

THOROLD BUSINESS IMPROVEMENT AREA ASSOCIATION
POLICY AND PROCEDURE MANUAL

GOVERNANCE		
POLICY NO: 100-07 REVISED: Dec. 28, 2017	COMPLAINT POLICY	PAGE 1 OF 7

COMPLAINT POLICY

1. DEFINITIONS

In this Complaint Policy:

- Terms defined in the BIA's Code of Conduct (the Code) and Terms of Reference have the same meanings here.
- “COMPLAINANT” means the individual who makes a complaint.
- “RESPONDENT” means a Member who is the subject of the complaint.

2. INFORMAL COMPLAINT PROCEDURE

Any individual who believes behaviour or activity by a Member contravenes the Code of Conduct or Terms of Reference may address the behaviour or activity by doing one or more of the following:

- Inform the Member that the behaviour or activity appears to contravene the Code of Conduct and/or Terms of Reference.
- Encourage the Member to acknowledge and to agree to stop the prohibited behaviour or activity and to avoid future occurrences of it.
- Document the incidents including dates, times, locations, other individuals present, and any other relevant information.
- Request the BIA Chair to assist in informal discussion with the Member about the alleged behaviour or activity in an attempt to resolve the issue.
- If applicable, confirm to the Member the individual's satisfaction with the response of the Member, or, if applicable, inform the Member of the individual's dissatisfaction with the response.
- Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part 3, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Individuals are encouraged to pursue the informal complaint procedure as the first means of remedying behaviour or an activity believed to violate the Code of Conduct or Terms of Reference.

With the consent of both the complaining individual and the Member, the Chair may participate in any informal process. The parties involved are encouraged to take advantage of

the Chair's potential role as a mediator of issues relating to an informal complaint.

However, the informal process is not a precondition to pursuing the formal complaint procedure outlined in Part 3.

3. FORMAL COMPLAINT PROCEDURE

Any individual who identifies or witnesses behaviour or an activity by a Member and believes it to be in contravention of the Code of Conduct or Terms of Reference may file a formal complaint as follows:

1. The complaint shall be made in writing and be dated and signed by an identifiable individual.
2. All personal information contained within the complaint form will be subject to protection to personal privacy in accordance with MFIPPA.
3. Where possible, the complaint shall be made using the Complaint Form (Appendix A) which will be posted on the Thorold BIA Website. If the Complaint Form is not used then the complaint must contain all of the information required by the Complaint Form, in the same order.
4. The complaint must state the section(s) of the Code of Conduct or Terms of Reference that the Complainant believes has (have) been breached.
5. The complaint must include background (including date(s), time(s) and location(s) of conduct, supporting documentation, details and names of all persons involved, and name(s) of any witness(es)) that contains reasonable grounds for the allegation that a Member has contravened the Code of Conduct or Terms of Reference.
6. The Complainant is encouraged to include relevant documents.
7. The Complainant is not required to, but may, submit an affidavit.
8. The complaint shall be submitted directly to the BIA Secretary by email, mail or delivery.
9. In the event that a complaint is sent to or left at City Hall, the Clerk shall ensure that it is delivered to the BIA Secretary.

4. SECRETARY'S CLASSIFICATION AND DECISION TO INVESTIGATE

The Secretary may not provide assistance to draft the content of a complaint made by an individual but they may for any reason:

- (a) invite a Complainant to clarify, or
- (b) permit a Complainant to amend or resubmit any complaint, including a complaint that does not meet the requirements of this Complaint Policy. The complaint is deemed to be received by the Secretary when it is clarified, amended or resubmitted. The complaint shall consist of the amended complaint, the resubmitted complaint, or the original complaint plus amendments or clarifications, as the case may be.

Upon receiving the complaint, the Secretary will conduct an initial classification to determine whether the complaint is within the BIA's jurisdiction and whether the Secretary should

commence an investigation.

If the complaint, or part of it, lies outside the BIA's jurisdiction the subject matter of the complaint shall be sent to the City of Thorold and the complainant notified as such.

The Secretary will only commence an investigation of a complaint, or part of it, that on its face contains allegations that if substantiated would constitute a breach of one or more provisions of the Code of Conduct or Terms of Reference, and then only in relation to such provision(s).

The Secretary has the discretion to decline to commence an investigation if on its face the complaint appears to be frivolous, vexatious or not made in good faith, and subsequently the Secretary may terminate an investigation if at any time the Secretary forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith.

If the Complainant is a Member, where the Secretary declines to commence or terminates an investigation on the ground that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith, the Secretary may report that fact to the Executive members and name the Member.

5. RESPONDING TO A COMPLAINT

If on its face the complaint, or part, relates more properly to another law or to another complaint process or dispute resolution procedure then the Secretary shall respond to the Complainant in writing as follows:

- (a) If the allegation might relate to an offence under the Criminal Code or another criminal statute then the Complainant shall be informed that such allegation, if the Complainant wishes to pursue it, should be brought to the attention of the police.
- (b) If the allegation relates to compliance with the Municipal Conflict of Interest Act as opposed to compliance with the Code then the Secretary shall suggest that the Complainant review the matter with the Complainant's own legal counsel.
- (c) If a complaint or part is more appropriately handled under the Municipal Freedom of Information and Protection of Privacy Act then the Complainant shall be informed that the matter falls under the responsibility of the Clerk, and shall be given the Clerk's phone number and email address and a link to the City's Freedom of Information Webpage.
- (d) If the complaint or part seems to fall under another City policy then the complainant shall be informed how to pursue the matter under the other policy.
- (e) If for any other reason the complaint or part is not within the jurisdiction of the BIA then the Complainant shall be so informed and given such additional reasons and/or referred to such agencies or authorities as the Secretary considers appropriate.
- (f) If the complaint or part relates to a matter that is already subject to another process, including but not limited to a court proceeding under the Municipal Conflict of Interest Act, a human rights complaint, an arbitration hearing, or another court or tribunal proceeding, then the Secretary may, in the Secretary's sole discretion, suspend any investigation pending the result of the other process.

6. SETTLEMENT, WITHDRAWAL AND OTHER OPPORTUNITIES FOR RESOLUTION

Following receipt of a formal complaint, or at any time during an investigation:

- (a) Where the Secretary believes that an opportunity to resolve the matter may be successfully pursued without starting or continuing an investigation, and both the Complainant and the Respondent agree, the Secretary may pause or delay the investigation and make efforts to achieve an informal resolution.
- (b) If a complaint is withdrawn, settled or informally resolved, the Secretary shall not report to the Council except as part of the annual report described in section 11.
- (c) Where the Secretary is unable to mediate or is the subject of a complaint, an Integrity Commissioner may be brought in to deal with the complaint effective March 1, 2019.

7. INVESTIGATION

Within three business days after receiving the complaint, the Secretary shall decide whether to investigate the complaint or part of it.

The investigation process shall be as follows:

1. Without identifying the Complainant, the Respondent or the circumstances, the Secretary shall give notice to the Clerk that an investigation is being commenced.
2. The Secretary shall, the same day, give the Respondent notice of the complaint (including a copy of the complaint and all supporting documentation) and invite the Respondent to provide a written response within seven business days.
 - (a) To protect the right of a full and fair opportunity to respond, the Respondent shall be given the entire complaint, including the Complainant's name but not the contact information of a Complainant who is not a Member.
 - (b) The Secretary may redact information that would identify the Complainant or a witness, provided that the Respondent receives sufficient disclosure to understand the allegation(s) and to receive a full and fair opportunity to respond.
 - (c) Despite paragraph (b), where the Complainant is a Member of the BIA the Complainant's identifying information will not be redacted.
3. The Secretary shall, the same day, give the Complainant notice that an investigation has commenced.
4. Within three business days after receiving the Respondent's response, if any, the Secretary shall send it to the Complainant with an invitation to reply within seven business days.
5. Within three business days after receiving the Complainant's reply, if any, the Secretary shall send it to the Respondent.
6. After reviewing the complaint, the response and the reply, the Secretary may speak to anyone, access and examine any other documents or electronic materials, and may enter any Town work location relevant to the complaint for the purpose of investigation and potential resolution.
7. Within 45 calendar days after the complaint is received, or such longer period as the Secretary deems necessary, the Secretary shall draft a report containing the findings of the investigation, including draft conclusions about whether the Respondent

contravened the Code of Conduct and/or the Terms of Reference and, where applicable, a draft recommended penalty, and submit it to the Respondent for representations and comments within seven business days.

8. Within five business days after receiving the representations and comments of the Respondent, and taking them into account, the Secretary shall finalize the report and deliver it to the:
 - (a) Clerk, for delivery to Council.
 - (b) Complainant.
 - (c) Respondent.

The Secretary has the discretion to extend any of the time frames and deadlines in this Policy. If, however, a report will not be completed within 90 days of the receipt of a complaint, the Secretary shall provide an interim report to Council (and the Respondent and Complainant). The interim report shall describe the complaint without identifying the Respondent and the Complainant, explain the delay and state when the final report is expected to be ready.

8. REPORT TO COUNCIL AND RECOMMENDATION

Upon receipt of a report, the Clerk shall place it on the next regular agenda of Council.

Where a report states the Secretary's opinion that a Respondent has contravened the Code of Conduct and/or Terms of Reference:

1. If the Secretary is of the opinion that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith, or occurred despite the Respondent taking reasonable measures to prevent it, then the report shall so state.
2. The Respondent shall have the right of reply when the report is considered by Council.

Despite paragraph 8.3, where the report recommends a pecuniary penalty on a Respondent the Municipal Conflict of Interest Act prevents the Respondent from taking part in the discussion, voting on any question in respect of the matter and attempting in any way before, during or after the meeting to influence the voting on any such question. In that circumstance the Secretary shall invite the Respondent to deliver a reply to the Integrity Commissioner concerning the recommendation and the Integrity Commissioner shall submit that reply to the Clerk for delivery to Council.

If the Secretary is of the opinion that a Respondent did not contravene the Code of Conduct or Terms of Reference but the Respondent's conduct was blameworthy or otherwise deserving to be brought to Council's attention then the report shall so state.

If the Secretary is of the opinion that the investigation has revealed the need for an amendment to the Code of Conduct, the Terms of Reference, this Policy or City policy then the report shall so state.

The Secretary may make interim reports to Council where necessary and as required, including to address any instances of interference, obstruction, delay, reprisal retaliation associated with the investigation.

9. CONFIDENTIALITY TO ENSURE A FAIR PROCESS

To ensure that a complaint is investigated (or settled or informally resolved) in a fair manner that respects the rights of the Complainant, the Respondent and witnesses, until the final report is delivered to Council the parties shall maintain the confidentiality of the complaint process, including but not limited to the confidentiality of the complaint, responses, replies and other communications from the Complainant, the Respondent, the Secretary and the Integrity Commissioner.

If a Complainant (whether or not the Complainant is a Member) discloses information about a complaint or investigation then the Secretary may take that fact into account in exercising discretion before declining to commence or terminating an investigation on the ground that the complaint is frivolous or vexatious or the Complainant is not acting in good faith.

The following paragraphs apply where a Member (whether or not the Member is a Complainant, a Respondent, a witness or uninvolved) discloses information about a complaint or an investigation:

1. Will not be subject to any reprisal or threat of reprisal against a Complainant or anyone for providing relevant information to the Secretary or Integrity Commissioner. Where the Secretary is of the opinion that the disclosure constituted a reprisal or a threatened reprisal, the Secretary, after giving a Member who disclosed a fair opportunity to respond, may report to Council that the Member contravened the Code of Conduct.
2. While carrying out the duties of the Secretary or Commissioner and they are of the opinion that the disclosure constituted obstruction, the Secretary or Commissioner, after giving the Member who disclosed a fair opportunity to respond, may report to Council that the Member contravened the Code of Conduct.

If the disclosure of information about a complaint or investigation makes it impossible, in the Secretary's opinion, to conclude a fair and proper investigation that respects the rights of the parties then the Secretary shall report that opinion to Council.

For greater certainty, a report under this section shall name the individual who disclosed or caused the disclosure of information about a complaint or investigation, and may name any Member who is involved as a Complainant, Respondent, witness or other involved individual.

10. NO COMPLAINT PROCESSING AND NO REPORT PRIOR TO MUNICIPAL ELECTION

Despite anything to the contrary in this Policy, after nomination day in the year of a regular municipal election:

- If Secretary receives a complaint then the Secretary shall not take any steps to classify, to investigate or otherwise to process it until after election day.
- If the Secretary is in the middle of processing a complaint then the Secretary may continue the investigation process but shall not deliver a report (including a draft report) to the Respondent, the Complainant or Council until after election day.

- The Secretary shall not deliver an interim report or an annual report until after election day.

11. ANNUAL REPORTS TO COUNCIL

The Secretary shall report to Council annually. In the annual report, the Secretary shall report on all complaints received and on their disposition (including complaints not falling within the jurisdiction of the BIA and other complaints that were not investigated). Unless otherwise provided in this Policy, a complaint that has not been the subject of a public report to Council will be described in the annual report without identifying the Complainant or the Respondent.

12. CONFIDENTIALITY, RECORD KEEPING AND PUBLIC DISCLOSURE

The Secretary and every person acting under the instructions of the Secretary shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under Part V.I of the Municipal Act, the Code, the Terms of Reference and this Policy. Nevertheless, information may be disclosed as required by law or otherwise in accordance with Part V.I of the Act, the Code, the Terms of Reference and this Policy. In a report on whether a Member has contravened the Code or Terms of Reference, the Secretary may disclose such matters as in the Secretary's opinion are necessary for the purposes of the report.

The Secretary shall retain all records related to the complaint and investigation.

For greater certainty, if the Secretary is of the opinion that a Member has contravened the Code or Terms of Reference then the Member's identity is not confidential information and the Member shall be named in the Secretary's report to Council.

All reports from the Secretary to Council will be made available to the public on the BIA Website.

THOROLD BUSINESS IMPROVEMENT AREA ASSOCIATION
POLICY AND PROCEDURE MANUAL

GOVERNANCE		
APPENDIX "A" TO POLICY NO: 100-07 REVISED: Nov. 28, 2017	COMPLAINT FORM	PAGE 1 OF 2

COMPLAINT FORM

CONTACT INFORMATION

Name	
Address	
Telephone	
Email	

CODE OF CONDUCT AND TERMS OF REFERENCE

The Code of Conduct and Terms of reference are available on the BIA's website. You may also request a copy by phone, e-mail or in person. Please state which section(s) of the Code of Conduct or Terms of Reference you believe have been breached:

COMPLAINT

Please provide a summary of your complaint. Include date, time and location of conduct, supporting documentation, details and names of all persons involved, and names of any witnesses. Attach extra pages if necessary.

Please mail, e-mail, or otherwise deliver this request to the BIA Secretary:

Email TBIAsecretary@gmail.com

Post City of Thorold - "ATTENTION: THOROLD BIA SECRETARY"
3540 Schmon Parkway
Thorold, On L2V 4Y6

SUPPORTING DOCUMENTATION

It is recommended that you provide supporting documentation that will help verify your complaint. Please attach any supporting documentation either in your e-mail (as an attachment), or attach physical copies in mailed forms.

Note: You may print this form and mail it to the above address.

USE OF YOUR INFORMATION / WHAT HAPPENS NEXT

The Secretary (or Integrity Commissioner if called in) will use the contact information you have provided to communicate with you about this complaint.

If the complaint falls under the Code of Conduct or Terms of Reference, a copy will be provided to the Member(s) you named. Your name but not your contact information will be included.

If the Secretary or Commissioner conducts an investigation, you, the Member(s) and other persons may be asked for more information.

At the end of an investigation, the Secretary or Commissioner will report to Council about whether the Member(s) contravened the Code of Conduct or Terms of Reference. The Secretary or Commissioner may disclose in the report such matters as in the Secretary or Commissioner's opinion are necessary for the purposes of the report. Reports to Council become public documents.