ *Michael Di Biase v. City of Vaughan; Integrity Commissioner of the City of Vaughan*, 2016 ONSC 5620 at para. 12.

In the City of Vaughan, as in the City of Ottawa, the Complaint Protocol outlines the process by which the Integrity Commissioner investigates allegations that a member of council has contravened the Code of Conduct. In the City of Vaughan, however, unlike in the City of Ottawa, the Complaint Protocol is a Council by-law.⁴ *Di Biase v. Vaughan* demonstrates the value of the Protocol as by-law, and therefore as part of the statutory scheme governing the work of the Integrity Commissioner.

First, *Di Biase v. Vaughan* notes the appropriateness of Council's having designed the procedure and created the legislative instrument by which its own members can be investigated:

“The City of Vaughan Council is the master of its own procedure. Indeed, the members of the City of Vaughan Council are the persons investigated by the Integrity Commissioner. The Councillors have codified the procedure or protocol for investigations of complaints about themselves in a bylaw entitled Complaint Protocol for Council Code of Conduct, which I have referred to as the Complaint Protocol.

Who better to decide the procedure or protocol governing those investigations?”⁵

Second, the fact that the Complaint Protocol had been so codified by Vaughan City Council proved key to the Divisional Court's decision. In his application to the Divisional Court, Di Biase's counsel advanced the objection that the Integrity Commissioner and the City of Vaughan denied Di Biase natural justice and breached procedural fairness by relying on a non-transparent investigation process.⁶

Di Biase v. Vaughan assesses this objection against factors used to determine the extent of the duty of fairness in *Baker v. Canada (Minister of Citizenship and Immigration)*. One of those factors is the nature of the statutory scheme.⁷ *Di Biase v. Vaughan* finds that the Complaint Protocol, which, as a by-law and therefore part of the statutory scheme, does not contemplate the type of participation that Di Biase alleges to have been denied.⁸

Under the scrutiny of the Divisional Court's test of the Vaughan Integrity Commissioner's investigation process, the Court rejected the submission that the

⁴ *Ibid.*, at para. 14, 41.

⁵ *Ibid.*, at para 131-132.

⁶ *Ibid.*, at para. 97.

⁷ *Baker v. Canada (Minister of Citizenship and Immigration)* [1999] 2 SCR 817.

⁸ *Di Biase v. Vaughan* at para. 118.

Commissioner and the City denied Di Biase natural justice and breached procedural fairness. The Integrity Commissioner had followed the Complaint Protocol, which, as a by-law, had been codified by Council. As part of the statutory scheme governing the Integrity Commissioner, the Complaint Protocol met the Court's test of natural justice and procedural fairness.

The City of Ottawa's Code of Conduct and Complaint Protocol

Ottawa City Council has not approved the Code of Conduct for Members of Ottawa City Council, or the Complaint Protocol, by specific by-law. The Code was approved by Council on May 8, 2013. On the same day, Council received the Complaint Protocol that I had developed based on the existing process for the Meetings Investigator, and on best practices elsewhere.

Specifically, recommendations of the Joint Governance Renewal Sub-Committee and Finance and Economic Development Committee to Council read as follows. Note that they recommend Council "Approve" the Code (Recommendation 1) and "Receive" the Complaint Protocol (Recommendation 3):

COMMITTEE RECOMMENDATIONS AS AMENDED

That Council:

- 1. Approve the Code of Conduct for Members of Council listed in Document 1, as described in this report and including the following elements, and as amended by recommendation 4 below:**
 - a. General Integrity;**
 - b. Confidential Information;**
 - c. Conduct at Council/Committee Meetings;**
 - d. Discrimination and Harassment;**
 - e. Improper Use of Influence;**
 - f. Use of Municipal Property;**
 - g. Conduct Respecting Staff;**
 - h. Expenses;**

- i. Conduct Respecting Lobbying;**
 - j. Gifts, Benefits and Hospitality;**
 - k. Election-Related Activity; and**
 - l. Compliance with the Code;**
- 2. Approve that the effective date for the Code of Conduct for Members of Council be July 1, 2013; and**
 - 3. Receive the Integrity Commissioner's Complaint Protocol for the Code of Conduct as described in this report and listed in Document 3.**
 - 4. That there be full disclosure of all gifts, benefits and hospitality received that exceed \$30.00 from one source in a calendar year.**

The Code and Complaint Protocol currently exist in a report/policy format that is encompassed in the Confirmation By-law which, enacted at the end of every meeting of Council, provides that every decision of Council is made by by-law.

Di Biase v. Vaughan has indicated the value of having the Code and Complaint Protocol exist as legislative instruments. With this in mind, I will be recommending that Council consider incorporating separate and distinct by-laws for the Code of Conduct for Members of Council and for the Complaint Protocol. Doing so will ensure the items are unquestionably part of the statutory scheme governing the Integrity Commissioner.

EDUCATION AND OUTREACH

In addition to my statutory role as Integrity Commissioner, I have a responsibility to provide education and advice on the application of the Code of Conduct for Members of Council and its related policies. This year, I focussed on clarifying requirements set out in the Community, Fundraising and Special Events Policy. The Community, Fundraising and Special Events Policy supplements the Code of Conduct for Members of Council and the Council Expense Policy, and incorporates the principles and guidelines enshrined in the Accountability Framework. The Policy was approved by Council on May 8, 2013.

The Policy recognizes that Members of Council host a variety of ward-specific community events, and that they also participate in broader fundraising events for charities, service clubs, and other non-profit and community based associations. As such, the Community, Fundraising and Special Events Policy is not intended to affect

the entitlement of a Member of Council to use her or his Constituency Services Budget to run or support community events (subject to the terms of the Council Expense Policy), to participate with the City and its agencies in the staging of community events, or to support other third-party benevolent activities. Rather, the Policy clarifies the rules for Members' involvement in two types of activity: Council Member-organized community events, and support for benevolent activities.

Since the Policy has been in place, questions about Members' involvement in community events and benevolent activities have comprised, on average, 14% of all questions received by my Office from Members of Council. Though they have not constituted a large percentage of inquiries, conversations that I had with Members and their staff on these matters following the initial inquiry were often complex in nature. For example, even when a Member follows the Policy, my guidance and, when necessary, the guidance of the City Clerk and Solicitor, that Member's involvement in a fundraising event may still have the potential to lead to the public perception of improper use of influence.

With these matters in mind, in February, 2016, I introduced Terms and Conditions documents to clarify the responsibilities of Members of Council, their staff, recipients of funds and any other parties involved in community events and benevolent activities. The documents provide clear guidance on items such as the following:

- No direct solicitation of funds by the Member or his/her staff, including that neither the Member nor his/her staff solicit funds from lobbyists or their clients with active files in the City's Lobbyist Registry;
- Donations being payable directly to the charity (and not flowing through the Member's Office);
- That the Councillor's support not require significant time on the part of his/her staff and/or City resources; and
- That the recipient charity release a public disclosure of funds.

I have found that the Terms and Conditions documents provide a clear and efficient way to communicate responsibilities. They also provide a record of decision, and serve as a reference tool for Members of Council and their staff. Finally, if they choose, Members can provide the documents to the charity or other third party involved in the event in order to make all parties aware of the guidance provided. Feedback from third party partners has been positive.

A sample Terms and Conditions document is attached as Appendix 1.

COMPLAINT INVESTIGATION AND ADJUDICATION

Anyone who identifies or witnesses behaviour or an activity that they believe to be in violation of the Code of Conduct may pursue the matter either through the informal or formal complaint procedures. All complaints received are handled in accordance with the Complaint Protocol. There is no fee charged for making a complaint.

All complaints received in 2015 – 2016 were from members of the public.

In May, 2016, my Office received eight informal complaints, sent by e-mail, regarding a partnership project. In general, complaints ranged from statements of opposition to the project, to those which alleged insufficient consultation with stakeholders. Five of the complaints on the subject did not offer sufficient detail for me to determine if the matter was within my jurisdiction as Integrity Commissioner. I responded to each with a brief explanation of my jurisdiction and what type of information I require to determine if the matter is within my jurisdiction. In each case, I did not receive further information from the complainant. The remaining three complaints about the project came to my Office after I had decided to investigate the matter in my capacity as Lobbyist Registrar.

My Office also received 17 grievances related to matters outside of my jurisdiction. Most often, these complaints had to do with City Staff or services.

In 2015 – 2016, I received two formal complaints and four informal complaints about matters within my jurisdiction as Integrity Commissioner.⁹

Formal Complaints

Formal complaints are submitted on the appropriate form, with a signed affidavit, to the City Clerk and must include information to support the allegation(s) made against a Member including dates, locations, other persons present and all other relevant information.

In February, 2016, my Office received a formal complaint submitted separately by two individuals on behalf of a third party. The submission alleged that the behaviour of a Member of Council had contravened the Code of Conduct in such a way that negatively

⁹ The reporting period in this section is the 11-month period of November 1, 2015 to September 30, 2016. I am using this period in order to bring the reporting period in line with all others considered in the report. Correspondingly, next year's Annual Report will report on the 12-month period of October 1, 2016 to September 30, 2017.

affected the third party. Although the two individuals who submitted the complaint expressed interest in pursuing it through a formal process, the third party at the core of the matter did not choose to pursue the complaint. Without the consent of that individual, I could not pursue the complaint.

My Office received a formal complaint in June, 2016, after the complainant had contacted my Office with questions regarding the complaint process. The complainant alleged that a Member of Council contravened Section 1 (General Integrity) and V (Improper Use of Influence) of the Code of Conduct. More specifically, the complainant alleged that the Member did not respond to the complainant's requests for action on a specific matter.

I reviewed the complaint and determined that I would conduct an Inquiry into the allegations as they related to the complainant's communications and the Member's actions during a specific time period. I determined that other allegations outlined in the complaint were not within my mandate, and were therefore excluded from the inquiry.

I reviewed the complaint against all provisions of the Code of Conduct, not only those to which the complaint referred. The provisions of the Code cited in the complaint were general in nature and therefore a high standard of proof had to be met, supported by appropriate evidence, in order for me to find that a clear contravention had occurred.

The Inquiry proceeded in accordance with Part B, subsection 7 of the Complaint Protocol, as follows:

Investigation

7. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the Public Inquiries Act:

- (a) Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten business days; and*
- (b) Provide a copy of the response provided to the complainant with a request for a written reply within ten business days.*

(2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

(a) The Member who is the subject of the investigation may consult with a lawyer and charge this to their office budget. If the complaint is determined to have merit, the Integrity Commissioner may require the Member to reimburse these expenses to the City. If the subject of the investigation of a citizen member of the Transit Commission or of the Built Heritage Sub-Committee, the costs may be expensed to the Council administration budget through the Clerk's office.

(3) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.

(4) The Integrity Commissioner shall retain all records related to the complaint and investigation.

After a thorough review of all evidence provided, I concluded that the Member's actions did not contravene the Code of Conduct for Members of Council. The evidence provided failed to meet the standard of proof required to establish a breach.

I concluded the investigation report with the suggestion that the issues detailed therein likely would have been better served by my Office through an informal mediated approach rather than the formal complaint process. I had initially suggested using an informal approach, which, I believe, may have led to further interaction between the involved parties and a negotiated outcome with my assistance as a third party rather than having all communications between the Member and the complainant stop during a formal Inquiry so that past issues could be adjudicated. That said, once I received a formal complaint, I concluded that the allegations warranted an investigation.

In accordance with Part B, Subsection 9 of the Complaint Protocol, where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended corrective action. With respect to a complaint not sustained, however, Part B, Subsection 9 of the Complaint Protocol reads as follows:

(4) Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the result of the investigation except as part of an annual or other periodic report.

As the complaint was not sustained, the result of the inquiry was not reported to Council, except in this summary as part of this Annual Report.

In addition, the identity of the complainant and the Member of Council in question, as well as the details of the investigation, remain confidential and this summary is anonymous in nature. I keep such items confidential and anonymous pursuant to Section 223.6(1) of the *Municipal Act, 2001*:

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

Informal Complaints

Informal complaints come in the form of emails, phone calls or letters and are addressed at a high level without a formal investigation.

In 2015 – 2016, I received four informal complaints about matters within my jurisdiction as Integrity Commissioner:

January 2016

1. I received a complaint alleging inaction on the part of two Members of Council in response to a request from a resident. I undertook a primary assessment and determined that, in order to intervene, I would require more specific detail regarding the alleged breach. I requested additional detail from the complainant, but did not receive a response.
2. I received a complaint regarding a Member allegedly failing to declare a conflict of interest, continuing to participate in Council discussions and to vote on the matter. I followed up by speaking with the complainant on the phone, at which time the individual confirmed having communicated with the Member of Council in question. As a result, the individual did not wish to proceed with a complaint.

February 2016

3. I received a complaint that a Member of Council had contravened the “General Integrity” provisions of the Code of Conduct in an email response the Member had sent to the complainant. Upon preliminary review, I determined that the material provided did not reveal any clear contravention of the Code of Conduct, or its related policies, on the part of the Member. I

communicated this finding to the resident and made the individual aware of how to pursue a formal complaint, should the resident so desire. The resident did not file a formal complaint.

April 2016

1. I received a complaint regarding the complainant's dissatisfaction that a Member did not interact with the complainant, in person and through email, in a manner deemed acceptable by the complainant. My preliminary review did not indicate any clear contraventions of the Code of Conduct for Members of Council or its related policies. Further, I was of the view that the actions of the Member did not reach the threshold to be considered a breach of the Code. I invited the complainant to provide further information; however, the individual did not supply any that could aid in my determination.

INQUIRIES AND ADVICE

Providing written advice and interpretations to inquiries Members of Council and their staff sent to integrity@ottawa.ca or directly by phone continues to be the core function of my Integrity Commissioner mandate.

The majority of inquiries received this year were from Members of Council or their staff, the general nature of which was advice and guidance.

On average, I respond to inquiries e-mailed to integrity@ottawa.ca within two business days.

Figure 1 – Origin and Nature of Written Inquiries Received by the Office of the Integrity Commissioner

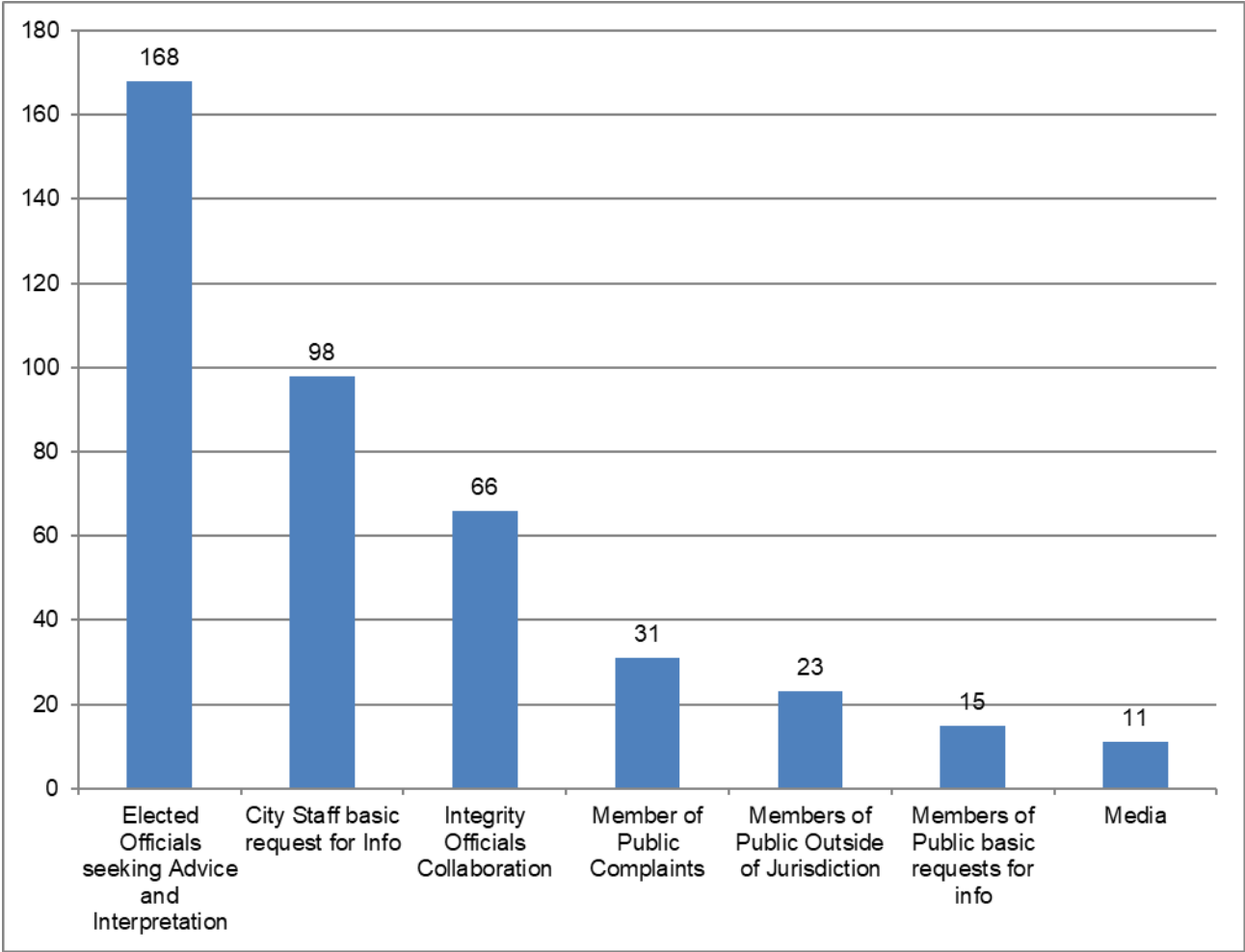
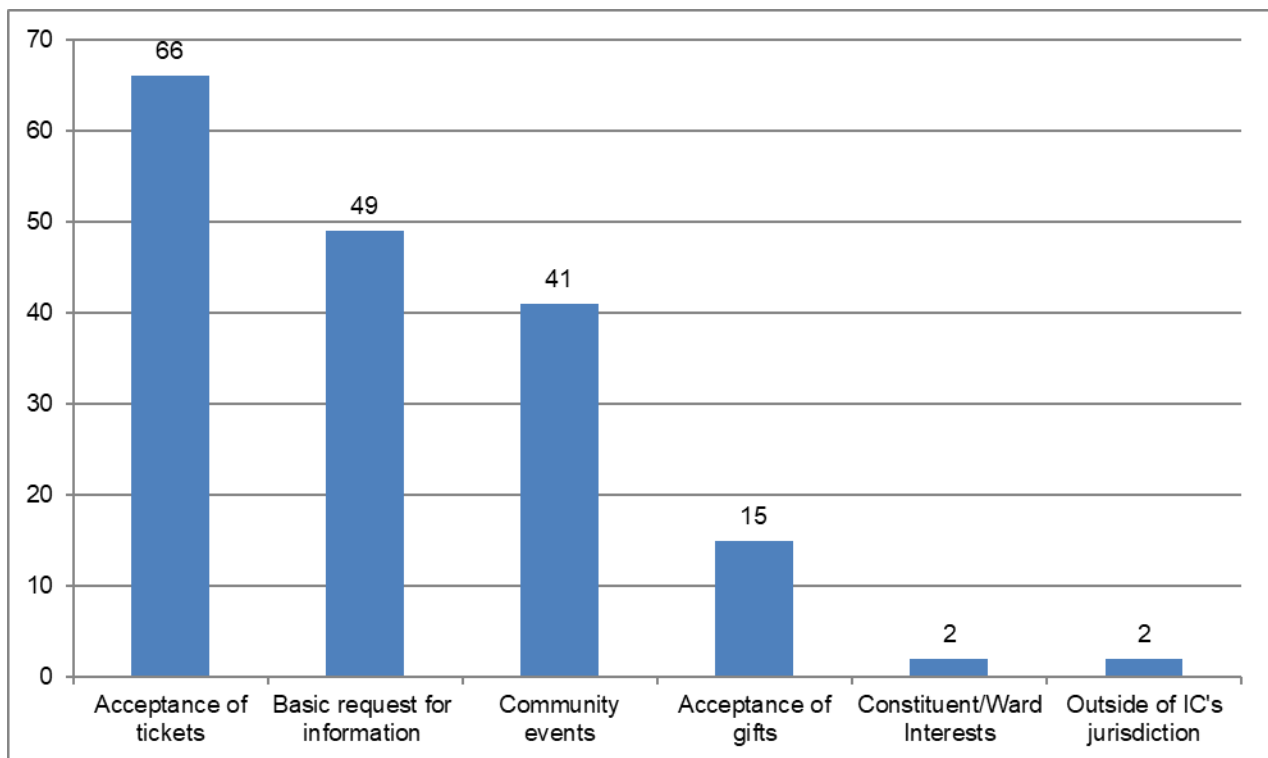


Figure 2 - Nature of inquiries received by the Office of the Integrity Commissioner from Members of Council



The following are samples of inquiries I have received and the interpretation or advice that has been provided. The anonymized summaries have been provided in an effort to ensure the Code is applied consistently and to assist Members with applying the Code to real life situations.

It is important to note that each inquiry is accompanied by its own specific context and facts. The following anonymized summaries should not be relied upon as rulings nor be considered a substitute for calling or writing my Office when in doubt.

Acceptance of Tickets

Guidelines for the acceptance of tickets as outlined in the Code of Conduct are as follows:

- Tickets/hospitality/benefits may not be accepted from lobbyists or their clients and employees with active lobbying files;
- A limit of two tickets for up to two events from one source in a calendar year is permitted and requires quarterly disclosure in the Gifts Registry; and

- A ticket with an estimated value exceeding \$30 that is not exempted based on the Member's representative role requires disclosure, along with the disposition thereof (e.g. who attended with the Member, or if donated, to whom or what organization).

Inquiry:

I have been offered a ticket to an event organized by a charity and supported by a colleague on Council pursuant to the Community, Fundraising and Special Events Policy. The ticket is being offered by a real estate developer that has active files in the City's Lobbyist Registry.

Does the Code of Conduct prohibition on accepting tickets from lobbyists with active files still apply, even though the event this is a fundraiser and is an event sponsored by a colleague?

Interpretation:

Your attendance at the fundraising event in and of itself does not pose any obvious issues with respect to the Code of Conduct for Members of Council.

That said, the acceptance of tickets from the developer for this event is strictly prohibited pursuant to the Code of Conduct for Members of Council.

Section IX of the Code of Conduct regarding lobbying states specifically:

“Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit, or hospitality from lobbyists with active lobbying registrations or from their registered clients or their employees by Members of Council or their staff is prohibited.”

Additionally, pursuant to Section I (General Integrity) of the Code of Conduct:

- Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real; and
- Members of Council shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.

Due to the relatively high price of tickets (between \$\$\$ and \$\$\$\$) and the developer's active projects in the City, a reasonably well-informed person could assume that the tickets were offered to you in exchange for a perceived benefit to the organization.

Acceptance of Gifts/Benefits/Hospitality

Guidelines for the acceptance of gifts as outlined in the Code of Conduct are as follows:

- The acceptance of a gift, benefit or hospitality can imply favouritism, bias or influence on the part of the Member; however
- At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community events linked to the duties of an elected official and their representative role; and
- Members of Council are required to disclose all gifts, benefits, hospitality and sponsored travel received which individually exceed \$100 from one source in a calendar year.

Inquiry:

I am attending a dinner at a local restaurant that celebrates a milestone anniversary of the business. The restaurant has strong ties to the community. For example, it has long supported local charities. The event is free of charge, but the restaurant will be supplying food and beverages.

The restaurant has an active file in the Lobbyist Registry. I am aware of the file, and know that the lobbying activity is still ongoing.

Am I able to attend the event?

Interpretation:

I will grant an exemption from the Code of Conduct prohibition on Members' acceptance of gifts, benefits or hospitality from lobbyists with active registrations. I understand that the restaurant is important to the community, and that you will be attending in your official capacity to mark the anniversary of the business.

Further, given the unique nature of the event, I can confirm that you are also exempt from the requirement to disclose hospitality received that was directly connected to the invitation. You are exempted from this requirement under Section X of the Code of Conduct, "Gifts, Benefits and Hospitality:"

(g) food and beverages consumed at banquets, receptions or similar events, if:

1. attendance serves a legitimate business purpose;
2. the person extending the invitation or a representative of the organization is in attendance; and
3. the value is reasonable and the invitations infrequent;

If you accept hospitality or a benefit in excess of \$100 that is beyond which is offered by the event, however, the supplementary hospitality requires disclosure in the Gifts Registry.

Representing Constituent/ Ward interests

Inquiry:

I am planning to host an event in the community, and am wondering if I can accept involvement from real estate developer X and Y. I would like to verify that neither developer has an active planning file in the City's Lobbyist Registry. Is there anything preventing me from accepting the developers' involvement in the event?

Interpretation:

Currently, a number of different company representatives from both developer X and Y have active lobbying files in the Lobbyist Registry.

As such, requesting donations from these organizations would contravene both the Code of Conduct for Members of Council and the Community, Fundraising and Special Events Policy.

The Code of Conduct for Members of Council, Section IX (Conduct Respecting Lobbying) states:

“Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit, or hospitality from lobbyists with active lobbying registrations or from their registered clients or their employees by Members of Council or their staff is prohibited.”

Additionally, Section 2 of the Community, Fundraising and Special Events Policy states that members of Council may:

“Not solicit or accept donations from lobbyist or their clients or their employees with active registrations in the Lobbyist Registry without pre-approval from the Integrity Commissioner;”

I would encourage your staff to consult the Lobbyist Registry in future before contemplating inviting organizations to participate in Ward events. Both the Community, Fundraising and Special Events Policy and the Code of Conduct for Members of Council have been appended to this correspondence for ease of reference.

CONCLUSION

The past year was a busy one for my Office. In 2015 – 2016, I received more complaints from members of the public than I had in any year since Council approved the Code of Conduct in May, 2013. As detailed herein, four of those complaints were resolved through the informal process, while two were filed a formal complaint.

I believe this indicates that, three years after its introduction, the Code of Conduct and its related policies are working well. Members of the public are becoming increasingly aware of the Code, and of the work of my Office, and are bringing their concerns to my attention.

To ensure continued effective and efficient management of the operations of my Office, I sought to standardize certain practices this year. I now provide Terms and Conditions documents to Members to guide their involvement in community events and benevolent activities.

In a similar vein, I have begun compiling a comprehensive manual of standard practices for the receipt, investigation, and reporting on complaints received by the Office of the Integrity Commissioner, Lobbyist Registrar and Meetings Investigator. My Office currently has these processes in place, for example, in documents such as the Complaint Protocol for Council Code of Conduct. A comprehensive process manual will, however, ensure my Office is prepared for the ongoing efficient management of complaints. Furthermore the Ontario Ombudsman now has jurisdiction to review integrity commissioners’ and lobbyist registrars’ investigations. It is therefore important, that in case of such a review, my Office can support his process by a demonstrated and documented best practices and the highest standard of fairness to all parties.

I will report on this project in my next Annual Report.

Lobbyist Registry

MANDATE

The Lobbyist Registrar is responsible for general compliance of the Lobbyist Registry By-law (By-law 2012-309) in addition to oversight and administration of the Lobbyist Registry.

The Lobbyist Registry is an online bilingual public search tool that documents instances of substantive communications between individuals who lobby public office holders, such as Members of Council and/or City staff, in a centralized database that is easy to access and search by the public and interested stakeholders.

The requirements of the Registry and the position and duties of the Lobbyist Registrar are set out in By-law 2012-309 which was approved in accordance with Section 223.9 of the *Municipal Act, 2001*.

OVERVIEW

On August 29, 2012, Ottawa City Council enacted and passed By-law 2012-309 (“the Lobbyist Registry By-law”) establishing the Lobbyist Registry.

The City of Ottawa’s Lobbyist Registry was officially launched on September 1, 2012, and has now been in operation for over four years. Upon the official launch of the Registry, the City of Ottawa became the second Canadian municipality to establish a formal Lobbyist Registry, and the first to do so voluntarily and in the absence of a scandal.

The Lobbyist Registry is one of the key components of the Accountability Framework for Members of Ottawa City Council. Along with its appended Lobbyists’ Code of Conduct, the Lobbyist Registry By-law advances accountability and transparency at City Hall.

As I highlight in all outreach sessions on the Lobbyist Registry, lobbying is a legitimate activity that can occur in both planned and unplanned scenarios. For this reason, the Lobbyist Registry By-law does not include any requirement for the lobbyist to pre-register to the database before communicating with a public office holder or in advance of a meeting in which lobbying will occur.¹⁰

Instead, under the Lobbyist Registry By-law, any individual who represents a business or financial interest, and communicates with a City of Ottawa public office holder with

¹⁰ The City of Ottawa’s system differs from others across Canada in this regard. For example, those who lobby City of Toronto or Province of Ontario public office holders are required to register before undertaking to lobby.

the aim of furthering that interest, must register his or her activity to the Lobbyist Registry within 15 business days following the initial instance of lobbying communication.

OPERATIONS

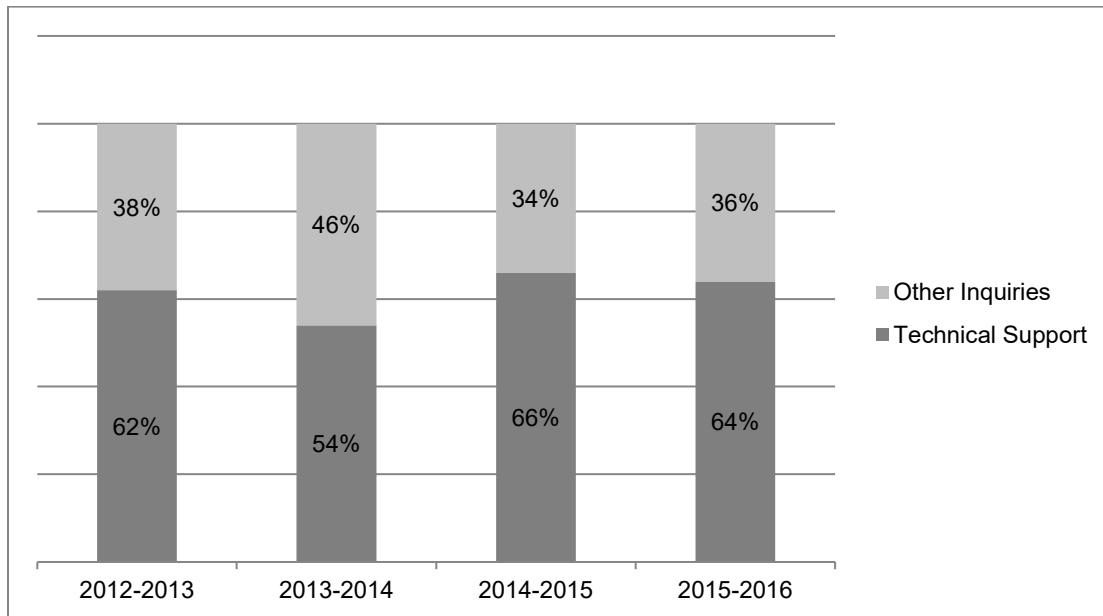
Supporting the Lobbyist Registry is a support assistant employed by the City Clerk and Solicitor’s Department. Approximately 85% of the assistant’s time is spent on such support; specifically, the Assistant provides administrative and technical assistance, such as approving registrations, responding to inquiries, monitoring compliance and intervening when necessary. This staff member also assists the Registrar in communicating with Lobbyist Registry stakeholders through notices, interpretation bulletins, individualized correspondence and group presentations.

Inquiries

Requesting Technical Support

This year, 64% of inquiries received by the Office of the Lobbyist Registrar were from Registry users requiring technical support. This breakdown is comparable to that experienced in past years:

Figure 3 - Nature of Inquiries Received by the Office of the Lobbyist Registrar



Inquiries requesting technical support are commonly due to the following matters:

- Forgotten username and/or password;
- Requesting assistance with creating a profile or lobbying file or activity; and
- Internet browser compatibility view settings.

As noted in last year's annual report, my focus for this year was to continue to promote education and ensure greater compliance with the Lobbyist Registry.

To improve the accuracy of our public records and maintain the integrity of the Lobbyist Registry, staff of my Office devoted a significant amount of time to communicating with lobbyists to ensure that instances of lobbying were disclosed in a timely manner in accordance with the provisions of the Lobbyist Registry By-Law and the Lobbyist Code of Conduct.

Figure 3 shows a slight increase in the number of inquiries related to technical support in the past two years, which would appear to indicate an active, positive response from lobbyists and a willingness to comply with the requests from my Office.

Separately, it is my belief that the accessibility of information, transparency and accountability promotes public confidence. Within the past year, I have issued two compliance agreements, one temporary ban on communication as well as my first Investigation Report as Lobbyist Registrar, that are all available to the public through the City's website. It is my view that there is a direct correlation between the decrease in the number of other inquiries and the availability of my investigation and work to the public.

Other Inquiries

This year, the remaining 36% of inquiries received by the Office of the Lobbyist Registrar requested clarification or interpretation of the Lobbyist Registry By-law.

The following are samples of inquiries I have received and the interpretation that has been provided. It is important to note that each inquiry is accompanied by its own specific context and facts. The following anonymized summaries should not be relied upon as rulings nor be considered a substitute for calling or writing my Office when in doubt.

Inquiry:

My colleague lobbied a City Councillor last week and entered this activity in the Lobbyist Registry accordingly. Two of the Councillor's Assistants were also in attendance at this

meeting. Should the Assistants also be included as “persons lobbied” in the Lobbyist Registry file for this meeting?

Interpretation:

The names of the Assistants should only appear in the record of activity if the Councillor delegated authority to those individuals on the matter that is the subject of the lobbying communication. Only if the Assistants have determinative decision-making authority over the matter can “lobbying” have occurred.

Under the Lobbyist Registry By-law, “lobby” is defined as (emphasis added):

“any communication with a public office holder by an individual who is paid or who represents a business or financial interest with the **goal of trying to influence any legislative action** including development, introduction, passage, defeat, amendment or repeal of a by-law, motion, resolution **or the outcome of a decision on any matter before Council, a Committee of Council, or a Ward Councillor or staff member acting under delegated authority.**”

If the Assistants have no final decision making authority on the matter, any influence a lobbyist may have on those individuals is inconsequential. For example, if an Assistant attends a meeting with the Councillor and the lobbyist, and the Assistant is in attendance to take notes for the Councillor, it is not necessary for the Assistant’s name to appear in the “persons lobbied” field for the record of lobbying activity. In that example, only the Councillor’s name should be recorded as a person lobbied because the Councillor has decision-making authority on the matter.

In contrast, if a Councillor’s Assistant attended a meeting with a lobbyist on behalf of the Councillor, the Assistant’s name should appear in the record. In that instance, the lobbyist’s efforts to influence a decision before a Councillor could be of consequence because the Assistant was acting on behalf of the Councillor.

Inquiry:

I recently met with Members of the Ottawa Public Library Board to offer my company’s services with the new Ottawa Central Library Project. Should this communication be registered to the City’s Lobbyist Registry?

Interpretation:

The City of Ottawa's Lobbyist Registry By-law does not apply to the Ottawa Public Library Board (OPLB). Under Part V.1 "Accountability and Transparency" of the *Municipal Act, 2001*, a board of health, a police services board and a public library board are excluded from the definition of a local board. As such, accountability and transparency measures such as the lobbyist registry do not automatically apply to these entities.

With that said, lobbying an OPLB Member who is also a Member of Ottawa City Council raises the potential for perceived conflict of interest and undue influence for that Board Member/Member of Council. There are, therefore, certain situations when lobbyists should register their communications with the OPLB Members who are also Members of Ottawa City Council.

If you are lobbying an OPLB Member who is also a member of Council, and the subject of that discussion is something that will come to a vote before Ottawa City Council, the lobbying communication should be entered in the City of Ottawa's Lobbyist Registry.

In such a situation, all of the requirements of the Lobbyist Registry By-law apply. It is, therefore, your responsibility to register the communication within 15 business days of the communication occurring.

Finally, as a lobbyist, you continue to be bound by the Lobbyists' Code of Conduct (which is appended to the Lobbyist Registry By-law). As such, you are prohibited from, directly or indirectly, offering or providing any gift, benefit or hospitality to Members of Council or their staff. The prohibition remains in effect when Members of Council are operating in their capacity as Members of the OPLB.

Inquiry:

I have recently created several lobbying files under my profile in the Lobbyist Registry and have added a number of lobbying activities to each file. The files are related to a large, long-term project by my firm. Should I open a new lobbying file for each new component of the same project?

Interpretation:

Lobbying files are intended to disclose the subject matter on which you are lobbying and lobbying activity is intended to capture each instance of communication with public office holders. Generally speaking, it is not necessary to open a new lobbying file for

each new component of the same project. Instead, it is sufficient to record all lobbying activity under one lobbying file. In fact, it is important to maintain a clear public record of all lobbying communications related to one file. If you create a new file for each component of a project, it may be difficult for Registry users to understand that the files, and all of the lobbying communications noted therein, are associated.

The “issue” section of your lobbying file should be clear and specific enough for the general public to understand the subject of your lobbying communications. You can note the various components of your project in this field.

That said, should you begin lobbying public office holders in relation to an entirely new undertaking, you would then be required to create a new and separate lobbying file.

Inquiry:

My colleague and I recently met with several staff from the Public Works and Environmental Services Department to discuss the possibility of the City adopting our company’s new software.

Should both I and my colleague register the lobbying activity to the Lobbyist Registry?

Interpretation:

Each individual person who lobbies City of Ottawa public office holders is required to record his or her lobbying communications to the Lobbyist Registry. The only exception, however, is if you are involved in the same lobbying activity (e.g. meeting) as another individual from your organization. In that case, only one person from your organization (the “principle lobbyist”) is required to record the activity.

In this case, as both you and your colleague lobbied while at the same meeting, only the principle lobbyist is required to record the activity.

If, however, both you and your colleague engage in further lobbying of the same public office holders (for example, by phone or email), you and your colleague would be required to each record the lobbying activity in your own profile.

Registration Activity

In its first year, the Lobbyist Registry had an average of 46 registrants per month, resulting in 552 approved lobbyists by September 30, 2013. Registrations slowed in subsequent years, with staff approving an average of 26 new profiles per month in 2014-2015.

This year, statistics show an increase in the number of registrations by consultant lobbyists and a decrease in the number of in-house lobbyist registrations, with the number of voluntary lobbyists remaining largely unchanged. There is an increase in the total number of lobbying files recorded in the system with over 100 additional active lobbying files and a minor decrease in the number of closed lobbying files. The number of lobbying activities has increased by 13% from last year. This increase indicates a higher overall activity reporting rate, as 2015 – 2016 saw fewer new registered lobbyists than did 2014- 2015.

Table 1 – Annual Lobbyist Registry Statistics

	2012-2013	2013-2014	2014-2015	2015-2016
Registered Lobbyists	552	338	310	291
Consultant Lobbyists	311	89	49	89
In-house Lobbyists	212	242	248	187
Voluntary, Unpaid Lobbyists	29	7	13	15
Lobbying Files	737	358	228	321
Active	663	324	206	301
Closed	74	34	22	20
Lobbying Activities	1921	1181	977	1152

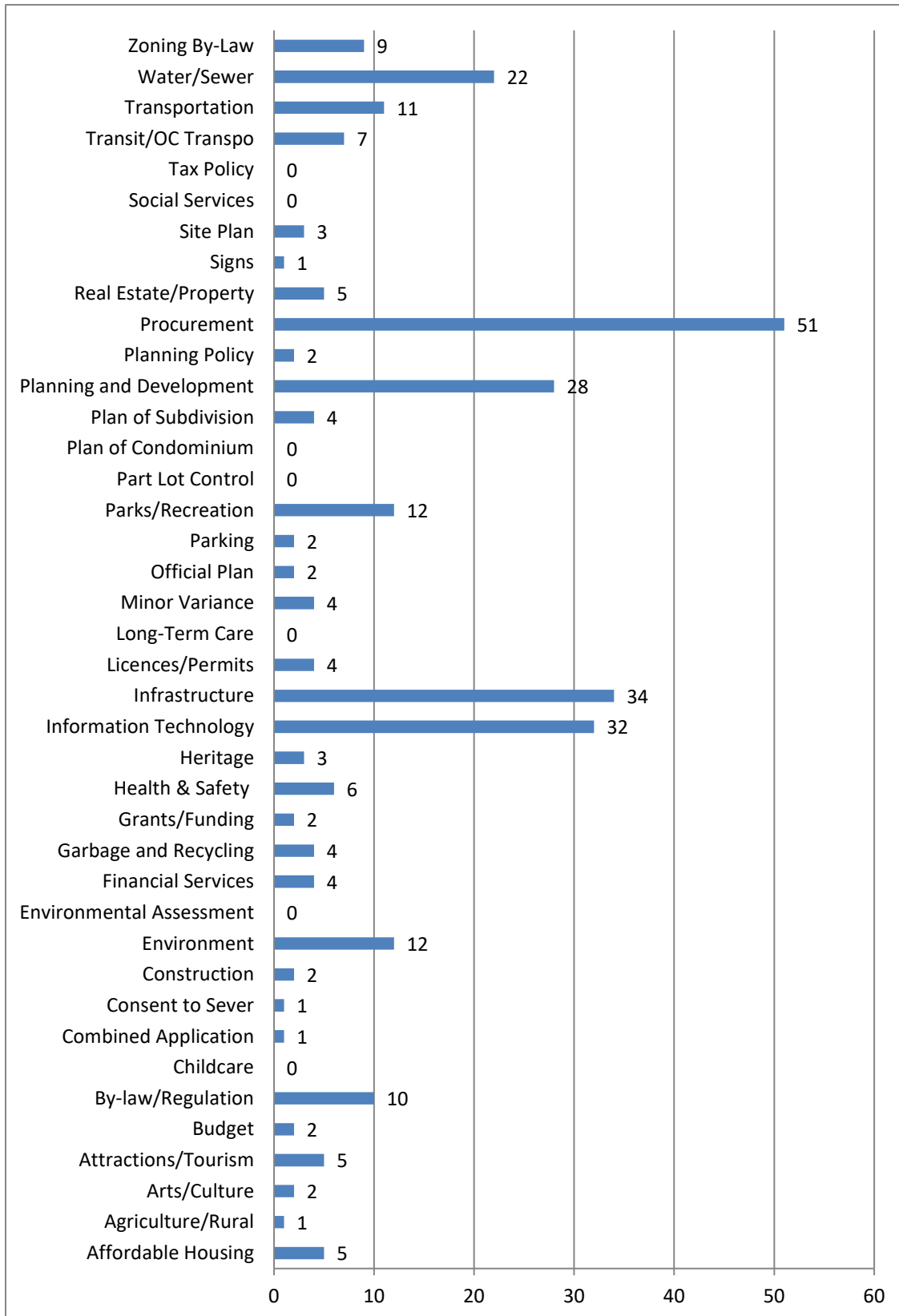
Annual statistics cover the period of September 1 to August 31.

In my next Annual Report (2016-2017), for administrative purposes, the reporting period will be shifted to October 1 – September 30. The data provided in Table 1, above, reports to August 31, 2016. As my next Annual Report will exclude September 2016 Lobbyist Registry statistics, I report them here, as follows:

Table 2 – September 2016 Lobbyist Registry Statistics

Total Registered lobbyists added	20	Total Lobbying Files added	18	Lobbying Activities added	60
Consultant	8	Active	18		
In-house	11	Closed	0		
Voluntary, Unpaid	1				

Figure 4 - Lobbying by Subject Matter 2015-2016



Confidentiality Codes

Lobbyists can apply to my Office for a confidentiality code in cases where transparency is a business risk or confidentiality is required to ensure the potential success of a proposal. If I approve such a code, the lobbying activity will eventually be reported out when an agreement is successful. This year, my Office received only one request to administer a confidentiality code.

Compliance Audit

In my past two Annual Reports, I have provided a summary of compliance audits undertaken by my Office. Through these audits, my Office has sought to review Lobbyist Registry profiles to ensure records of lobbying are accurate, clear, and comply with requirements set out in the Lobbyist Registry By-law.

I have found that the audits have provided my Office with the valuable opportunity to identify common problems, and to communicate with users to correct those problems. For that reason, I have incorporated the regular review of Registry profiles into part of the normal function of my Office.

In order to accurately record lobbying activity, Registry users are required to create a lobbying file for each subject on which s/he has lobbied City of Ottawa public office holders. Within that lobbying file, a lobbyist is required to record lobbying activity. Each time a lobbyist communicates with a public office holder on the same subject, s/he must enter a new instance of lobbying activity in the Registry. The activity must include the date lobbying occurred, the method (for example, meeting, email) and must include the names of person(s) lobbied.

For the purposes of the 2016 audit, compliant profiles were defined as profiles that included both lobbying files and activities, and featured clear and accurate information in all fields.

This year, in a sample audit of 500 approved Lobbyist Registry profiles, 51% of profiles audited were found to be non-compliant with the Lobbyist Registry By-Law while 48% were found to be compliant. The remaining 1% was found to be non-compliant due to technical glitches (for example, duplicate profiles having been created upon user registration). My Office has worked to correct those problems.

The audit identified 253 non-compliant profiles. Of those, the majority (85%) lacked both lobbying files and activities. The remaining profiles (15%) contained lobbying files but did not include any associated lobbying activities in those files.

My Office is working with users to correct the identified problems and is continuing to review remaining profiles. At the time of writing, 34% of the profiles in the Registry have been reviewed.

Enhancement

Individuals who lobby the City are expected to register with the Lobbyist Registry within fifteen business days of the communication occurring. This year, a new enhancement to the Lobbyist Registry has allowed my Office to easily track the amount of time between when a lobbying activity is reported to have occurred, and when the user input the information in the Registry. This new tool has allowed me to easily identify users who have not been reporting activity in a timely fashion, and to follow-up with those users to ensure they are aware of the requirement to do so.

Compliance Agreements

In February 2016, I introduced Compliance Agreements as a new way to manage lobbyist compliance with the Lobbyist Registry By-law and the Lobbyist Code of Conduct.

I introduced these voluntary agreements upon noticing that a large portion of the compliance issues that have arisen since the 2012 introduction of the Lobbyist Registry, Lobbyist Registry By-law and Lobbyists' Code of Conduct have not constituted intentional or breaches of a serious nature. I have found the compliance agreement to be a practical way of addressing inadvertent or minor contraventions of the Lobbyist Registry By-law and infractions of the Lobbyists' Code of Conduct. The agreements serve as both educational tools and compliance mechanisms, for both lobbyist and other stakeholders, while allowing me to reserve formal sanctions for more egregious breaches of the Lobbyist Registry By-law.

Compliance Agreements in Other Jurisdictions

I introduced Compliance Agreements after having observed their use by several oversight bodies in Canada.¹¹ The *Canada Elections Act*, for example, contains provisions regarding the use of compliance agreements. Sections 517 to 521 of the *Canada Elections Act* authorize the Commissioner of Canada Elections to enter into a compliance agreement if he or she believes that a person has committed, is about to commit or is likely to commit an act or omission that could constitute an offence under

¹¹ Compliance agreements are used in other areas of law such as food inspection. For example, the *Agriculture and Agri-Food Monetary Penalties Act*, Section 10, provides for the use of compliance agreements.

the *Act*.¹² The compliance agreement is entered into voluntarily between the Commissioner of Canada Elections and the contracting party. The compliance agreements are posted on the website of the Commissioner of Canada Elections, in accordance with the requirement as set out in Section 521 of the *Canada Elections Act* that notice of the compliance agreement be made public.¹³

The Integrity Commissioner of Nunavut also uses compliance agreements as an alternative to prosecution under the *Nunavut Elections Act*. The agreements are voluntary, and, as set out in subsection 232(2) of the *Nunavut Elections Act*, the Integrity Commissioner must publish notice of the compliance agreement. As noted on the website of the Integrity Commissioner of Nunavut, public notice is published via community newspaper, the Nunavut Gazette and/or the Integrity Commissioner's website.¹⁴

Finally, changes that the *Digital Privacy Act* brought to the *Personal Information Protection and Electronic Documents Act* (PIPEDA) in 2015 included a new provision allowing the Federal Privacy Commissioner to enter into voluntary compliance agreements with public sector organizations. The Commissioner enters into a compliance agreement with an organization with the aim of ensuring compliance with PIPEDA. Once signed, the compliance agreement precludes the Commissioner from commencing a hearing, and requires the Commissioner to apply to the court for a suspension of a pending application.¹⁵ While PIPEDA does not expressly require that the compliance agreements be made public, the Office of the Privacy Commissioner of Canada publishes full text of some agreements on its website. PIPEDA provides for the Commissioner's discretion to assess, on a case-by-case basis, the public good of providing full public disclosure of the agreement against any potential harm to the organization that might result from such disclosure.

The City of Ottawa

I introduced compliance agreements under the authority provided in the Lobbyist Registry By-law, Part IV, Section 9, which sets out my responsibilities as Lobbyist Registrar as follows:

¹² *Canada Elections Act* (S.C. 2000, c. 9) s. 517(1).

¹³ Commissioner of Canada Elections. "Compliance Agreements." <https://www.cfc-cce.gc.ca/content.asp?section=agr&document=index&lang=e> (accessed September 15, 2016).

¹⁴ Integrity Commissioner of Nunavut. "Other Responsibilities of Integrity Commissioner." <http://www.integritycom.nu.ca/content/other-responsibilities-integrity-commissioner> (accessed September 14, 2016).

¹⁵ Personal Information Protection and Electronic Documents Act (S.C. 2000, c.5) s. 17.1(3).

RESPONSIBILITIES

9. The Integrity Commissioner is responsible for:
- (a) overseeing the administration of the lobbyist registration system;
 - (b) providing advice, opinions and interpretations pertaining to the administration, application and enforcement of this by-law;
 - (c) conducting, in private, investigations or inquiries to determine whether contraventions of this by-law have occurred, as permitted under section 223.12 of the *Municipal Act, 2001*;
 - (d) suspending or revoking a registration;
 - (e) the enforcement of this by-law;
 - (f) advising Council on lobbying matters and recommending improvements and amendments to this by-law;
 - (g) providing an annual report to Council and any periodic reports and information as the Registrar considers appropriate; and
 - (h) performing other duties as may be assigned by Council.

I developed our compliance agreements to feature some of the same key elements seen in other Canadian jurisdictions.

Under my approach, the individual who committed the violation enters into the agreement voluntarily. The agreement includes an agreed-upon statement of facts regarding the specific manner in which the lobbyist's actions violated the Lobbyist Registry By-law and/or the Lobbyists' Code of Conduct. Each compliance agreement outlines the steps taken to address the breach, and includes a commitment from the lobbyist to adhere to the By-law or Code in the future. Both the lobbyist and I sign the agreement, and staff posts a copy of the signed document on the City's website.¹⁶ At this time, I plan to leave the Agreements online indefinitely.

To date, I have entered into two compliance agreements. In both cases, the Lobbyist contravened the Lobbyists' Code of Conduct by offering gifts or tickets to Members of Council when they had active lobbying files in the City of Ottawa's Lobbyist Registry. This contravenes Section 6(3) of the Lobbyists' Code, as follows (emphasis added):

¹⁶ The City of Ottawa. "Compliance with the Lobbyist Registry By-law – Compliance Agreements." <http://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/compliance-lobbyist-registry-law> (accessed September 2, 2016).

IMPROPER INFLUENCE

6. (1) Lobbyists shall avoid both the deed and the appearance of impropriety.
- (2) Lobbyists shall not knowingly place public office holders in a conflict of interest or in breach of the public office holders' codes of conduct or standards of behaviour.
- (3) Lobbyists with active lobbying registrations, their registered clients or their employees shall not, directly or indirectly, offer or provide any gift, benefit or hospitality to Members of Council or their staff.

In offering gifts or tickets to Members of Council while having active lobbying files, the lobbyists also breached Section 6(2) by causing the Members of Council in question to contravene the Code of Conduct for Members of Council. The Members' Code prohibits Members' acceptance of any gift, benefit or hospitality from lobbyists with active files.¹⁷

In both cases, I found a strong willingness on the part of the lobbyists to sign the agreements and to comply with the provisions set out therein.

An anonymized Compliance Agreement is attached as Appendix 2.

Corporate Compliance Agreements

This year I also introduced corporate compliance agreements. As in the case of the compliance agreements described above, the corporate compliance agreement addresses minor contraventions of the Lobbyist Registry By-law and Lobbyist Code of Conduct. The corporate agreements, however, address multiple such infractions committed by a number of individuals from the same corporation, often without the corporation's knowledge or approval. In some cases individuals have left the corporation, leaving the lobbying files inaccessible for update.

These voluntary agreements are in place as a proactive, preventative measure to avoid escalating compliance matters to the level of sanctions and penalties such as suspension of registration or removal from Registry, that are outlined in Part V of the Lobbyist Registry By-law.

Each agreement:

¹⁷ The City of Ottawa. Code of Conduct for Members of Council, Section IX. "Conduct Respecting Lobbying".

- Summarizes the act or omission that constitutes a breach of the By-law or Code of Conduct;
- Includes an agreed statement of facts wherein the corporation admits responsibility for the act or omission that constitutes the breach; and
- Includes an agreement to certain terms and conditions by the corporation and the principal lobbyist.

At present, I have entered into two corporate compliance agreements. I have not yet posted these agreements online as I am treating them as “providing advice, opinions and interpretations pertaining to the administration, application and enforcement of this by-law,” as set out in Section 9 of the Lobbyist Registry By-law.

However, I retain the discretion, with the agreement of the corporation, to post them in the future if the circumstances warrant it.

ENFORCEMENT

In accordance with Part V of the Lobbyist Registry By-law, the Integrity Commissioner has the authority to take progressive disciplinary steps in the event of non-compliance. Specifically, as outlined in Section 10 of the Lobbyist Registry By-law, the Integrity Commissioner may impose a temporary ban on communication for one month for a first breach and three months for a second breach. An appropriate sanction is determined for a third breach, if the Integrity Commissioner finds that the requirements of the By-law have not been met.

On February 16th 2016, I issued the first temporary ban on communication between a lobbyist and public office holders. The one-month ban was the lobbyist’s first breach. It was the result of unreported lobbying communication after receiving several notices from my Office requesting registration and disclosure of the lobbying communication. My Office posted online the lobbyist’s name and organization, the nature of the breach and the dates for which the temporary ban would be in effect.

First Investigation Report as Lobbyist Registrar

This year, I completed my first Investigation Report in my capacity as Lobbyist Registrar. The report was considered by Council on July 13, 2016, and included my findings and action taken with respect to an inquiry I undertook following a formal complaint from a member of the public.

In May 2016, the City of Ottawa announced that it was partnering with a production company to build a playground in a large urban park. The project, described as “Canada’s largest playground”, is intended to celebrate Canada’s 150th anniversary in 2017.

Following this announcement, I received a complaint from a member of the public who requested that I investigate whether unregistered lobbying occurred between the production company and public office holders (as defined in the Lobbyist Registry By-law), prior to the signing of a partnership agreement.

In order to investigate this matter, my Office conducted a preliminary review of the Lobbyist Registry. After sending formal Notices of Inquiry to affected parties, I conducted interviews and requested documentation from two members of City Staff in Parks, Recreation and Cultural Services. Two representatives of the production company were also interviewed as well as one member of City procurement staff. There were no external costs to the undertaking of this Inquiry. The Inquiry was undertaken with the support of existing resources of the Office of the City Clerk and Solicitor Department.

The inquiry determined that the company had initially contacted City staff with respect to a proposed playground partnership in January 2016. My report found that prior to a formal proposal being submitted to the City’s *Community Partnership Major Capital Program* in March 2016, communication between the company and City staff constituted lobbying, and this lobbying went undisclosed to the City’s Lobbyist Registry.¹⁸

Throughout the interviews with public office holders, staff stated they did not believe lobbying had taken place. Staff are required to review the Lobbyist Registry on a monthly basis to ensure that those instances where they have been lobbied have been disclosed through the Registry, as set out in the report titled “Lobbyist Registry – Update,” which was considered by a joint meeting of the Finance and Economic Development Committee and Governance Renewal Sub-Committee on July 6, 2012, and by Council on July 11, 2012. This report states:

¹⁸ Marleau, Robert. “Report to Council on an Inquiry by the Lobbyist Registrar: Playground Partnership Project at Mooney’s Bay Park.” July 8, 2016.
<http://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=6698&doctype=agenda&itemid=351380> (accessed September 2, 2016).

“Efforts to lobby City staff at all levels shall be logged with the lobbyist registry by the lobbyist as a mandatory requirement. Staff will be expected to routinely review the Lobbyist Registry, in the same manner as elected officials and citizen members of the Transit Commission, to ensure that lobbying activity involving them has been disclosed. If staff observes that disclosure has not occurred or if the disclosure is inaccurate, contact should be made with the Integrity Commissioner to resolve the matter.”¹⁹

Staff acknowledged that they had not reviewed the Registry for their communications with the company. Staff also acknowledged that they did not advise the company of any requirement to register. With this in mind, I did not impose any sanctions on company representatives as they agreed to retroactively register the lobbying communications.

Currently, the City of Ottawa’s Lobbyist Registry By-law is silent on the duty of public office holders to inform lobbyists of the existence and requirements of the By-law. My report stated my intent to bring forward, at the time of the regular Mid-term Governance Review, proposed amendments to the By-law that will seek to define the “duty to inform and assist” responsibilities of all public office holders, specifically those staff with delegated authority.²⁰

Since that time, in discussion with the City Clerk and Solicitor, I have determined that an update to the City of Ottawa *Employee Code of Conduct* to add explicit reference to lobbying and the Lobbyist Registry is a more appropriate and effective way to inform staff of their responsibilities with respect to lobbying than to formally amend the Lobbyist Registry By-law. Specifically, the *Code*’s “Transparency” section was updated with the following line. “When we are lobbied, we advise the Lobbyist to ensure that the activity is properly recorded in the Lobbyist Registry.”

Staff of the City Clerk and Solicitor Department have also developed communications material for City Staff to raise awareness about lobbying. An article in the September 2016 issue of “In the Loop”, an internal staff communication, summarizes the changes and notes that, “as public servants, City employees have an obligation to review the

¹⁹ Marleau, Robert. “Report to Council on an Inquiry by the Lobbyist Registrar: Playground Partnership Project at Mooney’s Bay Park.” July 8, 2016.

<http://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=6698&doctype=agenda&itemid=351380> (accessed September 2, 2016): 3

²⁰ The City of Ottawa. “Code of Conduct for Members of Council.” <http://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/code-conduct> (accessed September 2, 2016).

Lobbyist Registry and to avoid knowingly communicating with a lobbyist who has breached the Lobbyist Registry.”²¹

Finally, at the time of writing, staff are developing a standard response that all staff can use when contacted by people looking to do business with the City. The response will acknowledge that marketing is considered lobbying under the City’s lobbying guidelines. It will instruct the recipient where s/he may obtain more information on the Lobbyist Registry, and it will state that contacting any City staff, other than the Contracting Authority, during a procurement process is strictly prohibited.

I am of the opinion that these measures taken to inform staff respond adequately to the concerns I had expressed in my investigation report.

CONCLUSION

I have noticed increased attention to the work of my Office in the wake of my first investigation report as Lobbyist Registrar. Positive change has resulted from the report. First, it created the opportunity to develop communications to City Staff to increase their awareness of lobbying. Second, since the report’s release, I have noticed an increase in the number of Staff contacting my Office to ask about their responsibilities with respect to lobbying.

In the coming year, I will build on this interest by holding several information sessions with Staff on how to recognize when they are lobbied, and what to do when it occurs.

²¹ “Code of Conduct updated to include Lobbyist Registry.” *In the Loop* September 2016
<http://ozoneblogs/intheloop/en/2016/09/20/code-of-conduct-updated-to-include-lobbyist-registry/>

Meetings Investigator

MANDATE

The *Municipal Act, 2001* (“the Act”) provides that all meetings of Council, its committees or local boards shall be open to the public, except as provided through the following discretionary exemptions. Section 239 of the Act permits closed meetings of City Council, a local board or a committee of either, to discuss the following:

1. The security of the property of the municipality or local board
2. Personal matters about an identifiable individual, including municipal or local board employees
3. A proposed or pending acquisition or disposition of land by the municipality or local board
4. Labour relations or employee negotiations
5. Litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board
6. Advice that is subject to solicitor-client privilege, including communications necessary for that purpose
7. A matter in respect of which a council, board, committee or other body may hold a closed meeting under another Act.

Further, meetings of City Council, a local board or a committee of either may be closed to the public if:

1. The meeting is held for the purpose of educating or training the members.
2. At the meeting, no member discusses or otherwise deals with any matter in a way that materially advances the business or decision-making of the council, local board or committee.

An amendment to Section 239 of the Act came into effect on January 1, 2016, to include an additional exception for a closed meeting as follows (emphasis added):

- (3) A meeting or part of a meeting shall be closed to the public if the subject matter being considered is,
- (a) a request under the *Municipal Freedom of Information and Protection of Privacy Act*, if the council, board, commission or other body is the head of an institution for the purposes of that Act; or
 - (b) an ongoing investigation respecting the municipality, a local board or a municipally-controlled corporation by the Ombudsman appointed under the *Ombudsman Act*, an Ombudsman referred to in**

subsection 223.13 (1) of this Act, or the investigator referred to in subsection 239.2 (1).

Anyone who wishes to question the appropriateness of a meeting of Council, its committees or local boards (with some exceptions) that was closed in full or in part may request an investigation under Section 239.1 of the Act.

Section 239.2 of the Act outlines my authority as Council-appointed Meetings Investigator. Operating in an independent manner and respecting confidentiality, I investigate on receipt of a complaint made to me by any person in respect of a meeting or part of a meeting that was closed to the public. I determine whether an investigation is warranted and, if so, conduct an investigation and submit my findings and recommendations to an open meeting of City Council or the local board. In carrying out these functions, I may exercise such powers and perform such duties as may be assigned to me by Council. As prescribed in Section 239.2(5) of the Act, I operate with regard to the importance of:

- My independence and impartiality as investigator;
- Confidentiality with respect to my activities; and
- The credibility of the investigative process.

OVERVIEW

In 2016, I received three requests for investigation of a closed meeting.

Upon review of the first request, I determined that no meeting of Council, one of its committees or of a local board occurred on the date specified by the requestor. In follow-up conversation with the requestor I determined that the requestor had misinterpreted the “Request for Investigation of a Closed Meeting” form, and had been seeking general information on whether a closed meeting had occurred at all between City officials and unregistered lobbyists on a specific matter, but on an unspecified date. I confirmed that, in my role as Meetings Investigator, I require that a specific meeting be identified in order for me to investigate whether the meeting or part thereof was inappropriately held *in camera*. The requestor was satisfied with the response.

I received two additional requests for investigation of closed meetings. Upon review, I determined that neither meeting in question was a meeting of Council, one of its committees or local board over which the open meeting provisions of the *Municipal Act, 2001* apply. As such, it was not within my mandate to undertake an investigation in either case.

As I have noted in every Annual Report that I have issued to date, Members of Council and City Staff continue to be committed to holding open meetings and to disclosing as much information publicly as possible. For that reason, as has been the case since my August 2012 appointment as “three-in-one” Commissioner, the Meetings Investigator function has been the lightest of my mandate.

From November 1, 2015 to December 31, 2015, Council and its Committees went into closed session a total of one time:

- On November 26, 2015, the Audit Committee moved into closed session to receive the Information Technology Security Incident Handling and Response Audit from the Auditor General.

From January 1, 2016 to September 30, 2016²², Council and its Committees went into closed session a total of ten times, as follows:

²² In the “Meetings Investigator” section of past Annual Reports, I have reported on the period of November 1 – October 31. This year, in order to bring this section in line with the rest of the Annual Report, I am reporting on the 11-month period of November 1, 2015 to September 30, 2016. Correspondingly, next year’s Annual Report will report on the 12-month period of October 1, 2016 to September 30, 2017.

City Council

- February 8: To consider a verbal report from the Chair, Hiring Panel for the City Manager, and specifically to consider the recommended candidate for the position of City Manager.
- July 13: To receive a briefing from the City Manager with respect to the organizational alignment of the City of Ottawa.
- September 28: To receive an update regarding the ratification of the tentative agreement reached with the Canadian Union of Public Employees Local 503.

Finance and Economic Development Committee (Meeting as the Hiring Panel for the City Manager)

- January 18: To select the candidates to interview for the position of City Manager, as well as to consider matters related to the next steps in the hiring process, including employment contract negotiations.
- February 1: To interview candidates for the position of City Manager and future next steps.
- February 8: To continue to interview and consider the selected candidate(s) for the position of City Manager and the next steps, which may include contract negotiations.

Finance and Economic Development Committee (Regular FEDC meeting)

- February 2: To discuss the interviews for the position of City Manager and future next steps.

Transit Commission

- February 24: To receive an update on bargaining and the tentative collective agreements with the Amalgamated Transit Union Local 279 (Conventional and Para Transpo) and the Canadian Union of Public Employees Local 5500.
- March 23: To receive advice with respect to the tentative collective agreements with the Canadian Union of Public Employees Local 5500.

Audit Committee

- June 20: The Audit Committee moved into closed session to receive the Report on the Review of the Client Service Centre Laurier Cash Handling Process and Cash Discrepancies from the Auditor General.

It is worth noting that of the 11 closed meetings in twelve months, nine related to the traditional exemptions for 'labour relations and/or employee negotiations' as they involved the hiring of the new City Manager and various collective bargaining updates. Furthermore, the other two closed meetings concerned audits prepared by the Auditor General involving the 'security of the property' of the City (an IT breach and an allegation of fraud and waste), and both public reports included a fulsome legal opinion as to why part of those meetings should be considered in the absence of the public.

As I reported last year, as part of the City's ongoing efforts as a leader in open meetings, the City Clerk and Solicitor's Office initiated a practice whereby my Office is advised in advance of the public notice of any Committee, Commission or Council meeting where it is expected that confidential matters will be considered.

The City Clerk and Solicitor's Office has continued the practice this year of sending notice in advance of any in camera session. This notice provides with the opportunity to review the appropriateness of the planned closed session before the Clerk's Office issues public notice as part of the meeting agenda.

Municipal Act, 2001 – Legislative Review

In my last Annual Report, I wrote that the Ministry of Municipal Affairs and Housing was reviewing the open meeting provisions of the *Municipal Act, 2001*.

The Premier's Mandate Letter to the Minister of Municipal Affairs, released at the end of September, 2016, lists as a specific priority the introduction of legislative changes to the Act in fall 2016. The Minister has not introduced any such changes at time of writing.

CONCLUSION

I have no recommendations related to open and closed meetings at this time.

Outreach, 2016-2017 Goals and Financial Statement

EDUCATION, OUTREACH AND MEDIA RELATIONS

“There are many ways to promote understanding and compliance with codes of conduct. As noted above, the codes must be more than just ethical art. They should come down off the walls and be understood by all who are guided by them. This can be done through the City’s website, pamphlets, training seminars, electronic correspondence, events, discussions at regular staff meetings, and other means.”²³

Education and outreach have, and continue to be, a priority for me in my role as Integrity Commissioner for the City of Ottawa. From providing advice and guidance to Members of Council and their staff to educating stakeholders on obligations and compliance, an ongoing dialogue has contributed to the overall success of Council's Accountability Framework.

Below is a list of events that took place in the last year:

Meetings with Stakeholders

- Lobbyist Registry sessions with the Economic Development Department, April 2016

Education, Outreach (and Presentations)

- Accountability Framework session with the South African Delegation, Ottawa, April 6th 2016

Media Relations:

Throughout the course of my first Investigation Report in my capacity as Lobbyist Registrar, I received a number of media requests. Specifically, I received approximately 10 email inquiries and the same number of phone calls from the media requesting additional information. Although I was unable to provide comments regarding any specific potential complaints received by my Office, or on the progress or findings of the inquiry at the time in accordance with sections 223.5(1) and 223.12(3) (*Duty of confidentiality*) of the *Municipal Act, 2001*, my full inquiry is available for public access

²³ 1 The Honourable Madam Justice Denise E. Bellamy, *Commissioner*, *Toronto Computer Leasing Inquiry*, Volume 2 : Good Government: 35.

on the City's website and information from the inquiry was quoted in several news articles over the summer.

Separately, I was interviewed by the Ottawa Citizen on February 17th 2016 with respect to the City's first ever temporary ban of a lobbyist.

On average this year, I received approximately 2 media phone calls per month, totalling about 25 phone calls over the course of the year. Separately, I receive a number of requests from other integrity and accountability offices across the Country for advice, guidance and opinions as Ottawa's Accountability model continues to serve as a template for other municipalities.

Conferences/Seminars:

- The *Lobbyist Registrars and Commissioners Network (LRCN)* Conference, Ottawa, Feb 1st 2016
- Public Policy Conference: "What's Next for Canada?" by the International, Political and Policies Studies Students Association in Ottawa, Feb 6th 2016
- Municipal Integrity Commissioners of Ontario Meeting in Vaughan on April 26th 2016
- Public Sector Ethics Conference "Building trust in Government" in Toronto on September 30th 2016

Publications:

- Marleau, Robert. "The City of Ottawa's Lobbyist Registry: A Focus on Compliance" for the proceedings of the September, 2016 conference "Building Trust in Government: Public Sector Ethics Conference".

GOALS FOR 2016-2017

2015-2016 was a year of strict compliance monitoring with sanctions invoked, pursuant to the Lobbyist Registry By-law. In 2016-2017, I intend to continue with this trend in order to ensure the accuracy of our public records and the integrity of the Lobbyist Registry database. My primary focus remains on compliance, as it is important to remain consistent to ensure that public confidence in the transparency of municipal government continues to improve.

In addition to strict compliance, I intend to focus on education specifically with respect to events occurring in the City in 2017. As a result of a drastic increase in the number of sponsored events in honour of the City's 150th anniversary, I intend to take an active role in the education of Municipal Council on the appropriate manner in which to handle ticket invitations, participation in events, and fundraising and sponsorship requests, among other topics. Additionally, I intend to communicate with departments that will be handling the coordination of these special events, to ensure that the Accountability Framework is respected.

Education:

This past year, my focus continued to be on the education of lobbyists and public office holders, as well as compliance. As such, I released four interpretation bulletins that related to some of the most regular inquiries received by my Office. Specifically, the bulletins addressed the requirements for registration to the Registry, Ottawa 2017 sponsorships and events, and clarified the definitions of "local boards" and "public office holders" pursuant to the Lobbyist Registry By-Law.

As much of my time this year was devoted to compliance, my Office did not have the opportunity to engage in as many outreach opportunities as previous years. That said, the promotion of education, especially in relation to the Ottawa 2017 events in the City, will continue to be my main focus for 2016-2017 and my Office has already planned presentations with different City departments for the fall and winter months.

Compliance:

As noted in my previous annual report, one of my goals for this year was to introduce the use of compliance agreements to address minor contraventions such as late registrations this year. I found the use of both individual and corporate compliance agreements to be very effective in terms of avoiding infraction recidivism and also as a deterrent for similar future infractions by other lobbyists. There was a noticeable increase in the number of technical support inquiries received by my Office this year, which I believe is due to the fact that lobbyists are now actively striving to ensure that they are compliant with the provisions within Lobbyist Registry By-Law 2012-309 and Lobbyist Code of Conduct.

I fully intend to continue the use of both individual compliance agreements as well as corporate compliance agreements to address some of the more large scale, minor infractions of the Lobbyist Registry going forward.

Some minor technical enhancements are expected for the Lobbyist Registry tool itself to improve its functionality for users and reduce the amount of technical support by my Office.

FINANCIAL STATEMENT

The Integrity Commissioner's remuneration consists of a \$25,000 annual retainer and a per diem of \$200 per hour to a daily maximum of \$1,000.

The following is a breakdown of the period of October 1, 2015 to September 30, 2016.

	Q4 2015	Q1 2016	Q2 2016	Q3 2016	TOTAL
Retainer				\$25, 440	\$25, 440
Salary*	\$13, 534.08	\$14, 449.92	\$19, 131.32	\$14 856.96	\$61 972.28
Ancillary Costs (Parking, cell phone, business travel)	\$669.20	\$465.68	\$1,369.48	\$1,407.54	\$3, 911.90
Hours logged	67	71	94	73	305

*includes tax less eligible municipal rebates

Appendix 1



Office of the Integrity Commissioner
Bureau du Commissaire à l'intégrité

Terms and Conditions for Benevolent Activities – [Activity]

The following are the Terms and Conditions of Councillor (name) participation in the (charity name) fundraising event:

- Funds are not directly solicited by the Councillor or his staff, nor shall the Councillor or his staff directly receive any funds that are solicited by the (charity name) fundraising event;
- All donations shall be payable directly to the (charity name) fundraising event, the (charity itself) and all in kind donations will go directly to the (charity name) fundraising event or (charity itself);
- The Councillor's commitment and support does not require significant staff time and/or City resources;
- Decisions on the disbursement of funds or in the determination of the beneficiaries of the funds shall be made by the (charity name) fundraising event or (charity itself) and the Councillor shall remain at arm's length from the financial aspects of these processes without pre-approval from the Integrity Commissioner; and
- If more than \$25,000 in funds net of expenses is raised, the (charity name) fundraising event is encouraged to publicly disclose audited statements, which should include a list of receipts, expenses, donors and disbursements to beneficiaries.

Robert Marleau

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Appendix 2



Office of the Integrity Commissioner
Bureau du Commissaire à l'intégrité

Transaction

Dossier n° 01-16

On (date), the Integrity Commissioner of the City of Ottawa entered into a compliance agreement with (lobbyist's name) relating to a violation of the Lobbyist Registry By-law 2012-309 and the Lobbyist Code of Conduct.

STATEMENT OF FACTS

I, (full name) of the City of Ottawa, in the Province of Ontario, the (position title) of (company name), acknowledge the following:

On (date of infraction), when I (ex: was a registered lobbyist for X organization), I (describe the infraction).

I am now aware that (e.g. it is a breach of Section 6 of the Lobbyists' Code of Conduct for a lobbyist with active lobbying registrations, their registered clients or their employees to directly or indirectly offer or provide any gift, benefit or hospitality to Members of Council or their staff.)

I am also aware that by (describe infraction), I was in violation of Section (applicable section) of the Lobbyist Registry By-law 2012-309, as I (e.g. placed public office holders in a potential conflict of interest and a potential breach of the Code of Conduct for Members of Council.)

On (specific date), I was contacted by the Integrity Commissioner and informed that I was in breach of the Lobbyist Registry By-law 2012-309 and the Lobbyist Code of Conduct. I fully cooperated with the Integrity Commissioner and, at his direction; I arranged to (e.g. rescind the invitation/ gift).

I have apologized to the Members of Council concerned for any inconvenience and for unknowingly putting them in potential breach of their own Code of Conduct.

AGREEMENT

I acknowledge and accept responsibility for not complying fully with the terms of terms of the Lobbyist Registry By-law 2012-309 and the Lobbyist Code of Conduct.

I understand that my acknowledgement of non-compliance does not constitute an admission of intentional wrongdoing.

I am now aware of the relevant provisions of the Lobbyist Registry By-law 2012-309 and the Lobbyist Code of Conduct.

I undertake to comply fully with the provisions of the Lobbyist Registry By-law 2012-309 and the Lobbyist Code of Conduct in the future.

The Integrity Commissioner acknowledges that I fully cooperated with the Commissioner in this matter.

The Integrity Commissioner and I recognize that once this agreement is entered into, the Commissioner will not initiate a formal investigation, will not impose any sanction pursuant to the Lobbyist Registry By-law 2012-309, will close this case file as resolved and take no further action.

I consent to the publication of this agreement on the Integrity Commissioner's web page on the City of Ottawa web site.

Signed this ____ day of _____, 2016_.

Signature of Lobbyist

Robert Marleau, Integrity Commissioner