

From: ["Mochrie, Paul" <Paul.Mochrie@vancouver.ca>](mailto:Paul.Mochrie@vancouver.ca)
To: ["Direct to Mayor and Council - DL"](#)
Date: 9/12/2023 7:59:36 AM
Subject: BC Office of the Ombudsperson - Quarterly Report (April 1 - June 30, 2023)
Attachments: Office of the Ombudsperson Quarterly Report, April 1 to June 30 2023.pdf

Dear Mayor and Council,

Attached, for your information, is a report provided by the BC Ombudsperson regarding complaints received in relation to the City of Vancouver over the period April–June 2023 and the disposition of those matters. The Ombudsperson provides these reports on a quarterly basis.

Best,
Paul

Paul Mochrie (he/him)
City Manager
City of Vancouver
paul.mochrie@vancouver.ca



The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̓əm (Musqueam), Sḵwx̱w̱ú7mesh (Squamish), and səlilwətaʔ (Tseil-Waututh) Nations.



OMBUDSPERSON
BRITISH COLUMBIA

August 31, 2023

Paul Mochrie
City Manager
City of Vancouver
453 W 12th Ave
VANCOUVER BC V5Y 1V4

Dear Paul Mochrie,

RE: Office of the Ombudsperson Quarterly Report: April 1 - June 30, 2023

This package of documents details the complaint files the Office of the Ombudsperson closed for City of Vancouver between April 1 and June 30, 2023. Though no action is required on your part, we hope that you will find this information useful and share it within your organization.

These reports provide information about the complaint files we closed regarding your organization within the last quarter, including both files we investigated and files we closed without investigation. Files currently open with the office are not included in these reports.

Enclosed you will find detailed reports containing the following:

- A one-page report listing the number of files closed and the category under which they were closed. The categories we use to close files are based on the sections of the Ombudsperson Act, which gives the Ombudsperson the authority to investigate complaints from the public regarding authorities under our jurisdiction. A more detailed description of our closing categories is available on our website at: <https://bcombudsperson.ca/assets/media/QR-Glossary.pdf>.
- If applicable: Copies of closing summaries written about the complaint files we investigated. These summaries provide an overview of the complaint received, our investigation and the outcome. Our office produces closing summaries for investigated files only, and not for enquiries or those complaints we chose not to investigate.
- If applicable: A summary of the topics identified in the complaint files closed during the quarter. We track general complaint topics for all complaints we receive, and when applicable, we include authority-specific and/or sector-specific topics for your organization and/or sector. Our office tracks the topics of complaints we investigate and those we close without investigation, but not for enquiries. Because complaints to our office are confidential, we do not share complaint topic information if we received too few complaints to preserve the complainants' anonymity.

If your organization received too few complaints to produce a summary of complaint topics but you would like further information about the complaints our office received about your



OMBUDSPERSON
BRITISH COLUMBIA

organization, our Public Authority Consultation and Training (PACT) Team can provide further details upon request.

If you have questions about our quarterly reports or notice any inaccuracies in the data provided, or if you would like to sign up for our mailing list to be notified of educational opportunities provided by our Public Authority Consultation and Training Team, please contact us at 250-508-2950 or consult@bcombudsperson.ca.

Yours sincerely,

Jay Chalke
Ombudsperson
Province of British Columbia

Enclosures



Type of complaint closure for Authority: City of Vancouver	# closed
Enquiries – Many people who contact us are not calling to make a complaint, but are seeking information or advice. These contacts are classified as <i>Enquiries</i> to distinguish them from <i>Complaints</i> , which are requests that our office conduct an investigation.	2
Complaints with No Investigation – Our office does not investigate every complaint it receives. First, we determine whether we have authority to investigate the complaint under the <i>Ombudsperson Act</i> . We also have discretion to decline to investigate for other reasons specified in the <i>Ombudsperson Act</i> .	12
Early Resolution Investigations – Early Resolution investigations provide an expedited process for dealing with complaints when it appears that an opportunity exists for the authority to take immediate action to resolve the issue. Typical issues that are addressed through Early Resolution include timeliness, communication, and opportunities for internal review.	0
Complaint Investigations – When we investigate a complaint we may conclude with a determination that a complaint is not substantiated, or with a negotiated settlement of the complaint, or with public findings and recommendations. We may also exercise discretion to cease investigation for a number of other reasons specified in the <i>Ombudsperson Act</i> .	2
Reason for closing an Investigation	
Pre-empted by existing statutory right of appeal, objection or review.	0
Investigation ceased with no formal findings under the <i>Ombudsperson Act</i> .	
More than one year between event and complaint	0
Insufficient personal interest	0
Available remedy	0
Frivolous/vexatious/trivial matter	0
Can consider without further investigation	1
No benefit to complainant or person aggrieved	0
Complaint abandoned	0
Complaint withdrawn	0
Complaint settled in consultation with the authority – When an	1



investigation leads us to conclude that action is required to resolve the complaint, we try to achieve that resolution by obtaining the voluntary agreement of the authority to settle the complaint. This allows matters to be resolved fairly for the complainant and authority without requiring a formal finding of maladministration.

Complaint substantiated with formal findings under the <i>Ombudsperson Act</i> .	0
--	---

Complaint not substantiated under the <i>Ombudsperson Act</i> .	0
---	---

Ombudsperson Initiated Investigations – The Ombudsperson has the authority to initiate investigations independently from our process for responding to complaints from the public. These investigations may be ceased at the discretion of the Ombudsperson or concluded with formal findings and recommendations.	0
---	---



The *Ombudsperson Act* requires that investigations be conducted in private. Ombudsperson investigation documents are not available through the *Freedom of Information and Protection of Privacy Act*, and may be subject to rules preventing their use in court and tribunal proceedings. **Please contact the Office of the Ombudsperson before disclosing this document, or any responses, to any third parties.**

Closing Summary Index

Closing summaries are provided for all investigated files closed in each quarter. Identifying information is removed from the closing summary itself to allow for broader distribution within your organization for quality improvement purposes without disclosing personal information. The table below provides an index of these investigated files and lists the file number, closing date and authority contact involved. Files closed under our Early Resolution Program are also identified. This identifying information is provided separately to assist you in following up on individual files with involved staff as needed.

File Number	Authority	Authority Contact	ER file
16-0146792 / 001	City of Vancouver		
22-0197401 / 001	City of Vancouver	Paul Mochrie	



Closing Summary

Authority:	City of Vancouver
File Number:	16-0146792 / 001
Closing Date:	28-Apr-2023
Closing Status:	<i>Can consider without further investigation (s.13(e))</i>
General Complaint Topics:	Disagreement with Decision or Outcome, Process or Procedure
Authority-specific Complaint Topics:	All Local Government / Procurement
Closing Summary:	whether the City followed a reasonable process in administering an RFP Grounds for Unfairness: "Unfair procedure"

The information obtained through the investigation did not support the C.'s position that the City changed the "Acceptable Alternates" one week before proposals were due. The Request for Proposals appeared to provide clear direction regarding the furniture products that were eligible for "Acceptable Alternates". While there were some changes made to the RFP through the proposals process, the RFP never contemplated a proponent submitting only alternative products for all of the furniture items set out under the schedule. Therefore, the evidence suggests that the City followed a reasonable process for administering the RFP.



Authority:	City of Vancouver
File Number:	22-0197401 / 001
Closing Date:	02-Jun-2023
Closing Status:	<i>Complaint settled under s.14 (s.13(i))</i>
General Complaint Topics:	Communication, Delay, Disagreement with Decision or Outcome
Authority-specific Complaint Topics:	All Local Government / Bylaw Enforcement
Closing Summary:	<p>We received a complaint from an individual regarding an issue they reported to the City of Vancouver concerning an alleged bylaw violation committed by WC, a waste management company. The individual informed us that WC has consistently been parking their garbage truck in the middle of laneways during their service operations, in direct violation of section 19.1 of the city's Street and Traffic bylaws, thereby impeding the smooth flow of traffic.</p> <p>They expressed their dissatisfaction with the city's response, highlighting that despite providing photographic evidence of WC's actions, their concerns regarding the safety of other road users in potential emergency situations were not given due consideration. They reported that the city staff declined to accept their electronic evidence, consequently, the city did not take any enforcement action against WC for the alleged bylaw infraction.</p> <p>Furthermore, the individual raised concerns regarding the city staff's decision to recommend amending the bylaw to accommodate WC's alleged infraction. They believed this action implies an abuse of the staff discretionary power, and a support for WC's alleged illegal conduct.</p> <p>Additionally, the complainant believes that the city staff have exhibited a habit of delayed response to their emails, which adds to their frustration with the way the city addressed their complaint.</p> <hr/> <p>We investigated the reasonableness of the city's rationale and decisions regarding the following matters: non-enforcement of the bylaw, recommendation for an amendment to the bylaw, dismissal of the complainant's electronic evidence, and the timeliness of the response to the complainant's emails.</p> <p>As part of our investigation, we reviewed correspondences related to the complaint, sections of the city's Street and Traffic By law 2849 that pertain to the prohibition of stopping and parking on laneways, exemptions for public utility vehicles, as well as the provisions of the Local Government</p>



Bylaw Notice Enforcement Act [SBC 2003] regarding evidence used in the provincial adjudication proceedings.

Furthermore, we spoke to the city's Director of Access to Information and Privacy, Cobi Falconer about our concerns regarding the following issues:

1. The nature of staff communications with the individual regarding whether WC contravened the bylaw, and the rationale for their decision not to enforce the bylaw in this situation.

The individual had relied on s.19.1 (d) of the Street and Traffic Bylaw which prohibits vehicles from stopping or parking in the middle of the lane. However, section 49(2)(b) of the Street and Traffic Bylaw, exempts public utility vehicles from this prohibition. From our investigation, it appeared that the staff did not rely on the exemptions outlined in section 49(2) of the Street & Traffic Bylaw, as a result, they did not explain to the individual that WC's actions is not a contravention of the bylaw.

Our investigation showed that the staff informed the individual about their decisions to not enforce the bylaw, but to recommend that the bylaw be amended to provide the same exemptions under s.49(2) of the Street & Traffic Bylaw. Because of this, the complainant was misled to believe that they had a valid concern, hence, their repeated demands for the rationale for the staff decisions.

While the city confirmed that no proposal has been put forth for the amendment of the bylaw, we questioned the reasonableness of the staff's communication with the individual regarding their decisions, as it lacks clarity and fails to provide a sufficient justification as to why the complaint does not constitute a violation of the Street & Traffic Bylaw.

2. The arbitrariness of the staff's decision and reasons behind their dismissal of third-party electronic evidence.

From our investigation, it appeared that other bylaw teams within the City of Vancouver accepts third party evidence except the Parking Operations and Enforcement Branch (the branch). The branch advised us that their rationale for refusing third-party electronic evidence was because "the evidence collected is used in a provincial adjudication, and that if third-party evidence were to be allowed or collected by the city, such evidence would not be relied upon by the provincial adjudicators which would result in the violation being voided".

We were concerned about the branch's rationale for refusing third-party evidence as it did not appear to be supported by section 20 (1) (b) and (2) of the Local Bylaw Notice Enforcement Act, (the applicable legislation for the provincial dispute adjudication process).



It therefore seemed that the branch's decision to reject the complainant's electronic evidence was arbitrary, inconsistent with the Act, and the practice by other bylaw teams within the city.

To address these concerns, we requested that the city take the following actions:

Inform the complainant of their decision regarding the enforcement of the bylaw in this situation, providing clear and appropriate reasons for their decision and referencing the specific legislation that applies to their decision.

2. Notify the complainant that no proposal has been made to amend the bylaw and provide an explanation for this decision.
3. Acknowledge that the Parking Operations and Enforcement branch's position on the use of the third-party electronic evidence was incorrect, and recognize that provincial adjudicators hold the discretion to accept or refuse any evidence in the provincial dispute adjudication proceedings.
4. Remind staff members to ensure that their decision is clearly articulated, appropriate, and consistent with the relevant laws.
5. Provide staff members with mandatory regular training in complaint investigation, decision making, writing reasons, and dispute adjudication process if this is not already required; and
6. Consider implementing a peer review process to promote consistency in the enforcement of bylaws and dispute adjudication practices among staff members.

The city responded positively to our requests, and as a result, the Manager for the Parking Operations and Enforcement Branch contacted the complainant to address the specific issues raised.

Regarding the timeliness of the staff responses to the complainant, after reviewing the correspondences, we were unable to conclude that the staff had unreasonably delayed in responding to the complainant.

Given that the city has taken the appropriate measures to address the administrative fairness concerns identified by our investigation, we have concluded our investigation and closed our file on the basis that the complaint is settled pursuant to section 13(i) of the Ombudsperson Act.



The tables below summarize the complaint topics we are tracking for your sector and/or authority and the number of times this topic was identified in the files (investigated and non-investigated complaints) that were closed in the most recent quarter.

If you would like more information on the types of complaints we receive, please contact our Public Authority Consultation and Training Team: email us at consult@bcombudsperson.ca or call us at 250-508-2950.

Sector-Specific Complaint Topics – All Local Government

Business Licensing	2	1%
Bylaw Enforcement	44	29%
Council Member Conduct (incl. Conflict of Interest)	13	9%
Fees/Charges (incl. Taxes)	13	9%
Official Community Plan/Zoning/Development	25	17%
Open Meetings	6	4%
Other	31	21%
Procurement	2	1%
Response to Damages Claim	4	3%
Services (incl. Garbage, Sewer, Water)	11	7%

General Complaint Topics – All Local Government

Accessibility	12	6%
Administrative Error	10	5%
Communication	21	10%
COVID-19	3	1%
Delay	8	4%
Disagreement with Decision or Outcome	80	38%
Discrimination	3	1%
Employment or Labour Relations	3	1%
Other	8	4%



Process or Procedure	43	20%
Review or Appeal Process	5	2%
Treatment by Staff	15	7%



Authority-Specific Complaint Topics – City of Vancouver

Bylaw Enforcement	6	32%
Council Member Conduct (incl. Conflict of Interest)	2	11%
Fees/Charges (incl. Taxes)	4	21%
Official Community Plan/Zoning/Development	2	11%
Open Meetings	1	5%
Other	3	16%
Procurement	1	5%



General Complaint Topics – City of Vancouver

Accessibility	1	4%
Administrative Error	1	4%
Communication	2	8%
Delay	1	4%
Disagreement with Decision or Outcome	14	58%
Process or Procedure	3	12%
Review or Appeal Process	1	4%
Treatment by Staff	1	4%