



**Office of the Auditor General: Investigation into
the Giver 150 Playground at Mooney's Bay Park,
Tabled at Audit Committee – June 22, 2017**



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Executive Summary

Purpose and Rationale

On May 13, 2016, the City issued a News Release, which formally announced that an Agreement had been signed with Sinking Ship Entertainment (SSE), a Toronto-based company, to construct a new Playground (the “Playground” or “the Giver 150 Playground”) at Mooney’s Bay Park in Ottawa. Following the News Release, several media reports raised questions regarding the Playground. These reports focused on concerns regarding a perceived lack of transparency and public consultation associated with the project. The media attention raised questions about whether City staff followed policies and protocols in the period leading up to the Agreement with SSE.

In July 2016, the OAG commenced an investigation (“the Investigation”) into the Giver 150 Playground in response to reports received directly by the Auditor General and via the City’s Fraud and Waste Hotline. The objective of the Investigation was to identify the extent to which the City complied and demonstrated compliance with relevant by-laws, policies, procedures and other applicable requirements during the period leading up to the signing of the Agreement with SSE. This report details the results of the OAG’s investigation including findings and recommendations.

Findings

The Investigation concluded that the City did not breach any relevant by-laws, policies, procedures or other applicable requirements¹. However, the Investigation highlighted a gap insofar as the City had no clear intake and evaluation mechanism in place to engage in relationships like the one proposed by SSE². It also identifies several weaknesses and lessons learned based on the extent to which the City demonstrated the principles of transparency, accountability and due process. These include weaknesses related to the documentation of due diligence and related decision-making,

¹ The Investigation concluded that the arrangement with SSE reflected a partnership rather than a procurement. As such, procurement-related requirements including the Ethical Purchasing Policy and the Ottawa Option Policy were not applicable.

² We note that, in 2012, the City of Toronto developed a policy which establishes the guidelines, criteria and delegated authorities associated with relationships like the one proposed by SSE to the City of Ottawa.

as well as the process for identifying a potential need for public engagement / consultation. This report includes a number of recommendations that address opportunities for the City to avoid or mitigate reputational risk or other implications should situations like this one occur in the future.

Conclusion

Based on the Investigation conducted into the Giver 150 Playground, the City was not in breach of any relevant by-laws, policies, procedures or other applicable requirements. However, the actions and decisions taken in the preparation and approval of the Agreement with SSE did not fully reflect the principles of transparency, accountability and due process.

In addition to supporting Council's November 2016 direction that City staff assess the need for additional policy guidance regarding arrangements like the one with SSE, this Investigation highlights the importance of ensuring that effective tools and protocols are leveraged when City staff are dealing with situations of a potentially high-profile nature.

Recommendations and Responses

The investigation resulted in a few recommendations, as listed below.

Recommendation #1

That the City implement documentation protocols, such as documentation of meetings agendas/minutes/records of decisions, that must be activated in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Under both the City's *Records Management Policy* and Procedures as well as the *Records Retention and Disposition By-law*, being By-law No. 2003-527, as amended, all staff have an obligation to know and apply the *Policy* and the *By-law*. In doing so, staff are required to identify, classify and capture Official Business Records in one of the City's two record management systems.

The City's existing *Records Management Policy* defines two types of records: Official Business Records ("OBRs") and Temporary Records. Official Business Records document work-related decisions and actions. OBRs show:

- what happened,
- when,
- who was involved,
- what was decided or recommended and by whom.

OBRs provide evidence of City decisions and decision-making, policies, procedures, services, operations (including transactions, activities, etc.).

Increased awareness of the importance of maintaining records and, in particular, the responsibility of institutions to accurately document key decisions ('Duty to Document') has been prompted by recent changes to the *Municipal Freedom of Information and Protection of Privacy Act* along with calls for further policy changes from information officers such as the Information and Privacy Commissioner of Ontario. In response, existing records management policies and practices have been reviewed and updated. Similarly, several communications have been circulated to senior management, management and to all City staff over the past two years reinforcing that records are essential for good government and serve as evidence of the decisions that have been made. In addition, the

Employee Code of Conduct expressly emphasizes the importance of keeping “records of our important decisions” in the sections on Transparency and Respect.

The City Clerk and Solicitor will continue to monitor relevant legislation and the Duty to Document requirement with respect to any subsequent municipal best practices. Any necessary changes or new guidelines will be brought forward as part of Information Management’s annual report to Committee and Council.

Finally, and following on direction from the Senior Leadership Team, the Office of the City Clerk and Solicitor is conducting a corporate-wide communications plan in an effort to consistently reinforce the value of information and employee’s records management responsibilities, including the duty to document and record important decisions. The plan will coincide with the release of additional Municipal Duty to Document guidance by the Information and Privacy Commissioner of Ontario expected in early Q4 2017. Further, the City Clerk and Solicitor will look at incorporating training and guidance related to Duty to Document as part of ongoing training for all City employees.

Recommendation #2

That the City implement a protocol whereby formal consideration of accountability and transparency mechanisms is considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Council-approved accountability and transparency measures that are currently in place include the hiring of a Lobbyist Registrar to oversee the City’s Lobbyist Registry. The purpose of the Lobbyist Registry is to provide accountability and transparency around lobbying activities that serve to benefit an individual or group with a business or financial interest. The Registry does this by providing a public, searchable record of who is lobbying whom, on what subject matter and when the lobbying is occurring.

In response to the Lobbyist Registrar’s 2016 Inquiry Report on the Playground Partnership Project at Mooney’s Bay Park, an amendment was made to the Transparency section in the *Employee Code of Conduct* to expressly require staff to notify lobbyists of their obligation to record their activity in the Registry.

In keeping with the City's *Accountability and Transparency Policy*, each delegation of authority to staff is accompanied by the obligation for the individual exercising the authority to report such exercise out, on a routine basis, usually to the appropriate Standing Committee or Council. Generally, use of delegated authority by departments is reported on an annual basis to the appropriate Standing Committee in the form of Information Previously Distributed ("IPD"). Furthermore, the *Delegation of Authority By-law*, includes a process for obtaining Ward Councillor concurrence and reporting on delegated authority that was established based on the Site Plan approval process. The Site Plan approval process provides steps from pre-application to final decision on a site plan, including a step at which the Ward Councillor may lift delegated authority if unsatisfied with conditions of approval outlined in staff's Delegated Authority Report.

As part of the 2018-2022 Council Governance Review, staff of the Office of the City Clerk and Solicitor will lead a review of service area-specific processes for consultation and decision-making within delegated authority. The review will seek to identify gaps in existing processes with respect to consultation and reporting, as well as to identify potentially high-profile situations for which the development of such processes would be beneficial. This report will be tabled during the current Term of Council and considered by the 2018-2022 Term of Council. Management will develop training for all new managers and new employees on requirements, as set out broadly in the *Delegation of Powers Policy* and as documented in such service area-specific processes that will provide for enhanced accountability and transparency of decision-making. This training will be incorporated into existing modules following approval of the 2018-2022 Council Governance Review Report.

Recommendation #3

That the City develop a tool and/or protocol that would serve to help identify situations where public engagement should be considered in potentially high-profile (e.g. sensitive or higher risk) situations.

Management response:

Management agrees with this recommendation.

Residents expect to be engaged by the City on a wide variety of subjects, programs and services. City Council recognized the importance of improving public engagement outcomes by approving the Public Engagement Strategy in December 2013.

As approved by Council, the Public Engagement Strategy is required for use by all City staff as the overarching framework and approach for public engagement. The Strategy assists staff to determine when engagement is appropriate, how engagement should be designed and implemented, who should participate, and provides tools and training that should be used for different engagement activities.

The Public Engagement Strategy guidelines identify a number of reasons to engage the public. Contained within the Strategy is a checklist to assist staff in determining if public consultation is required. The criteria for public engagement is as follows:

1. A legislated requirement to consult the public.
2. Council direction to consult the public.
3. Public input required to help define or influence the final outcome.

The Public Engagement Strategy includes a toolkit to support public consultation. As each department is ultimately responsible for public consultation, the tools were designed to be flexible and responsive to staff and departmental needs, offering each department the ability to tailor the tools to their service area. Public Engagement training is also available through the Learning Centre for City staff.

Evaluation and continuous improvement is an important component of the Public Engagement Strategy. Components of the evaluation include monitoring the implementation of the Public Engagement Strategy and developing an evaluation of the effectiveness of the tools and guidelines.

Working with departments, management will communicate the importance of using the Public Engagement Strategy and encourage staff to participate in the training courses. This will be done through internal communications and by reaching out directly to each departmental Business Support Services branch. This initial communication to staff is planned for early June 2017. Following this, the internal communications group will develop a communications plan for the Public Engagement Strategy in late Q2/Q3 with implementation scheduled for Q3/Q4 2017.