

Lobbying Disclosure for Board Members Policy – Proposed Revisions

Date:	May 26, 2014
To:	Toronto Public Library Board
From:	City Librarian

SUMMARY

The purpose of this report is to present proposed revisions to the Board's Lobbying Disclosure Policy for Board Members for approval. The policy was revised to respond to a Board motion adopted at its March 24, 2014 meeting requesting that the scope of the policy be expanded to apply to lobbying on any Board decision with sensible exemptions found in the City of Toronto, Ontario and Canadian federal lobbying laws. The proposed policy addresses the Board motion by broadening the scope of the policy beyond procurement processes to require Board Members to make public disclosures when they receive communications from, or plan to meet with people, attempting to influence Board Members in the exercise of their powers and duties under the Public Libraries Act.

Proposed exemptions to the policy were developed after a review of relevant federal and provincial legislation, and the City of Toronto Act and in consultation with Toronto's Lobbyist Registrar. The policy does not apply to:

- a) Board Members and employees of the Toronto Public Library while acting in their official capacity;
- b) Board Members and employees of the Toronto Public Library Foundation while acting in their official capacity;
- c) employees of the City of Toronto while acting in their official capacity;
- d) employees of local boards while acting in their official capacity;
- e) deputations made at Library Board meetings and/or Board Committee meetings;
- f) written communications received at Library Board and Board Committee meetings;
- g) a communication made as part of a public consultation that is restricted to the subject matter of the consultation;
- h) a communication i) that advocates for a community benefit and ii) there is no perceived financial benefit to the individual, corporation or organization (including a business, trade union or non-profit organization) on whose behalf the communication was made;
- i) a communication that is restricted to compliments or complaints about library services;
- j) a communication that is restricted to a request for information.

RECOMMENDATIONS

The City Librarian recommends that the Toronto Public Library Board:

1. approves the revisions to the Lobbying Disclosure for Board Members Policy (including Appendix A: Lobbying Discussion Memorandum and Appendix B: Lobbying Disclosure Form).

FINANCIAL IMPACT

The recommendation in this report will have no financial impact beyond what has already been approved in the current year's budget.

The Director Finance & Treasurer has reviewed this financial impact statement and is in agreement with it.

DECISION HISTORY

The Lobbying Disclosure for Board Members Policy was passed on February 27, 2012. On March 24, 2014, the Board approved a Motion requesting that the City Librarian submit a revised policy with:

- a. the inclusion of unions, including Local 4948;
- b. the explicit application of the Policy to include lobbying of Board Members for the purposes of influencing employee-labour negotiations such as collective bargaining (the Policy already explicitly only applies to Board Members, and does not apply to any Library Staff whose job it is to negotiate);
- c. the expansion of the Policy beyond merely procurement matters to include altering, interpreting, applying or otherwise dealing with existing contracts and agreements, or any Board resolution or policy;
- d. the inclusion of sensible exemptions, similar to those found in the City of Toronto, Province of Ontario, and Canadian Federal lobbyist registries, for deputations made at Board and Committee meetings and for communications with City or Agency, Board and Commission employees, if the employees are acting in their official capacity.

ISSUE BACKGROUND

Lobbying Disclosure for Board Members Policy and the *Public Libraries Act*

The Board's Lobbying Disclosure Policy was established under the authority of the *Public Libraries Act* which allows Board Members to establish policies that regulate their own behavior. The Act does not authorize the Board to regulate general lobbying activities or compel lobbyists to cooperate with any investigation. Therefore, the Lobbying Disclosure policy places the onus on Board Members to disclose lobbying activity rather than ask the lobbyist to report as in other lobbying regulatory regimes, including the City of Toronto. The Library does not have the legal authority to impose sanctions on lobbyists or compel lobbyists or Board Members to cooperate with any investigation. If by voluntary admission, however, a Board Member is in violation of the Policy, the Board could pass a motion to censure a Member or communicate to City Council that the Member is in violation of Library Board Policy.

Lobbying Registration and the *City of Toronto Act*

In first establishing the Board's *Lobbying and Disclosure Policy* the possibility of having Toronto Public Library included in the City of Toronto Office of the Lobbyist Registrar was considered and revisited again in revising the Policy to address the Board's motion. City Legal has advised that given a broad interpretation of the *City of Toronto Act*, City Council has the authority to amend the Municipal Code Chapter 140 to appoint Library Board Members (not staff) as "Public Office Holders" and make the lobbying of Library Board Members subject to the City's lobbying regime. Having Board Members but not Library staff included in the City's lobbying regime could be an issue as lobbyists could meet directly with Library staff without disclosure which would be inconsistent and have inappropriate operational consequences. The Board's motion specifically requires that Toronto Public Library Workers Union Local 4948 and labour-negotiations be included under the Library's Policy. City Council has included exemptions for the municipal Canadian Union of Public Employees (CUPE) locals in the City's lobby legislation and therefore having the Library under the City's lobbying regime may not address the Board's motion if a similar exemption was proposed.

Lobbying Regulation, Trade Unions and Collective Bargaining

The City of Toronto exempts employee trade unions from its lobbying registration requirements as outlined above. Though the federal and provincial government does not offer the same exemption to their respective employee trade unions, communications regarding collective bargaining do not fall under the definition of "lobbying" in the federal *Lobbying Act* or in Ontario's *Lobbyists Registration Act, 1998*.

COMMENTS

The proposed amendments underwent legal review and the Lobbyist Registrar was also consulted. The Registrar assisted to identify possible exemptions that could be included in the policy. The exemptions that were identified by the Lobbyist Registrar are included in the revision.

Proposed Changes to the Policy

The proposed changes to the policy address the revisions requested by the Board motion and are summarized below:

Amendment to the Policy Statement

When Board Members receive communications from, or plan to meet with, people attempting to influence Board Members in the exercise of their powers and duties under the Public Libraries Act Board Members must make disclosures using the process outlined in this policy.

This change broadens the scope of the policy beyond procurement matters to include “altering, interpreting, applying or otherwise dealing with existing contracts and agreements, or any Board resolution or policy.”

Exemptions

This policy does not apply to

- a. Board Members and employees of the Toronto Public Library while acting in their official capacity;*
- b. Board Members and employees of the Toronto Public Library Foundation while acting in their official capacity;*
- c. employees of the City of Toronto while acting in their official capacity;*
- d. employees of local boards while acting in their official capacity;*
- e. deputations made at Library Board meetings, Committee meetings;*
- f. written communications received at Library Board and Committee meetings*
- g. a communication made as part of a public consultation that is restricted to the subject matter of the consultation;*
- h. communication i) that advocates for a community benefit and ii) there is no perceived financial benefit to the individual, corporation or organization (including a business, trade union or non-profit organization) on whose behalf the communication was made;*
- i. a communication that is restricted to compliments or complaints about library services;*
- j. a communication that is restricted to a request for information.*

These changes provide for exemptions for local Board Members, including the Toronto Public Library, Toronto Public Library Foundation and employees of Toronto’s Agencies, Boards, Commissions and Divisions when acting in their official capacity. It also provides an exemption for members of the public who contact Board Members about a compliment or complaint regarding library services or make a request for information. Also excluded are deputations made at Board and Committee meetings and communications made at Library public consultations.

A community or public interest exemption is also included. The exemption has two components. First, the communication must advocate for a specific position in relation to a library policy, program or service and second, the communication cannot be made for the

benefit of any business, trade union or for-profit organization. It should be noted that the Library's Policy requires a Board Member to know what a person's interest in a matter may be and that it may be difficult at times for Board Members to know if a person may receive an additional private benefit.

Amendment to Definitions

"Lobbying" for the purposes of this policy, means oral or written communications by an individual, corporation or organization (including a business, trade union or non-profit organization) with a member of the Library Board, in order to influence the member in the exercise of his or her powers and duties under the Public Libraries Act including, but not limited to:

- a) the model and method of delivering a library service or;*
- b) the procurement of goods, services or;*
- c) negotiating or entering into an agreement, including collective agreements, with the Library;*
- d) altering, interpreting, applying existing agreements or;*
- e) Board resolutions and policies.*

These changes to the definition of lobbying make explicit the application of the policy to include lobbying for the purposes of influencing employee and labour negotiations. It also makes trade unions subject to the policy and thereby includes Toronto Public Library Workers Union Local 4948.

Amendments to Specific Directives

The *Proposal Discussion Memorandum* is now referred to as the *Lobby Discussion Memorandum* and has been modified to reflect the increased scope of the policy. It now applies to all potential lobbyists and no longer is limited to discussions related to procurement. The Memorandum also provides the opportunity for the form to be completed following communication with the Board member.

City Legal has advised that under the *Municipal Freedom of Information and Protection of Privacy Act*, Board Members are not required to give notice of collection prior to obtaining the contact information of lobbyists and having this information published on the Library's website.

Making a disclosure under the Policy

There are no changes to the disclosure process as outlined below. Lobbying Disclosure Form and the Lobbying Discussion Memorandum have been updated to reflect the expanded scope of the Policy.

1. Once this Memorandum is obtained, the Board Member may discuss the matter with the lobbyist.

2. Following the discussion, the Board Member completes a Lobbying Disclosure Form.
3. Both the Lobbying Disclosure Form and the Lobbying Discussion Memorandum are submitted to the Board Chair and City Librarian (or in the case when the Lobby Discussion Form and Lobby Discussion Memorandum have been completed by the Chair, forms are submitted to the Vice Chair and the City Librarian).
4. Both documents will be included in the next package of Board Meeting materials and will be published on the Library's website as part of the meeting package and on a separate page reserved for Lobbying Disclosure Forms.

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SIGNATURE

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ATTACHMENTS

Attachment 1. Amended Lobbying Disclosure for Board Members Policy