

Title:	Frivolous, Vexatious or Unreasonable Requests or Complaints Policy
Number:	GOV-21-01
Approved By:	City Council
Administered By:	Legislative Services
Effective Date:	April 26, 2021

1.0 Purpose/ Background

The purpose of this Policy is to support the City of Oshawa's dedication to serving our community. The City recognizes the importance of public input and welcomes Complaints as valuable forms of Feedback. The City also recognizes that Complaints, which are Frivolous, Vexatious or Unreasonable, can consume a disproportionate amount of time and resources and impede Employees from attending to other customers or essential issues. This Policy provides City of Oshawa Employees with consistent practices for handling Frivolous, Vexatious or Unreasonable Requests or Complaints about City programs, facilities, services and Employees.

2.0 Policy Statement

Actions taken pursuant to this Policy will ensure that municipal resources are used effectively and efficiently, while maintaining a high level of service excellence and responsiveness and at the same time providing a work environment that is free from discrimination, Harassment, bullying and violence as outlined in the Respect in the Workplace – Harassment and Violence Policy.

3.0 Scope/Application

This Policy applies to all Employees (including employees of the Oshawa Senior Community Centres), Volunteers, Students, and/or Contracted Service Providers of the Corporation of the City of Oshawa.

This Policy does not apply to:

- Complaints about Members of Council (as they are governed by the Council Code of Conduct and investigated by the Integrity Commissioner);
- Members of advisory and quasi-judicial committees and local and other boards;
- A function where there is a statutory or prescribed process for review or which is governed by specific legislation;
- Complaints from Employees about other Employees or working conditions;
- Allegations of violations of Canada's Criminal Code.

This Policy does not apply where legal action against the City or a City official has been threatened or commenced. Additionally, the Policy does not apply to typical Complaints, which are addressed through the Complaint Management and Resolution Policy, which provides the public with an avenue for submitting Complaints about City programs, facilities, services and Employees, and provides a consistent practice for handling Complaints.

4.0 Definitions

City means the Corporation of the City of Oshawa.

Complaint means an expression of dissatisfaction or concern about the action or lack of action taken regarding operations, facilities, services or programs provided by the City or a person or body on behalf of the City. A Complaint can be spoken, written or submitted by another method of communication.

Complainant means a customer person who is submitting a Complaint. Any customer who uses or is affected by City services can make a Complaint including residents, visitors, businesses and community groups.

Contracted Service Provider means an individual or business that undertakes a contract or agreement with the City in order to perform a service on a continuing basis (e.g. Security Guard Services, Marriage Officiants, etc.).

Council means Oshawa City Council as a whole.

Council Member means an individual member of Council, including the Mayor.

Cyberbullying means the use of communication technologies to engage in deliberate, repeated or hostile behaviour intended to harm, embarrass, Harass or slander someone deliberately, including, but not limited to: social media outlets (e.g. Facebook, Instagram, Twitter, YouTube, LinkedIn, etc.), personal blogs, web pages, discussion groups or online media/newspaper articles.

Employee means all full-time, part-time, temporary, seasonal and Employees hired on a contract basis for a defined period of time, of the City of Oshawa as well as, Students.

Feedback means an opinion or comment about a program, facility, service or Employee.

Frivolous means a Complaint/Request that has no serious purpose or value or may have little merit and be trivial and is part of a pattern of conduct that amounts to an abuse of the right of access, interferes with the operations of the institution, or is made in bad faith or for a purpose other than to obtain access.

Harassment or Harass means engaging in a course of behaviour, comment or conduct, whether it occurs inside or outside the work environment, that is or ought reasonably to be known to be unwanted. It includes but is not limited to any behaviour, conduct or comment that is directed at or is offensive to another person:

- on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.

Ombudsman means the Ombudsman of Ontario or the Ombudsman appointed by Council in accordance with Section 223.13 (1) of the Municipal Act, 2001, S.O. 2001, c 25.

Request means the act of asking for something to be given or done.

Student means an individual at least 15 years of age and registered in an educational program at a high school, college or university level.

Unreasonable means a Complaint/Request that is likely to cause distress or disruption to the City, its Employees or other members of the public, without any proper or justified cause. Behaviour that because of the nature or frequency of a Complaint's contact with the City, negatively affects the ability to deal with their Complaints or those of others.

Vexatious means a Complaint/Request without merit, that is pursued in a manner that is malicious, intended to inconvenience, embarrass or Harass the recipient or is a pattern of conduct by the Complainant that amounts to the misuse of the Complaints processes and procedures.

Volunteer means an individual who volunteers their services, from time to time, to assist in areas of the City.

4.1 Examples of Frivolous, Vexatious and Unreasonable Complaints/Requests

Examples of what might be considered Frivolous, Vexatious and Unreasonable Complaints/ Requests are detailed below. This list is not exhaustive nor does a single behaviour on its own necessarily imply that a Complaint or Request will be considered Frivolous, Vexatious or Unreasonable.

Generally, the Complainant will exhibit one or more of these examples over a period of time:

- Refusing to specify the grounds of a Complaint, despite offers of assistance.
- Prolonged submission of Requests with high volume and frequency of communications to one or more City Employees via one or more customer service channels.
- Requests for information the Complainant has already seen, or clear intent to reopen issues that have already been considered and concluded.
- Refusing to accept the decision of the City, repeatedly arguing points with no new evidence.
- Where complying with the Request would impose significant burden on the Corporation in terms of expense, and affect our ability to provide service to others.

- Where the Complainant states that the Request is meant to cause maximum inconvenience, disruption or annoyance.
- Where the Request lacks any serious purpose or value. An apparent lack of value would not usually be enough on its own to make a Request Vexatious, but may when considered with other factors.
- Complaint is retaliatory or is initiated with the intent to embarrass or annoy another customer or resident or in an attempt to use City services or by-laws as a tool in an ongoing neighbour dispute.
- Making excessive demands on the time and resources of Employees with lengthy phone calls, emails to numerous Employees, excessive social media posts on City channels, or detailed correspondence every few days and expecting immediate responses.
- Causing distress to Employees using intimidation or hostile, abusive or offensive language, or an Unreasonable fixation on an individual Employee or any of the prohibited behaviours defined in the City's Respect in the Workplace - Harassment and Violence Policy.
- Making unjustified Complaints about Employees who are trying to deal with the issues, and threatening to negatively affect their employment status with the City.
- Excessive, repeated or hostile Cyberbullying and contact with City social media accounts, intended to harm, embarrass, Harass or slander the City or its Employees.

5.0 Responsibilities

5.1 Employees

Employees are to have knowledge and understanding of the purpose of receiving Complaints, the process through which a Complaint can be made and the service standards that apply to Complaints. They are to be aware of this Policy and any accompanying guidelines and protocols.

5.2 Managers, Directors and Direct Supervisors

Managers, Directors and direct Supervisors are responsible for ensuring that relevant Employees are aware of and trained on this Policy and any accompanying guidelines and protocols.

5.3 Commissioner

Commissioner is responsible to consult with the City Solicitor and the Chief Administration Officer ("C.A.O.") in the application of the Policy.

5.4 Corporate Leadership Team

Corporate Leadership Team is responsible for ensuring this Policy is applied organization-wide, and adhered to by all Employees of the City and for clarifying and resolving any ambiguity, which may exist within this Policy.

5.5 Customers

Customers are asked to recognize that the City must consider the needs of the whole community. They are to provide honest and respectful communication with a goal to improving services.

6.0 Legislative and Policy Overview

6.1 Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56

The Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c.M. 56, provides that a Request for information may be denied if, on reasonable grounds, it is found to be Frivolous or Vexatious.

6.2 Occupiers' Liability Act and Occupational Health and Safety Act

The City has a general legislated duty under the Occupiers' Liability Act, R.S.O. 1990, c 0.2, to take such care, as in all the circumstances is reasonable, for any persons entering on its premises, and the property brought on the premises are reasonably safe. The City has further duties under the Occupational Health and Safety Act, R.S.O. 1990, c 0.1, to address workplace violence and harassment and to:

- make reasonable efforts to provide a safe, healthy working environment for its Employees;
- ensure that all persons on the property are reasonably safe while on the premises; and,
- make reasonable efforts to provide for the safety of all Council, Employees, Students, Volunteers and the public in City operations and in public use of City facilities.

6.3 Related By-laws and Policies

The City of Oshawa is committed to ensuring a climate of understanding and mutual respect and to make reasonable efforts to provide a safe workplace, free from any form of discrimination, Harassment, bullying or actual, attempted or threatened violence. The Respect in the Workplace – Harassment and Violence Policy details the steps available to the City to ensure that a respectful and safe workplace is maintained.

The City's Complaint Management and Resolution Policy provides the public with an avenue for submitting Complaints and provides City Employees with consistent practices for handling Complaints about City programs and services.

Enforcement By-law 92-2014, Section 4.4 (c) states that Officers may, subject to the Director's directions, conclude investigations if the Complaint is trivial, Frivolous, Vexatious or made in bad faith.

7.0 Procedure

7.1 Classifying Requests

Deciding whether a customer's actions fall under this Policy must take into account all the circumstances of the case. There is no rigid test or criteria in deciding whether this Policy applies as each case will be considered on an individual basis. Employees must establish, through the documented words and/or actions of a Complainant (e.g. emails, letters, Employee notes reporting a conversation or incident, voice mails), that the Complaint is Frivolous, Vexatious or Unreasonable before applying the process outlined in this Policy.

7.2 Employee Review

If an Employee believes that a Complaint is Frivolous, Vexatious or Unreasonable, the Employee should consult with their Manager or direct Supervisor, provide any supporting materials and advise the Manager or direct Supervisor of the steps that have been taken to resolve the issue, including:

- The length of time that the Employee has been in contact with the Complainant and the amount of correspondence that has been exchanged with the Complainant;
- The number of Complaints that the Complainant has brought and the status of each;
- The nature of the Complainant's behaviour; and,
- A list of other branches/departments and Employees the Complainant has also contacted.

Employees may choose to contact their Manager or direct Supervisor for assistance prior to a pattern of conduct being established if the Complainant's behaviour is of concern.

7.3 Manager/ Direct Supervisor Review

Managers/ direct Supervisors are responsible for reviewing the information provided by Employees and determining if the Complaint should be escalated to the appropriate Director/Commissioner.

Before escalating to the Director/Commissioner, the Manager or direct Supervisor must be satisfied that:

- The Complaint has been dealt with properly and in line with the relevant procedures (e.g. the City's Complaint Management and Resolution Policy) and statutory guidelines.
- Employees have made reasonable efforts to satisfy or resolve the Complaint and communication with the Complainant has been adequate.
- The Complainant is not attempting to provide any significant new information when contacting Employees.

7.4 Director/ Commissioner Confirmation

Directors are responsible for reviewing the information provided by the Manager/ direct Supervisor in a timely manner and confirming whether or not this Policy should apply. Directors/ Commissioners may want to contact or convene Employees from other departments to confirm the extent of the Complainant's contact with the City.

If, after reviewing the circumstances, the Director/ Commissioner determines that action under this Policy should be taken, they will determine the appropriate action(s)/restrictions in accordance with this Policy and in consultation with their respective Commissioner, the City Solicitor and the C.A.O. A written warning will be provided to the Complainant, with a copy to members of Council, the C.A.O., the Corporate Leadership Team, the Director responsible for the Complaint and Manager, Customer Service, advising of actions that will be put into effect if the Frivolous, Vexatious or Unreasonable behaviour continues. Actions will be tailored to address individual circumstances as outlined in the Frivolous Policy.

7.5 Restrictions

Actions available to Directors/ Commissioners to address Complainant's behaviour may include one or more of the following:

- limiting the Complainant's correspondence with Employee to a particular format (e.g. email only), time (e.g. telephone calls only at specific times and days of the week) or duration (e.g. conversations may last no longer than ten minutes);
- limiting the Complainant to an established point of contact at the City (where possible, other Employees should be advised not to respond to the Complainant, but to refer them to the established point of contact);
- requiring any face-to-face interactions between the Complainant and Employee to take place in the presence of an appropriate witness and in a suitable location;
- requiring the Complainant to make contact only through a third party (e.g. solicitor, counsellor, friend acting on their behalf);
- requiring that the Complainant produce full disclosure of documentation or information before Employees will investigate any new Complaints;
- instructing Employees not to respond to further correspondence from the Complainant regarding the Complaint of a substantially similar issue;
- instructing Employees not to investigate any Complaints regarding an issue that has already been investigated, or which is substantially similar to an issue which has already been investigated;
- limiting or regulating the Complainant's use of or access to the City's services or facilities (e.g. community centres, access to technology systems);
- informing the Complainant that further contact on the matter of the Complaint or Request will not be acknowledged or replied to;
- in extreme circumstances, instructing Employees to severely reduce or completely cease responses to further Complaints and correspondence from the Complainant; and/or
- other actions as deemed appropriate.

7.6 Application of Restrictions (if required)

If a Complainant disregards the warning letter and continues to submit Complaints deemed to be Frivolous, Vexatious or Unreasonable, the Director will advise their Commissioner.

The Commissioner will:

- Consult with the City Solicitor and the C.A.O. and notify the Complainant in writing that the actions outlined in the warning letter will take effect immediately and advise when the decision will be reviewed.
- Determine a date for the decision to be reviewed. This could be for a period of a few months or longer depending on the severity of the situation.
- Advise the Corporate Leadership Team, the Mayor, members of Council, the Director and the Manager, Customer Service of the action the City has taken and the reasons for it.

7.7 Review of Restrictions

The Director will monitor review dates and facilitate a review at least four weeks prior to the expiration of any restrictions. The status of the Complaint and subsequent behaviour will be reviewed with their Commissioner, Director and any other applicable Employees. In consultation with the City Solicitor and the C.A.O., the Commissioner will determine if the restrictions should continue or if the restrictions will be extended. The Complainant will be informed of the outcome of the review in writing and, if applicable, will be given another date for review.

7.8 New Complaints

Complaints on a separate or new issue from a Complainant who has come under this Policy will be treated on their individual merits. The Commissioner, in consultation with the City Solicitor and the C.A.O., will decide if any restrictions, which are currently in effect, should be applied to the new Complaint.

8.0 Maintaining Detailed Records

Employees are responsible for maintaining detailed records of their interactions with Complainants (emails, notes of telephone conversations and notes of in-person discussions) in order to justify any action being taken to restrict the Complainant's access to Employees. Records must be retained in accordance with the City's Records Retention By-law and Schedule.

9.0 Monitoring and Evaluation

This Policy is reviewed by the City Clerk or designate at least every three years to ensure its effectiveness and compliance with legislation and current business processes or as required based on legislative changes.

The City Clerk is authorized to make minor or housekeeping amendments to this Policy, as required.

For further information regarding this Policy, please contact City Clerk Services at 905-436-3311 or clerks@oshawa.ca

10.0 References

Bill 8, the Public Sector and MPP Accountability and Transparency Act, 2014

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, as amended.

Occupational Health and Safety Act, R.S.O. 1990, c 0.1

City's Respect in the Workplace - Harassment and Violence Policy

Complaint Management and Resolution Policy

Ontario Ombudsman - Tips for Municipal Complaint Resolution Policie