



## STAFF REPORT ACTION REQUIRED

11.

### Lobbying of Library Board Members

<b>Date:</b>	February 27, 2012
<b>To:</b>	Toronto Public Library Board
<b>From:</b>	City Librarian

#### **SUMMARY**

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At the December 12, 2011 meeting, the Board requested that the City Librarian identify policy options available to the Library to address lobbying outside of the period when a formal call has been issued.

This report recommends that the Board establish a policy for its Members to make disclosures when they have been subjected to lobbying. The policy option is within the Board's authority, supports transparency and open practices, and is cost effective.

#### **RECOMMENDATIONS**

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##### **The City Librarian recommends that the Toronto Public Library Board:**

1. approves the Board Member Lobbying Disclosure Policy (Attachment 1)

#### **FINANCIAL IMPACT**

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The recommendation in this report has no financial impact.

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

#### **DECISION HISTORY**

In August 2006, the City Manager provided a report to the Bellamy Recommendations Steering Committee that proposed design features for a lobbyist registration system. In that report the inclusion of Library Board Members was considered, but rejected.

The report noted that under the current legislation, City of Toronto Act, 2006 (COTA), the province explicitly excluded the Library Board and other Boards from the definition of "local board" for the purposes of the lobbying registry. However, the province provided City Council with some discretion to designate others, including persons who

are appointed to offices or Boards of the City as public office holders for the purpose of the lobbying registry. In regards to the Library, this discretion is limited to declaring Board Members as public office holders, but not staff. The report noted that treating “employees and members of the Board in an inconsistent manner...would have inappropriate operational consequences”.

In order to resolve these issues, the Steering Committee recommended that City Council request the Province of Ontario to amend legislation to allow the Toronto Public Library, the Toronto Police Services and other bodies to participate in a Lobbyist Registration System. This recommendation, brought before City Council in September 2006 through a report from the Policy and Finance Committee, was not adopted by Council. Council approved a recommendation that the Members of the Public Library Board not be included as public office holders, and instead be provided with an exemption from registration requirements.

At the December 12, 2011 meeting, the Board requested that “Library staff consult with the City of Toronto Lobbyist Registrar and identify options available to the Library in terms of policy changes to respond to lobbying outside the period when a formal call has been issued.”

## **ISSUE BACKGROUND**

Current policies at the Library address lobbying during a competitive procurement process which includes a formal call.

The Library’s Lobbying Disclosure for Requests for Proposals and Tender/Quotation Call Policy and the Procurement Processes Policy determine the restrictions that are placed on lobbying during a competitive procurement process.

As a matter of practice the Library stipulates that a bidder can only discuss a bid with the official point of contact named in the bid documents – usually the Library’s Purchasing Agent – and/or make deputations to the Board if they wish to advocate for their bid.

When this restriction is not in place, bidders or their representatives who lobby must complete and submit a disclosure form to the Purchasing Agent prior to the time set for the awarding of the contract. The forms require bidders to disclose:

1. the name, address and telephone number of the Bidder and any representative they have hired;
2. the Request or Call document number that was subject to lobbying;
3. a description of the general nature of communications;
4. the name of the person at the Library and department who was lobbied.

Failure to disclose can result in a bidder being disqualified from any Library competitions for one year. Since amalgamation only one disclosure of lobbying form has been filed.

Library staff are vigilant in notifying bidders of the procurement processes and lobbying restrictions.

Businesses or vendors that approach the Library with unsolicited proposals to sell products or services are asked to sign a Proposal Discussion Memorandum, before any meeting, stating that they have been made aware of the Library's procurement practices including the requirement for competitive bids. Completed Proposal Discussion Memorandums and lobbying disclosure forms are kept on file by the Library's Purchasing Agent and are available upon request.

The Library's Conflict of Interest policy requires employees to uphold the public interest when they are subjected to lobbying. Employees must advance the interests of the organization and avoid placing themselves in situations where an actual or potential conflict may occur.

## **COMMENTS**

### **Lobbying Disclosure Policy for Board Members**

To address the issue of lobbying outside of a competitive procurement process, a lobbying disclosure policy – which establishes a process for Board Members to disclose when they have had meetings or communications with lobbyists – is recommended. This would provide clarity for Board Members.

Lobbying is defined in the policy as “oral or written communications by prospective vendors and/or representatives with Members of the Library Board, in order to influence:

1. the model and method of delivering a library service or;
2. the procurement of goods, services or;
3. entering into an agreement with the Library.”

The Board can establish a policy that requires Board members to disclose when they have had discussions with lobbyists.

The recommended approach is:

1. Board Members must complete a Lobbying Disclosure Form (see Appendix 1 of Attachment 1) and require lobbyists to sign a Proposal Discussion Memorandum declaring an understanding that vendors are responsible for complying with Library policies that apply during a procurement process and that any discussion will not preclude the Library from engaging in an open competitive procurement process.

Board Members would be required to make this disclosure prior to conducting any meetings with lobbyists, or as soon as practical following a meeting if they were not aware of the nature of the discussion beforehand.

2. Board Members would be required to send lobbying disclosures and the signed Proposal Discussion Memorandums to the Chair and the City Librarian. Disclosures would be published as part of the public record as part of the Board agenda materials for the next Board meeting and kept on file by the Library's Purchasing Agent.

Having a Board policy for disclosing lobbying is recommended since this option is currently within the authority of the Board, supports transparent and open practices, is responsive to the limited lobbying activity at the Library and it has no financial impact.

The recommended Lobbying Disclosure for Board Members Policy has been reviewed by City legal counsel.

Staff will review all other policies germane to lobbying and any recommended changes will be brought forward to the Board.

## **Discussion with the Lobbyist Registrar**

The City of Toronto has an established Office of the Lobbyist Registrar that "promotes and enhances the transparency and integrity of City government decision making through public disclosure of lobbying activities and regulation of lobbyists' conduct." The Office has its own administration, established procedures and has the authority under COTA and the City's Municipal Code (chapter 140 - "Lobbying") to impose penalties for non-compliance such as failing to properly disclose lobbying activities or violating the Code of Conduct for lobbyists set out by the City. Under the Office of the Lobbyist Registrar, lobbyists register prior to communicating with any public office holder. The exception for this would be communications that were part of the public record, such as deputations made at public meetings.

Linda Gehrke, the City's Lobbyist Registrar, has advised that under the current City by-law, the Registrar's office does not have jurisdiction over the Toronto Public Library. The City's by-law – Municipal Code chapter 140, Lobbying – would need to be amended by Council to add Library Board Members. Due to restrictions in COTA, Library staff would not be covered. Including staff under the Registrar's authority would require changes to COTA by the province. The registrar stated that in order to fall under her Office's jurisdiction, Board Members would need to be deemed "Public Office Holders" under COTA. According to the Registrar, if Board Members were covered by the Office of the Lobbyist Registrar, they would be restricted from lobbying City and Library public office holders for one year after leaving the Board.

If the Council by-law and COTA were amended, the Registrar indicated that adding the Library could be covered with the Office's existing complement of staff, based on the assumption that there would be a limited number of registrations for Library related lobbyists. In addition the Registrar stated that the Office would need to request capital funding from City Council in order to make the necessary changes to add the Library.

## **CONTACT**

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## **SIGNATURE**

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Jane Pyper  
City Librarian

## **ATTACHMENT**

Attachment 1: Lobbying Disclosure by Board Members Policy