



Human Rights and Anti-Harassment/Discrimination – Complaint Procedures

Purpose

The following procedures have been established so that complaints of discrimination and harassment can be reported and resolved internally and are intended as an alternate dispute resolution process to more formal legal avenues. These procedures should be read in conjunction with the City of Toronto **Human Rights and Anti-**

Harassment/Discrimination Policy (HRAP) (https://www.toronto.ca/?page_id=319459).

The goals of the HRAP and the complaint resolution procedures is to a) assist employees and service recipients in exercising their rights where they believe that they have experienced harassment/discrimination and b) to prevent, correct and remedy situations of discrimination or harassment and not to be punitive, although discipline may result.

The *Manager's Guide to Addressing Employee Harassment and Discrimination Complaints & Incidents* ("Manager's Guide") was prepared to assist management in fulfilling their policy and legislated obligations and provide guidance on all steps required to appropriately address workplace and service issues of discrimination and/or harassment under the HRAP in a fair and timely manner. Management must adhere to the steps identified in the Manager's Guide when addressing complaints and incidents of harassment and discrimination.

Jurisdiction

The following procedures apply to incidents and complaints of harassment and/or discrimination brought under the City of Toronto's HRAP. References to complaints within these procedures may also include incidents of harassment and/or discrimination where applicable. Complaints or incidents under the HRAP may be raised by employees, recipients of services, users of facilities, those who contract directly with the City, as well as those who occupy accommodations under the jurisdiction of the City of Toronto.

If your complaint falls under the HRAP, you may use the Human Rights Office (HRO) **confidential online complaint form** (<https://www.toronto.ca/city-government/accessibility-human-rights/human-rights-complaint-form/>) to file a complaint with the HRO.

The following are exceptions to the City's jurisdiction to handle complaints under the HRAP:

Other Avenues of Complaint

A complaint under HRAP is one of several complaint avenues available to pursue discrimination or harassment complaints. Making a complaint under this policy does not limit individuals from pursuing other avenues of complaint.

The City's Human Rights Office (HRO) may intervene in a complaint where the same or related events are raised in a criminal complaint. The HRO cannot intervene in a complaint where the same or related events have been pursued using another complaint avenue, such as an application to the Human Rights Tribunal of Ontario, a complaint to the Ministry of Labour, Training and Skills Development (MOL), an application to the Ontario Labour Relations Board, a civil suit, a grievance pursuant to the terms of an applicable collective agreement or other legal proceeding, unless that other proceeding is withdrawn.

City Council and Local Boards (Restricted Definition)

The HRO has no jurisdiction over acts or procedures (e.g. policy decisions) of Toronto City Council or **Local Boards (Restricted Definition)**. (<https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/integrity-commissioner/codes-of-conduct-and-resources/members-of-local-boards-restricted-definition/>)

If you are not an employee of the City and believe that you have experienced harassment and/or discrimination from a Member of Toronto City Council or a Member of a Local Board (Restricted Definition), or if you are a Member of City Council or a Local Board (Restricted Definition) and believe you are experiencing harassment and/or discrimination by another Member, you may consult and/or file a complaint with the City of Toronto's Office of the Integrity Commissioner. You may contact the office at 416-392-3826 or **visit the Integrity Commissioner** (<https://www.toronto.ca/city-government/accountability-operations-customer-service/accountability-officers/integrity-commissioner/about-the-integrity-commissioner/>).

If you are a City of Toronto employee and believe that you have experienced harassment or discrimination from a member of Toronto City Council or a Local Board (Restricted Definition) see section B3 below for the applicable complaint procedures.

Agencies and Corporations

The HRO has no jurisdiction over the City's various **Agencies and Corporations** (<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/city-managers-office/agencies-corporations/>), (e.g. the Toronto Transit Commission, Toronto Community Housing, Police Services). As per the Toronto Public Service By-Law, Agencies and Corporations are to have internal human rights policies and complaint procedures that meet provincial legislation. Complaints of discrimination and harassment, including access to and use of facilities and occupancy of accommodations under the jurisdiction of Agencies and Corporations must be made directly to them.

Contracted Services at the City

All City contracted service providers are required to have internal policy and dispute resolution processes, consistent with the City's process and provincial legislation. Complaints of harassment and/or discrimination related to contracted services may be made to the contractor and/or division responsible for the contracted service.

Where a complaint or incident is brought to the attention of the contracted service provider, the contractor will notify the City upon receiving the complaint or incident. The contractor will be responsible for responding to and addressing the complaint where they or their staff are alleged to have engaged in wrongdoing, in accordance with their internal harassment and discrimination dispute resolution processes and the City's policy and **Declaration of Compliance with Anti-Harassment/Discrimination Legislation**  (<https://www.toronto.ca/wp-content/uploads/2021/04/95b1-Declaration-of-Compliance-with-Anti-Harassment-and-Discrimination.docx>). The Contracted services provider must also provide notice to the City of the outcome.

A – Complaint Procedures

A1. Confidentiality

Application

All persons involved with a HRAP complaint, including the person making the complaint (complainants), the person who the complaint is about (respondents), support persons, witnesses, management, union/association representatives and investigators are expected to treat the matter as confidential.

Confidential information includes: information about the existence of the complaint or investigation itself, the contents of a complaint or an investigation interview, identifying information about any individuals involved, the outcome of the investigation or complaint, and/or the investigation report or results letter.

All persons involved with a HRAP complaint are not to ask individuals if they have participated in an investigation process, discuss any details about the complaint or any investigation interviews. They are also not to advise anyone in the workplace or otherwise connected to the workplace and/or service provision about the complaint and/or investigation unless the disclosure is necessary for the purpose of managing the complaint, investigating, taking corrective/remedial action or is otherwise required by law.

Employees involved with a harassment/discrimination complaint may be required to sign a confidentiality agreement.

Employees may be disciplined if confidentiality is breached up to and including termination, unless one of the exceptions below applies.

Confidentiality Exceptions

Individuals may communicate with their union/association/legal representative, immediate family members who are not connected to the allegations or the City workplace(s) involved in the allegations, health care practitioners or another legal authority, including the police.

Immediate family members to whom confidential information is disclosed should be requested to keep the information confidential. Immediate family members who are also City employees are equally bound by the confidentiality provisions applicable to City employees contained in this section, in relation to the confidential information they have received.

Duration

From the time a complaint is initiated, throughout the investigation, and after the investigation or resolution of the complaint, confidential information should not be disclosed.

Additional Management obligations

Managers and supervisors are required to keep information as confidential as possible when addressing concerns under the HRAP. This includes refraining from sharing information with other members of management unless necessary as part of the investigation, to escalate to the attention of appropriate level of senior management, or to address the concern. Managers and supervisors are also subject to discipline for breaches of confidentiality.

Under the *Occupational Health and Safety Act (OHSA)*, complaint details, investigations, and results/reports produced under the HRAP are not considered to be occupational health and safety reports. As such, these documents are not to be shared with joint health and safety committees.

Additional Investigator obligations

Subject to the requirements of procedural fairness of the investigation/resolution process, the investigator will preserve confidentiality as much as possible, or as legally required or permitted.

Consult the Human Rights Office (HRO) for additional details regarding confidentiality exceptions.

A2. Confidentiality Exceptions

The HRO is committed to protecting the confidentiality of its consultations, investigations and related records. Where an individual/group who has consulted the HRO or been involved in an HRO complaint engages another legal proceeding related to the subject matter of the HRO consultation/complaint, upon receipt of the legal proceeding documentation (e.g. grievance, WSIB report, MOL complaint, statement of claim etc.) and request from the City's Legal Services Division and/or the People & Equity Division, the HRO will determine whether it is appropriate to:

- Confirm or deny whether it was consulted;
- Respond to specific questions regarding the consultation for the purpose of responding to the legal proceeding;
- Provide a brief summary of the nature of the consultation;
- Provide originating and/or concluding complaint documentation (e.g. the initial complaint or results letters).

In cases where an HRTO application is filed by an individual/group who has consulted the HRO on the same and/or related matter, the HRO will, upon receipt of the application and a request from the Legal Services Division, provide a copy of its file to the Legal Services Division.

Where the entire contents of a HRO file is required related to any other legal proceeding, the HRO may determine whether consent of the employee involved or an order of the court/tribunal/arbitrator or other adjudicative body is required prior to disclosing its file or providing any information beyond that outlined above.

A3. Complaint/Incident Source:

Complaints or information about incidents that may be a contravention of the HRAP will be accepted from any source that provides reasonable grounds upon which to initiate an intervention. Complaint/incident sources may include the individual who was subjected to the alleged contravention an involved person or group, a witness or other third parties.

All persons who believe that they have experienced or witnessed harassment and/or discrimination should keep detailed notes about the issue(s) and preserve all relevant documentary or electronic records.

Complaints or information about incidents can be communicated verbally, in writing, or by submitting a complaint form.

Where deemed necessary by the HRO, Complainants will be required to provide a written account of their concerns. Where necessary and appropriate, the HRO may assist in drafting the complaint.

A4. Time Limits:

The time limit for the filing complaints under the HRAP is up to one year after an individual experiences discrimination and/or harassment. If there was a series of harassing and/or discriminating events, the individual can file a complaint up to one year after the last event.

A5. Notification of complaint:

Typically, respondents will be advised that a complaint under HRAP has been filed against them as soon as appropriate.

In certain circumstances, the respondent may not be advised of the complaint. Such circumstances include where the complaint does not warrant exploration, there are insufficient details, where the complaint is outside the HRAP mandate or where an issue can be resolved through a remedy such as training. (Please see A9.2 for process of disclosing allegations to the Respondent).

A6. Complaint Records:

Any record of a complaint and all related documentation, including original notes and documentary or electronic evidence, will be handled confidentially and stored in a secure location separate from employee personnel files in accordance with the Records Retention Schedule or other legal requirements. Records of a complaint will only be placed on an employee's personnel file when they have been found to have engaged in conduct contrary to the HRAP and/or corrective action is taken. Any record of discipline is subject to the provisions of any applicable collective agreement.

A7. Range of Resolution Options:

Several options to resolve harassment and discrimination concerns are available for complainants. Informal approaches can foster prompt resolution and prevent escalation, particularly when concerns are raised promptly. These are opportunities for parties to resolve a dispute, ensure the workplace is free from harassment and discrimination and address broader issues that caused or contributed to the dispute.

A7.1. Consultation – Advice & Assistance

Complainants may benefit from having expert information and advice before deciding how to proceed with a discrimination or harassment concern. Complainants can consult management, HRO, or other sections in People & Equity. These staff all have a responsibility to take action to resolve and prevent harassment and discrimination (refer to section 3.0 of the HRAP, Roles and Responsibilities) and can provide advice, assistance, coaching, and referrals to assist complainants in addressing harassment or discrimination themselves. Employees may also consult their union or staff association as well as the Employee Assistance Program.

Service or facility users should contact the relevant supervisor or manager as soon as practicable to resolve the issue and may contact the HRO at any time for confidential advice.

A7.2. Talking to the person about their conduct

All complainants are encouraged to make good faith efforts to attempt to resolve matters themselves before filing a complaint. If a complainant feels they are experiencing harassment or discrimination, the complainant should immediately make known to the person responsible that the conduct is unwelcome or offensive and may be in breach of the HRAP. It is important that this message be clear and unambiguous. If addressing the person responsible is not appropriate and/or is unsafe, complainants may pursue other resolution options outlined in these procedures.

Where an individual is spoken to about their conduct that is a breach of the HRAP, the individual, including management staff, is expected to make reasonable adjustments to their behaviour to resolve the matter.

A7.3. Interventions by other staff

If a complainant is unable to resolve the issue themselves, does not feel safe asking the person to stop, feels that a direct request is inappropriate, or if the discrimination or harassment continues after asking the person to stop, the complainant may request management or the HRO to intervene to facilitate resolution.

A complainant can do this by making a verbal or written complaint, to management or the HRO.

Employees are encouraged to complete a Workplace Harassment/Discrimination complaint form to document their complaint. Where an employee is raising a concern about their superior, the employee should escalate the complaint to the next appropriate level of management or to the HRO.

For employee and resident complaints the following details should be included in the complaint to the extent possible:

- Who is the complaint or alleged incident against or related to?
- What happened – a description of the events or situation, including specific details of what the respondent(s) said or did that the complainant believes could be considered harassment or discrimination
- The Human Rights Code ground, if applicable
- When the alleged incident(s) happened – dates and times
- Where the alleged incident(s) happened
- Who saw the alleged incident(s) happen – the names of witnesses, if any
- Any other relevant context or documentation (e.g. texts, emails, etc.);
- How the complainant is aware of the situation, if not directly involved.

When a complainant has requested management or the HRO to intervene by submitting a complaint the assessment process under A9.1 is to occur. The complainant should be notified within 10 business days of submitting their complaint whether an investigation is required, whether another dispute resolution option is appropriate, or what the anticipated next steps are.

When Complaints are brought to Management

Where management has been aware of information of an incident or received a complaint about possible harassment or discrimination, management is obligated to ensure it is addressed and dealt with in a timely manner.

Where a complaint or information about an incident is brought to management, the receiving manager/supervisor should consult the Manager's Guide.

Where the complainant does not use the complaint form, but communicates their concern(s) verbally, management will confirm the allegations with the individual.

When complaints are brought to the HRO

If the HRO is contacted by a complainant, HRO staff will determine in consultation with a complainant whether the concern(s) can be referred to division management to allow an opportunity to resolve the matter or whether the matter should be addressed by the HRO. If the HRO is contacted by management, HRO staff will determine, in consultation with management, whether the concern(s) would be best addressed by management or the HRO.

HRO staff can also advise parties where they have concerns about real or perceived bias, fairness, reprisal etc., when management is exploring the parties' concerns.

Intervention options by management or HRO may include some or all of the following:

- A preliminary assessment of the concerns and fact-finding meetings as required
- A more in-depth assessment and/or investigation of the concerns and allegations; consulting, advising, meeting with and/or interviewing management, the respondent, witnesses, People & Equity staff, etc.
- A review of documentary evidence, e.g., email messages;
- Where appropriate, an option by parties to participate in mediation or to have a facilitated negotiation to resolve the issue;
- A separate communication in writing to both the complainant(s) and respondent(s) advising whether allegations were fully, partially, or not substantiated, and confirmation, where necessary, of corrective actions that will be undertaken to resolve and remedy policy breaches.

Where the complaint or incident alleges non-Code workplace harassment or workplace sexual harassment (based on sex, gender identity, gender expression, and sexual orientation) an investigation appropriate in the circumstances is required. This requirement under the HRAP originates from the *Occupational Health and Safety Act*.

The HRO may also initiate a Special Response Investigation (SRI) whether or not a complaint has been filed, if it has information that suggests the existence of an outstanding specific or systemic problem (see A10).

A8. Mediation

Where appropriate, the HRO may offer to mediate the complaint at any point before, during or after an investigation. Mediation for workplace harassment and sexual harassment complaints can only occur after an investigation that is appropriate in the circumstances has been completed. Participation in mediation is voluntary and either party to the mediation is entitled to have a “support person” (please refer to A 9.6 for role and limitations regarding the support person).

All mediation discussions will be held on a confidential, without prejudice basis. Any settlement would have to be satisfactory to both parties, be consistent with the HRAP, and approved by senior division management where appropriate. Parties will be required to sign confidential Minutes of Settlement.

A9. Internal Investigations Process

Investigations led by divisional management or the HRO will be conducted in a fair and impartial manner appropriate in all of the circumstances, taking into consideration the nature of the complaint, the seriousness of the issues, the parties involved, and the availability of relevant information including documents and witnesses, etc.

The investigator has the authority to speak with anyone, examine and copy any documents, records, files and enter any work locations which are relevant to the complaint.

A9.1 Receiving and Assessing the Complaint

Upon receipt of a complaint or incident, Divisional management should start to document their response using the Management Assessment Form. If the complaint or incident is Code-related, Divisional Management are expected to contact the HRO for guidance. If the complaint or incident is not Code-related see A.13.

For Code-based complaints, divisional management may consult with the HRO to determine whether an investigation is required, and if so, whether the HRO or divisional management should have carriage of the investigation.

- A “Division-led” investigation is an investigation conducted by the Complainant and/or the Respondent’s Division, People & Equity, or any other section other than the HRO.
- An “HRO-led” investigation is an investigation conducted by the HRO, as a neutral third party.

“HRO-led” investigations and “Division-led” investigations follow the same process.

If the HRO is contacted directly by the Complainant and the HRO has decided to conduct an investigation, the appropriate senior divisional manager will be notified of the investigation by the HRO.

If it is determined that the Division will be conducting an investigation, management should consider potential for real or perceived bias when choosing an appropriate investigator. Consult the Manager’s Guide, ELR or the HRO for more information.

HRO-led investigations may also explore whether broader issues contributed to the complaint and systemic concerns identified by the HRO through the investigation process.

A9.2 Notification to Parties

The complainant should be notified within 10 business days of making their complaint whether an investigation is required or whether another dispute resolution option is appropriate, and what the anticipated next steps are.

Typically, respondents to a complaint resulting in an investigation will be notified that a complaint under the HRAP has been filed against them as soon as appropriate.

Both complainants and respondents must be provided a fair process at all times during the investigation (i.e. procedural fairness). This includes notification of the investigation process and allegations. The type and timing of the notice depends on the nature and severity of the allegations, the possible outcomes, and whether the investigation is divisional-led, HRO-led, or led by a third party. Ensure that all steps are in accordance with applicable Collective Agreement requirements.

In all circumstances, the respondent must be provided with an opportunity to respond to the allegations, including additional allegations that arise in the course of the investigation. Depending on the circumstances, the investigator will determine how the allegations will be provided to the respondent. Options include:

- providing allegations during the initial investigative interview, either orally or in writing;
- providing a follow-up meeting to allow for an additional opportunity to respond to the concerns;
- in some limited circumstances, where appropriate, and at the discretion of the investigator, the respondent may be provided the allegations either orally or in writing, in advance of the initial meeting with the investigator (e.g. where an external investigator is conducting the investigation).

A9.3 Time for Completion of Investigation

Investigations under the HRAP should be completed within 90 days from the date that the complainant is notified that an investigation is required. Parties will be advised in writing prior to the end of the 90 day period if a delay is anticipated. Completion of investigations must not exceed 6 months unless there are extenuating circumstances. Any additional delays must be communicated in writing to the parties.

A 9.4 Interim Measures

The Division or the HRO may determine, in consultation with others as necessary and on a case-by-case basis, whether during an investigation the complainant or respondent should be relocated within the division, provided with an alternate reporting relationship, or placed on a paid leave, or whether other alternate interim measures should be taken.

Safety measures should be explored as appropriate. However, identifying details and/or complaint information should be limited only to what is required for the purpose of obtaining advice when consulting with other experts (Occupational Health and Safety, Security, etc.).

A9.5 Investigator Expectations

The investigator will conduct a thorough, fair and unbiased investigation, including interviewing the complainant(s), respondent(s), and witnesses, gathering and reviewing documentary and other evidence as appropriate in the circumstances. The result of the investigation will include findings of fact (including whether an allegation is substantiated or not) based on the evidence, and draw conclusions from those findings of fact, in relation to the violations of the HRAP or applicable legislation as alleged in the complaint.

A9.6 Support Persons

Complainants and respondents have the right to be accompanied by a support person of their choice during meetings regarding a complaint under the HRAP. Support Persons can be a union or association representative, or an individual who is not in any way connected to the investigation or a potential witness, such as a family member.

Where the investigator is of the opinion that the presence of the support person selected is inappropriate or that it may or is hindering the process, the investigator will advise the relevant party who shall be entitled to select another support person provided that doing so does not hinder or unduly delay the meeting/process.

The purpose of the support person is simply to be present to support the complainant or respondent. They are not permitted to participate in any way. As this complaints procedure is a mechanism for alternative dispute resolution, parties are not entitled to select legal counsel to fulfill the role of support person.

Support persons are bound by the confidentiality provisions contained in A1.

Witnesses are not entitled to bring a support person to meetings. However, if a witness offers details/evidence that may identify them as a respondent or if others implicate the witness as a potential respondent prior to the meeting, the witness will be informed of the potential change in status and their right to a support person, and the meeting will be re-scheduled if a support person is requested, but not available. If a witness offers details/evidence that identifies they have a right to make their own complaint, the meeting will pause and the witness will be informed of the right to be treated as a complainant and to have a support person in the meeting. If the witness chooses to be treated as a complainant, the meeting will be re-scheduled if a support person is requested, but not available.

A9.7 Investigation Conclusions to be in Writing

At the conclusion of an investigation, the investigator will prepare a written report that includes the allegations, respondent's position, witness and documentary evidence, factual findings, conclusions and discussion about policy violation(s).

For Division-led investigations, the investigator may complete the Management Assessment Form in the place of preparing a report. This will require the investigator to make a determination if the allegations are fully substantiated, partially-substantiated, or not substantiated, and whether any substantiated allegations are a breach of the HRAP. Management should refer to The Manager's Guide or contact the HRO or Employee & Labour Relations for assistance in coming to their conclusions.

For HRO-led investigations, the investigator is expected to draft a report to be provided to the appropriate senior divisional management contact. In some cases, an executive or summary report may be created.

The report may also include recommendations to support divisions in addressing issues identified by the investigation. The HRO can make recommendations to address any existing problems and/or prevent similar problems from occurring in the future, at the

conclusion of any investigation, whether HRO- or Division-led.

A9.8 Notification of Results of the Investigation to Parties

The complainant and respondent will be provided with separate results letters notifying them of the outcome of the investigation. Results letters should be provided as soon as practicable after the conclusion of the investigation.

A9.9 Corrective actions

Final decisions regarding corrective actions, if any, including disciplinary consequences for City employees, will be made by the Division in consultation with Employee & Labour Relations and/or Legal Services as appropriate.

A10. Special Response Investigations (SRI)

Special Response Investigations (SRI) refer to a more formal investigation process that may be conducted where the complaint is significantly serious or systemic in nature, or where the HRO deems necessary. SRI investigations are only conducted by the HRO at the discretion of the HRO.

SRIs follow the process outlined in section A9, with the following exceptions:

A10.1

All complaints of a serious or systemic nature related to Code-based harassment or discrimination will be referred to the HRO for consideration and direction on the appropriate response.

A10.2

HRO staff will assess whether a SRI is the only appropriate way to address the concern or if another process under A7, A8, or A9 would be more appropriate.

A10.3

For an SRI to commence, a complaint must be in writing and signed by the complainant. Where necessary and appropriate, the HRO may assist in drafting the complaint.

A10.4

The responsible division head and/or Deputy City Manager or City Manager as applicable will be notified of an SRI as soon as it is initiated by the HRO.

A10.5

Respondents to a complaint being investigated as an SRI will be notified of the allegations as soon as appropriate during the investigation process.

A10.6

At the conclusion of an investigation, the investigator will prepare a written report that includes the allegations, respondent's position, witness and documentary evidence, factual findings, conclusions and discussion about policy violation(s).

The HRO will make recommendations to correct any existing problems and/or to prevent similar problems from occurring in the future.

A10.7

Findings will be provided to the Deputy City Manager or City Manager as applicable, division head, the complainant(s) and respondent(s).

A10.8

The parties will be given 10 business days to submit comments before a final disposition of the complaint is made.

A10.9

Final decisions regarding the disposition of a complaint will be made by the responsible Deputy City Manager or City Manager as applicable and communicated in writing to the parties and division head.

A11. Reprisals

The HRAP strictly prohibits any retaliation, either direct or indirect, or clear threat of retaliation against an individual for exercising their rights under the HRAP, including but not limited to:

- not participating or accepting harassing or discriminatory behaviour;
- initiating a complaint in good faith;
- investigating a complaint;
- being a decision maker in a complaint;
- participating as a witness in an investigation;
- being a respondent to a complaint; or
- having been associated with, or representing a complainant, witness or respondent.

Appropriate discipline for a policy violation (or other workplace misconduct) is not considered a reprisal.

The HRAP also strictly prohibits any threat of retaliation where the intention is to prevent or discourage an individual from exercising their rights under the HRAP. Employees may be disciplined for engaging in reprisal up to and including termination.

A12. Disciplinary Action

Any employee who engages in discrimination or harassment, reprisals, or breaches confidentiality before, during, or after an investigation or resolution may be subject to appropriate disciplinary action up to and including termination of employment.

Service, facility users, or those contracting with the City who have been found to engage in discrimination, harassment, or reprisal may be subject to service limitations, issuance of a trespass notices, removal under the *Trespass Property Act*, or other consequences as deemed appropriate in consultation with Legal Services.

Staff who are in a supervisory position and fail to take action when they become aware of or are advised of alleged discrimination and/or harassment may also be subject to disciplinary action.

Disciplinary action may also be taken if a complaint is found to be vexatious, made in bad faith and/or is an abuse of process.

Consequences for policy violations may include but are not limited to: an apology, counselling, education and training, a verbal or written reprimand, suspension with or without pay, a transfer or termination of employment. In determining appropriate consequences, factors including, but not limited to, the following will be taken into account: the nature of the violation, the severity, whether the individual has previously violated the HRAP and/or whether there is relevant discipline on file.

A13. “Non-Code” Workplace Harassment

Management

Division management are responsible for intervening and addressing employee complaints of non-*Code* workplace harassment and incivility as defined in section 4.9 and 4.12 of the HRAP. Managers should contact Employee & Labour Relations or assistance with non-*Code* complaints and incidents, including non-*Code* Workplace Harassment.

The HRO can assist management in assessing whether an incident or complaint is *Code* or non-*Code* workplace harassment, but the HRO will not provide ongoing assistance if it is determined that the complaint or incident is non-*Code*.

Employees

Employees should raise their non-*Code* workplace harassment and incivility complaints as defined in section 4.9 and 4.12 of the HRAP to their superior and not to the HRO. If the concern involves the employee's superior, the employee may raise the concern with an appropriate person in management (e.g. the respondent's superior, their Director, or their divisional people services contact).

Non-*Code* incidents or complaints reported to the HRO will not be referred to Division Management by the HRO. It is the employee's responsibility to bring their non-*Code* workplace concerns to the Division's attention if they wish to have it addressed.

The HRO will only accept complaints from employees of non-*Code* workplace harassment where there is evidence that following the employee bringing the complaint or incident to the Division's attention, Divisional Management failed to meet HRAP obligations. In these instances, HRO may explore appropriate interventions to support the complaint resolution.

A14. Non-Intervention

Division Management must consult with the HRO for *Code*-related matters or Employee & Labour Relations for non-*Code*-related matters before deciding not to intervene or investigate, or to discontinue an intervention or investigation into a complaint or incident.

The HRO or Divisional Management has discretion not to intervene or investigate or may discontinue an intervention or investigation where:

A14.1

The complaint or incident is reported anonymously. Where complaints are anonymous and without sufficient detail to trigger policy obligations no further action will be taken.

In exceptional circumstances, the HRO or Divisional Management may assess the complaint or incident and, if appropriate, intervene or make internal referrals. Individuals who submit anonymous complaints will not be entitled to communications as outlined in A9.

Divisional Management should consult with Employee & Labour Relations or the HRO, as appropriate, for guidance on assessing anonymous complaints or incidents. The Managers Guide also includes additional information on anonymous complaints or incidents.

A14.2

The complaint is outside the time limit (see A.4).

A14.3

The complaint is trivial, frivolous, vexatious or made in bad faith/an abuse of process; or having regard to all the circumstances further investigation of the matter (or intervention) is determined by the HRO to be unnecessary.

Trivial complaints involve allegations that are of such a minor nature that proceeding with an intervention is not in the public interest.

A frivolous complaint contains allegations that, even if true, are not a breach of the HRAP.

A complaint is vexatious when the complaint has been the subject of a decision by an alternate complaint process that considered the human rights allegations, a reasonable offer to remedy the complaint was rejected by the complainant and/or the complaint was filed to annoy, embarrass or harass the respondent or is otherwise improperly motivated.

Complaints are an abuse of process/made in bad faith in circumstances that include when an adequate remedy already exists or the complainant is engaging in improper action – fraud, deception, intentional misrepresentation or the complaint is filed out of malice, hostility, personal animosity or vindictiveness

A14.4

If either party to the complaint retains legal counsel and/or engages another complaint forum. As this complaints procedure is a mechanism for alternative dispute resolution, a mediation or investigation may be terminated if this occurs.

A14.5

If a resident or service recipient has not exhausted other reasonably available avenues of complaint/appeal prior to making a complaint under this policy. If this is the case, the resident or service recipient may be required to exhaust these avenues before making a complaint under this policy.

A14.6

Where a complaint or incident is against an employee of a City contracted service provider and the complaint or incident is already being addressed by the contractor in accordance with their internal harassment and discrimination dispute resolution processes that are consistent with the City's process and provincial legislation.

A14.7

It has been decided by the City Manager, or recommended by the HRO, Chief People Officer or the Legal Services Division to the division head, Deputy City Manager or City Manager that an investigation that would otherwise be conducted by divisional management or the HRO should be referred to an external consultant for investigation. (See A.17)

A15. Complaints with the Human Rights Tribunal of Ontario (HRTO)

Applications filed with the Human Rights Tribunal of Ontario will be referred to the City Solicitor and the HRO. Legal Services Division has responsibility for responding to HRTO applications. Contact the Legal Services Division immediately upon receiving any correspondence from the HRTO.

A16. Complaints with the Ministry of Labour, Training and Skills Development (MOL)

Staff must immediately contact the City's Legal Services Division, Corporate Occupational Health and Safety and other City employees involved in responding to MOL complaints/visits/orders, upon becoming aware of a complaint to the MOL, the attendance of an MOL employee or upon receipt of an MOL order.

Where the complaint, visit or order is related to sexual harassment, staff must also consult the HRO.

A17. External Consultant (External Investigations)

Investigations of complaints in section A are typically conducted by the HRO or Division Management. However, in exceptional cases the City Manager may decide or the HRO, Chief People Officer, Employee and Labour Relations or the Legal Services Division may recommend to the appropriate Director, Division Head, Deputy City Manager or City Manager that an investigation should be referred to an external consultant. Examples of such exceptional cases include, where there are significant systemic or ongoing human

rights issues that have not been appropriately remedied by internal interventions, where the division does not have capacity to investigate a complex non-Code complaint, or where the HRO does not have jurisdiction to intervene.

In such cases, the HRO and/or Legal Services Division shall be involved in retaining the external consultant and determining the authority and duties of the external consultant, as well as the scope of the investigation, including policy issues which may arise. As part of the retainer, after providing a signed confidentiality undertaking, the external consultant will be sent the complaint and any documentation that forms the basis for the complaint.

The scope of the external consultant's duties shall be outlined in the agreement. To the extent possible, the external consultant shall adhere to these Procedures and the process set out for HRO-led investigations set out at A9 of the Procedures. External investigations should be completed within 90 days of retaining the investigator unless otherwise stated in the agreement. Extensions may be provided on request and with sufficient notice to the parties of the delay.

The affected Division is responsible for paying all fees related to the external consultant unless otherwise agreed upon.

B – Procedures for Incidents/Complaints Involving Senior Management, Accountability Officers, and Equity, Diversity and Human Rights Section Staff

Qualified external consultants may be retained to resolve complaints of discrimination and/or harassment under the circumstances described below. External consultants will follow Part A (complaints procedures) in all cases except where exceptions are identified in this part. The affected Division is responsible for paying all fees related to the external investigator retained unless otherwise agreed upon.

Where a complaint involves multiple Respondents who fall under Part A and Part B, HRO and/or Legal Services should be consulted.

B1. Complaints Involving Senior Management – Deputy City Managers and Division Heads

A complaint filed with the HRO by or about the direct personal behaviour of a Deputy City Manager or Division Head must be in writing, signed by the complainant. Where necessary and appropriate, the HRO may assist in drafting the complaint.

B1.1. Complaint Assessment

The HRO will notify the City Manager or Deputy City Manager as appropriate of the complaint. The HRO will assess the merits of the complaint in consultation with the City Manager or Deputy City Manager, Chief People Officer, and/or Legal Services staff to determine whether the complaint warrants further investigation.

Where it is determined that the complaint warrants further investigation, the HRO in consultation with others as necessary, will determine if an external consultant is required to investigate all or part of the complaint. Where an external consultant is required, the City will retain a qualified external consultant and the HRO and/or Legal Services in consultation with others as necessary will determine the scope of and manage the contract of the consultant.

B1.2. Notification of Complaint

The external consultant shall notify the persons named in the complaint as Respondents of the specific allegations against them as soon as appropriate to ensure procedural fairness.

B1.3. Authority and Duties of the External Consultant

The scope of the external consultant's authority to investigate and/or attempt to settle the complaint, to speak with anyone, examine any documents and enter any work location relevant to the complaint for the purposes of investigation or settlement will be set out in the terms of the contract in accordance with City Policies. Unless otherwise stated in the agreement with the external consultant or dictated by the circumstance, the external consultant shall perform the duties contemplated for the HRO with respect to complaints under Part A above.

B1.4. Interim Reports and Discontinuance of Complaint

The external consultant may make interim reports to the City Manager or Deputy City Manager as required, to address instances of interference, obstruction, retaliation, or breaches of confidentiality encountered by the external consultant while dealing with a complaint under the HRAP.

Upon receipt of the complaint, or at any point during the investigation/mediation, the external consultant may submit a report to the City Manager or the Deputy City Manager making a recommendation to stop dealing with a complaint where:

- the complaint is trivial, frivolous, vexatious or made in bad faith, or an abuse of process;

- having regard to all the circumstances, further investigation of the matter is unnecessary; or
- the complaint has been settled by the parties.

The City Manager or Deputy City Manager may approve or reject the recommendation after considering submissions from the parties to the complaint.

B1.5. Other Avenues of Redress

The City Manager or the Deputy City Manager may decide to postpone, suspend or cancel any investigation into a complaint under the HRAP if it is believed that the investigation would duplicate or prejudice another avenue of complaint (see “jurisdiction” section above).

B1.6. External Consultant’s Findings

The City Manager or the Deputy City Manager shall be presented by the external consultant with a report outlining the findings, conclusions, and where requested the recommended corrective action, or terms of settlement, within 90 days of retaining the external consultant. The City Manager or the Deputy City Manager may grant an extension of time upon the request of the external consultant.

The external consultant may be requested to provide a summary/executive report and/or results letters, for the complainant and respondent(s).

The complainant and respondent will be given 10 business days to review and comment on the external consultant’s findings as set out in the summary/executive report and/or results letter. Unless directed otherwise, parties shall provide their comments to the City Manager or the Deputy City Manager responsible for the complaint.

B1.7. Final Decision

Final decisions about complaints involving Division Heads will be made by the City Manager or the Deputy City Manager in consultation with others, (e.g., appropriate Deputy City Managers, the HRO, Legal Services Division staff, the Chief People Officer, etc.), as necessary.

The City Manager or the Deputy City Manager will review the final report and any comments received before making any decision on the matter. The City Manager or Deputy City Manager, in consultation with the Legal Services Division may approve, change or reject any proposed terms of settlement or recommended corrective action.

Where appropriate, the City Manager or the Deputy City Manager may make recommendations to City Council for final decisions (e.g. Divisions Heads appointed by Council/bylaw). For final decisions about complaints involving Deputy City Managers, the City Manager will make recommendations to City Council and/or undertake other action to resolve the complaint, as required or appropriate.

B2. Complaints involving the City Manager, City Clerk and City Solicitor

A complaint by or about the direct personal behaviour of the City Manager, City Clerk or City Solicitor should be made to the HRO which will then refer a written complaint, signed by the complainant to the Integrity Commissioner. Where necessary and appropriate, the HRO may assist in drafting the complaint and compiling the supporting materials that are submitted.

The affected Division is responsible for paying all fees related to the use of external services retained unless otherwise agreed upon.

B2.1. Complaint Assessment

The HRO will forward the complaint and any supporting material to the Integrity Commissioner. The Integrity Commissioner will assess the merits of the complaint to determine whether the allegations are trivial, vexatious, frivolous, made in bad faith, or an abuse of process. The Integrity Commissioner may consult with internal or external resources, as necessary in the Integrity Commissioner's opinion, to assess the complaint.

Where the Integrity Commissioner determines that the complaint warrants further investigation, the Integrity Commissioner has discretion to investigate using the Commissioner's internal staff or to retain external services. The process set out below refers to an investigation conducted by the Integrity Commissioner using internal staff or external services.

B2.2. Notification of Complaint

The Integrity Commissioner shall notify the persons named in the complaint of the specific allegations against them once it has been determined that the matter warrants further investigation or is dismissed as being trivial, vexatious, frivolous, made in bad faith, or an abuse of process.

B2.3. Authority and Duties of Investigators

An investigator, upon direction of the Integrity Commissioner, has authority to investigate or settle the complaint, to speak with anyone, examine any documents and enter any work location relevant to the complaint for the purposes of investigation or settlement.

B2.4. Dismissing or Settling the Complaint

The Integrity Commissioner has authority to dismiss the complaint at any point if the Integrity Commissioner is of the opinion the complaint is trivial, frivolous, vexatious or made in bad faith or an abuse of process; or, having regard to all the circumstances, further investigation of the matter is unnecessary. The Integrity Commissioner may dismiss the complaint for these reasons without issuing a final report with recommendations after notifying the parties and inviting and considering any submissions made by them.

The Integrity Commissioner may also settle the complaint at any point before a final report with recommendations is submitted to Toronto City Council. Any settlement must be satisfactory to both parties, consistent with the HRAP and approved by the Integrity Commissioner. The Integrity Commissioner may obtain advice from the HRO or Chief People Officer with respect to appropriate terms of settlement.

B2.5. Other Avenues of Redress

The Integrity Commissioner may decide to postpone, suspend or cancel any investigation into a complaint under the HRAP if the Integrity Commissioner:

- believes that the investigation would duplicate or prejudice another avenue of complaint (see “jurisdiction” section above); or,
- determines that there are reasonable grounds to believe that there has been a contravention of the *Criminal Code* (Canada). If such a determination is made, the Integrity Commissioner shall immediately refer the matter to the appropriate authorities and shall report this to Toronto City Council.

B2.6. External Consultant’s Findings

The Integrity Commissioner or delegate, with the review and approval of the Integrity Commissioner, shall issue a statement of proposed findings which can include conclusions, recommended corrective action, interim report, or terms of settlement, within 90 days of initiating the investigation or retaining an external investigator.

If the Integrity Commissioner determines additional time is required to issue that statement, the Integrity Commissioner will determine the required extension and notify the parties.

The complainant and respondent will be given 10 business days to review and provide their comments on the findings to the Integrity Commissioner, unless directed otherwise. The Integrity Commissioner shall consider those comments and issue a final report with recommendations to Toronto City Council no sooner than 10 days later, or the next City Council meeting, whichever is later.

B2.7. Final Decision

The final report with recommendations will be provided by the Integrity Commissioner to City Council for action, where required. Where no action is required as an investigation results in no findings or where the Integrity Commissioner dismisses or settles the complaint, the Integrity Commissioner has discretion to determine whether to provide a report to Toronto City Council for its information. Where the Integrity Commissioner makes adverse findings and subsequent recommendations involving the City Manager, City Clerk or City Solicitor, final decisions regarding those findings and recommendations will be made by Toronto City Council and communicated to the parties in writing by the Integrity Commissioner.

B3. Employee Complaints involving a Member of Council or Local Board (Restricted Definition)

Employees who believe that they have experienced harassment and/or discrimination by a Member of Council or Member of a Local Board (Restricted Definition) may raise their concerns with division management or for Code-related complaints to the HRO directly. Employees may also raise concerns directly to the Integrity Commissioner, for investigation pursuant to the relevant Code of Conduct for Members of Council or Code of Conduct for Members of Local Boards (Restricted Definition).

B3.1. Complaint Notification

To enable the City to comply with its legal obligations under the *Occupational Health and Safety Act*, where a harassment or discrimination complaint is made directly to the Integrity Commissioner, on consent of the employee, the division will be notified of the complaint. If consent is not provided by the employee, this may prevent the City from taking any action under this policy. Where a complaint is made directly to the division or HRO, the Integrity Commissioner will be notified of the complaint.

B3.2. Complaint Source

Where notice is provided to the Integrity Commissioner by the division or HRO, where necessary, the appropriate divisional contact shall be the complainant for the purposes of the Integrity Commissioner's procedures.

B3.3. Investigation Findings

Where the Integrity Commissioner conducts an investigation, the Integrity Commissioner will provide results to the complainant in accordance with the Integrity Commissioner's procedures. Based on the Integrity Commissioner's reporting, division management will provide the complainant with a summary of the findings.

B4. Complaints involving an Accountability Officer (Retaining External Consultants)

B4.1

Complaints by or about the direct personal behaviour of an Accountability Officer should be addressed to the City Clerk. Such complaints should be in writing, signed by the complainant. Where necessary and appropriate, the HRO may assist in drafting the complaint.

B4.2

The City Clerk, in consultation with other City Officials as required, will follow a similar process to what is outlined in Section B1, with modifications as appropriate. Where warranted, an external consultant will be retained to investigate complaints/incidents. The City Clerk will transmit the findings of the external consultant to City Council, for final decision making on such matters, where required.

B5. Complaints Involving Staff in the Equity, Diversity and Human Rights Section (EDHR)

Complaints of discrimination and/or harassment made by or regarding the direct personal behaviour of staff in EDHR section should be raised to the appropriate leader within EDHR. If not appropriate, complaints should be raised to the Director of EDHR for resolution. If the complaint involves the Director of EDHR, the complaint may be raised to the Chief People Officer and/or the City Manager, as appropriate.

If an investigation is required, an external consultant or investigator outside of EDHR may be retained as appropriate in the circumstances and with the discretion of the Director of EDHR, Chief People Officer and/or the City Manager. External consultant contracts for

investigations or mediations under this section will be administered consistent with section B1 above with necessary modifications. For instance, final decisions about the complaint will be made by the City Manager, Chief People Officer, or the Director of EDHR, where appropriate.

B6. Conflict with HRO staff

An external consultant may be considered where there is a potential conflict between the HRO's staff and the parties involved in the complaint.

The decision on whether to refer a complaint to an external consultant or another appropriate party will be within the sole discretion of the Director of EDHR in consultation with others as necessary, the Chief People Officer, or the City Manager where the potential conflict affects the Director of EDHR.

Where a complaint under B6 is referred to an external consultant, the scope and authority of the external consultant will be determined by the Director of EDHR or the City Manager. Paragraphs B1.4, B1.5 and B1.6 (above) will apply with necessary modifications. For instance, the Director of EDHR may play the roles contemplated for the City Manager or Deputy City Manager in those paragraphs.

Final decisions will be made by the affected division head in consultation with the Director of EDHR and others as appropriate. The affected division is responsible for paying all fees related to the external consultant's investigation or mediation.

B7. Legal Representation and Costs (Employees only)

B7.1.

Parties to a complaint which proceeds under Part B against senior management (Division Head, Deputy City Manager, City Manager, City Clerk or City Solicitor) or an Accountability Officer have the right to receive advice/consult a representative of their choice, including legal counsel, unless they are subject to a collective agreement that provides for union/association representation. The legal representative is not a support person for the investigation.

B7.2.

The related legal costs incurred by a respondent under paragraph B7.1 will be reimbursed up to \$10,000.00 in all cases in which the investigator concludes that there has been no violation of the HRAP.

B7.3.

The related legal costs incurred by a complainant under paragraph B7.1 will be reimbursed up to \$10,000.00 in all cases except where the complaint is found to be trivial, frivolous, vexatious, or made in bad faith/an abuse of process.

B7.4

Where there is a settlement of a complaint (including a mediated agreement), reimbursement subject to the limit outlined above may be provided to the complainant, respondent, or both, at the discretion of the City Manager.

Approved by

Chief People Officer, People and Equity Division

Date Approved

June 23, 2008

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August 18, 2021

Related Information

Human Rights and Anti-Harassment/Discrimination (HRAP) (<https://www.toronto.ca/city-government/accountability-operations-customer-service/city-administration/corporate-policies/people-equity-policies/human-rights-and-anti-harassment-discrimination-hrap/>)