



Report Date: June 30, 2022
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Meeting Date: July 15, 2022

TO: Auditor General Committee
FROM: City Manager and Auditor General
SUBJECT: Whistleblowing – Reporting, Investigation and Protection ADMIN-002

REPORT SUMMARY

This report is intended to provide an update and to inform the Auditor General Committee (AGC) of the required next steps in finalizing the April 22, 2022, recommendations of the AGC regarding the Whistleblower Policy, which was subsequently approved by Council on June 21, 2022.

By way of background, at its April 22, 2022, meeting, the AGC received the Auditor General's Whistleblower Study, April 2022, and made recommendations to Council regarding revision of the City's Whistleblower Policy. The Auditor General's Whistleblower Study is attached for reference as Appendix A. The recommendations of the Auditor General were approved with amendments by the AGC. For reference, the final motion as approved by the AGC was as follows:

- A. THAT the Auditor General Committee recommend to Council to direct City staff to revise the Whistleblower policy so that it addresses complaints coming from sources external to the City and report back to Council before the end of July.
- B. THAT the Auditor General Committee recommend to Council to direct staff to revise the Whistleblower policy so that the Auditor General is delegated responsibility for the intake, assessment and investigation of complaints, making recommendations for corrective action and publicly reporting results, except for complaints involving elected officials, which are to be referred to the Integrity Commissioner.
- C. THAT the Auditor General Committee receive the Whistleblower Study for information.

REPORT

Background/Context

City management and the Auditor General have begun revising the Whistleblower Policy in accordance with the recommendations contained in the motions approved by the AGC during its meeting on April 22, 2022, which were approved by Council at its meeting on June 21, 2022.

Key components for this work to be completed and the path forward include the following:

Addressing shortcomings in the existing Whistleblower Policy

There was a pre-existing need to revise the Whistleblower Policy, but as a result of the pandemic that review was delayed. For instance, fundamental definitions such as what constitutes “serious misconduct” require updating in the context of the Respectful Workplace Policy and the City’s Code of Conduct Policy, which were introduced subsequent to the last update of the Whistleblower Policy. These shortcomings will be addressed as the Whistleblower Policy is updated in accordance with Council’s direction. There was also a pre-existing administrative process described for the general public with a confidential means to report incidents of serious misconduct, fraud, waste and wrongdoing which now has to be incorporated into the revised Whistleblower Policy.

Knock-on effect on other Council-approved policies

Initial efforts focussed on updating the Whistleblower Policy in isolation. However, given the impact on other policies it became apparent that the broader policy environment had to be considered to ensure that updates to the Whistleblower Policy do not create unintended conflicts with other existing policies. For instance, much as the Respectful Workplace Policy and the City’s Code of Conduct Policy impacted the Whistleblower Policy, updates to the Whistleblower Policy will similarly impact processes outlined in the other two policies. Roles and responsibilities of the City Manager, the Auditor General and the Chief Human Resources Officer will also need to be clearly defined.

Human Resources/Labour Relations

There is a good faith understanding that bargaining units and staff associations will be consulted prior to the implementation of changes to City policies that impact their members and city staff. Accordingly, it is important that there be sufficient time built into the process to allow for adequate consultation.

Next Steps

A working group co-chaired by the Auditor General and the City Managers Office, with representation from HR/Legal/Risk Management will draft and review amendments to the Whistleblower Policy, following Council’s direction and ensuring consistency with other related policies. The working group will report back to the AGC to provide an update on its progress after it is reconstituted following the October civic elections.

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Whistleblower Study

April 2022

14 April 2022

This report was prepared in response to a request from Council's Auditor General Committee concerning the City's whistleblowing function and how it compares to other Canadian local governments with an Auditor General (or equivalent).

This report is not an audit. I did not examine the effectiveness of the City's whistleblowing program or specifically seek evidence of the City's compliance with it. However, I note that the information gathered in support of this study suggests the program might benefit from an independent examination.

The report contains two recommendations for improving the structure of the City's whistleblower program. Because my recommendations are directed to Council, I have not sought a response from City management, however, management was provided with a draft of the report for comment. It is my hope that we will work together to bring my recommendations to life.

Mike Macdonell, MBA, CFE, CPA, CA
Auditor General
Vancouver, BC

Whistleblowing

Whistleblowing is a process generally understood to involve an individual reporting information they believe reveals activities that are against policy, laws, ethics, safety standards or similar rules and expectations. The City of Ottawa's Fraud and Waste Policy defines a whistleblower as "a person who calls attention to a questionable or illicit activity in an attempt to have the activity brought to an end."

While typically used to describe information provided by a person from within an organization, whistleblowing can also describe revelations provided by a person from outside an organization concerning the organization's conduct or the conduct of its employees.

Effective whistleblowing processes exhibit a number of characteristics, including:

- The confidentiality of whistleblowers is protected;
- Grounds for a valid whistleblower complaint are defined;
- All valid complaints are investigated;
- An investigation and reporting process is established, communicated and followed; and,
- The investigative process is independent of management.

Whistleblowing Practices in Other Jurisdictions

The information presented in this section was compiled from publicly available sources to provide a basis of comparison with the City of Vancouver's whistleblower program. It is intended to be illustrative rather than exhaustive. The three jurisdictions selected – Ottawa, Toronto and Calgary – each have an Auditor General or equivalent function and provide sufficient public information to allow for meaningful comparisons. No comments are made or intended in this study regarding the effectiveness of a particular municipal government's whistleblower program.

Ottawa

Framework – In 2005 Ottawa launched a Fraud and Waste Hotline to facilitate the reporting of suspected fraud or waste by employees. Council later made the Hotline available to the public in 2009. The Hotline is a confidential and anonymous service operated by an independent third party.

Ottawa's Fraud and Waste policy identifies appropriate channels for addressing complaints concerning affiliated entities (e.g. complaints concerning police and library are directed to the appropriate Board) and elected officials (complaints concerning elected officials are directed to the Integrity Commissioner).

Ottawa's Fraud and Waste policy defines appropriate matters to report and states "the City's intent to fully investigate any alleged fraud or waste."

Ottawa's Auditor General Bylaw delegates responsibility for the administration of the Fraud and Waste Hotline to the Auditor General in accordance with the Council's Fraud and Waste Policy, and requires the Auditor General to establish such protocols and procedures that are necessary for the conduct of investigations of suspected acts of fraud or waste.

Results – The Auditor General publishes an annual report on Ottawa's Fraud and Waste Hotline. In 2021 Ottawa's Fraud and Waste Hotline received 301 unique reports with two-thirds of reports coming from employees and the remaining one-third coming from the public.

- Roughly 1/3 of reports related to alleged misuse of city property, information or time.
- Roughly 1/4 of reports related to alleged violations of laws, regulations, policies or procedures.
- 10% of reports related to alleged theft, embezzlement, fraud, conflicts of interest or falsification of data.
- Roughly 1/4 of reports were not applicable under Ottawa's Fraud and Waste Policy.

Of the 302 reports closed during 2021, Ottawa's Auditor General notes that 31 were substantiated, meaning the allegation was accurate and constituted fraud or waste. Actions taken in response to substantiated complaints are the responsibility of management and are detailed in the report.

Toronto

Framework – Toronto established a Fraud and Waste Hotline in 2002. The general public, city staff and anyone doing business with the City can report suspected fraud, waste or wrongdoing involving city resources. The Hotline program is operated by Toronto's Office of the Auditor General.

The *Disclosure of Wrongdoing and Reprisal Protection* policy, part of the *Toronto Public Service By-law*, includes a duty for employees to report allegations of wrongdoing to their manager, their Division Head or to the Auditor General's Office. Allegations of wrongdoing received by managers are to be immediately reported to the Auditor General. The Auditor General reports that all complaints received are evaluated to determine the disposition or action to be taken and that all contacts are handled in confidence in accordance with Toronto's privacy policies.

The Auditor General's website provides definitions of wrongdoing, waste and fraud, the types of allegations investigated, an overview of the investigation process and the range of potential outcomes from investigations. It also identifies the role of Toronto's Integrity Commissioner with respect to complaints concerning elected officials.

Results – The Auditor General publishes an annual report on Toronto’s Fraud and Waste Hotline. In 2021 Toronto’s Fraud and Waste Hotline received 820 complaints containing 1,200 allegations (a complaint may contain multiple allegations). 197 of these complaints were closed after preliminary work, 181 were referred elsewhere, 90 resulted in an investigation, and action was yet to be determined for 352.

Of the 743 complaints closed in 2021, 307 were from previous years. 11% of these were substantiated in whole or in part.

Toronto’s Auditor General reports that, between 2017 and 2021, a total of \$28 million in actual losses were found and another \$1 million in potential losses were prevented. Additional benefits that are not quantifiable include:

- The deterrence of fraud and wrongdoing;
- Strengthened internal controls;
- Improvements in policies and procedures;
- Increased operational efficiencies; and,
- The ability to use complaint data to identify trends, address risks, make action-oriented recommendations to management and inform the Office’s work plan.

Calgary

Framework – In 2007 Calgary established a whistleblower program for the prevention, detection, reporting and investigation of any suspected act of waste and/or wrongdoing. The responsibilities of Calgary’s City Auditor in relation to the City’s Whistle-blower Program are described in the City Auditor’s enabling by-law, “including intake, assessment, investigation, reporting and corrective action recommendation processes”. Council’s Whistle-blower Policy includes a definition of confidentiality that restricts communication of information to a “need to know” basis.

Reports or allegations of waste, wrongdoing, or matters of public concern may be made by any employee, contractor, supplier, or member of the public who has knowledge of the City’s operational activities that they consider to be dishonest, unethical, wasteful, improper, a matter of public concern, or illegal. Allegations directed at members of Council are to be reported directly to the Integrity Commissioner. Wrongdoing is defined in the policy as theft, fraud, misappropriation, malfeasance and breaches of Calgary’s Code of Conduct.

The Whistle-blower Program is intended to ensure “all reported concerns received are appropriately reviewed and assessed.” Calgary’s Acting City Auditor reports that historically, employees have accounted for 56% of reports received. In 2021, employees reported 64% of all concerns.

Results – Calgary’s Whistle-blower By-law requires the City Auditor to report, on at least an annual basis, information related to reports received and investigations conducted. Summaries of substantiated complaints leading to recommendations are reported on the City Auditor’s website on a quarterly basis.

In 2021 the Whistle-blower Program received 154 new reports, representing 249 new allegations; 30 of these reports were approved for further investigation. A total of 33 investigations were concluded during the year, 27% of which were substantiated, leading to the identification of 44 opportunities for improvement.

Whistleblowing in Vancouver

Framework – Vancouver’s *Whistleblowing - Reporting, Investigation and Protection* policy was first approved by Council in 2008, and updated in 2017. The policy provides examples of serious misconduct, and differentiates whistleblowing from reports contemplated under collective agreements, human rights and harassment legislation, and complaints related to occupational health and safety. The City Manager is responsible for overseeing the policy, with day-to-day responsibility delegated to the General Manager, Human Resources.

The policy defines whistleblowing as “reporting serious misconduct in good faith”, however it applies only to City employees. There is no Council-approved policy with respect to complaints from external parties. Instead, the Office of the Chief Human Resources Officer has developed a Whistleblower / Fraud Submission policy, the purpose of which is described as “the standard process for members of the public with (*sic*) a confidential means to report incidents of serious misconduct, fraud, waste or wrongdoing. The online form is used to report matters such as: misuse of public funds, conflict of interest, abuse of position, manipulation or falsification of data and harm to people or property.”

The City’s Whistleblower policy requires information to be treated confidentially, with disclosure limited to a “need to know” basis. HR’s policy states that “matters covered by this policy are considered confidential and breaches of that confidentiality, including making public statements or disclosing information to the media, will be dealt with in accordance with this policy.”

Vancouver’s Auditor General has no role with respect to whistleblowing and is required to comply with the City’s Whistleblowing policy. This means that a whistleblowing complaint from City staff, received by the Auditor General, is to be referred to the General Manager of Human Resources. While there is nothing that prevents the Auditor General from investigating any matter, the requirement to refer complaints to City management is inconsistent with the independence of the Office.

Results – Vancouver’s whistleblowing policy states that “a summary of reports made under this policy and outcomes of subsequent investigations will be

submitted annually to the City Manager and to City Council.” We were informed that no such summary report has been written or reported to Council.

A spreadsheet listing whistleblower complaints from 2015 to present day was provided. It lists when each complaint was received and from whom, the information initially provided, who was assigned to investigate it, and the status (completed or in progress). In 2021 a total of 113 complaints were logged. Since this is a study, not an audit, we did not review supporting files to determine what actions were taken, whether these actions were adequate, or whether the outcomes were appropriate.

Observations and Recommendations

The table below summarizes the observations of this study.

| Municipality | Confidential | Grounds Defined | All Complaints to be Investigated | Employee & External | Results Reported | Independent |
|--------------|--------------|-----------------|-----------------------------------|---------------------|------------------|-------------|
| Ottawa | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Toronto | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Calgary | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Vancouver | ✓ | ✓ | ✓ | ✗ | ✗ | ✗ |

While the legislative and policy frameworks for whistleblowing complaints vary among municipalities and results are reported differently, this study has highlighted three significant issues in the City of Vancouver’s approach to whistleblowing:

1. Vancouver lacks a Council-approved policy for the handling of whistleblower complaints from sources external to the City.
2. The results of whistleblowing complaints are not being reported to Council.
3. The City’s reliance on the Human Resources department to investigate whistleblower complaints is an outlier compared to other Canadian municipalities with an Office of the Auditor General or equivalent, in that the investigation process is not independent from City management.

An update to Vancouver’s Whistleblowing policy was approved by Council on October 21, 2017, with another review to take place by October 31, 2020. In light of this overdue review and the issues noted above, the following two recommendations are made to Council:

1. *Council should direct City staff to revise the Whistleblower policy so that it addresses complaints coming from sources external to the City.*
2. *Council should consider whether the City’s existing Whistleblower policy should be revised in the context that there are now independent Offices of the Auditor General and Integrity Commissioner.*