

WORKING WITH THE OMBUDSMAN

A Guide for the Toronto Public Service



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1.0 Ombudsman Role and Authority

The Ombudsman's authority rests on a firm legal foundation. The roles and responsibilities are enshrined in both provincial and municipal legislation: the *City of Toronto Act* and the City of Toronto Municipal Code, Bylaw 1098-2009.

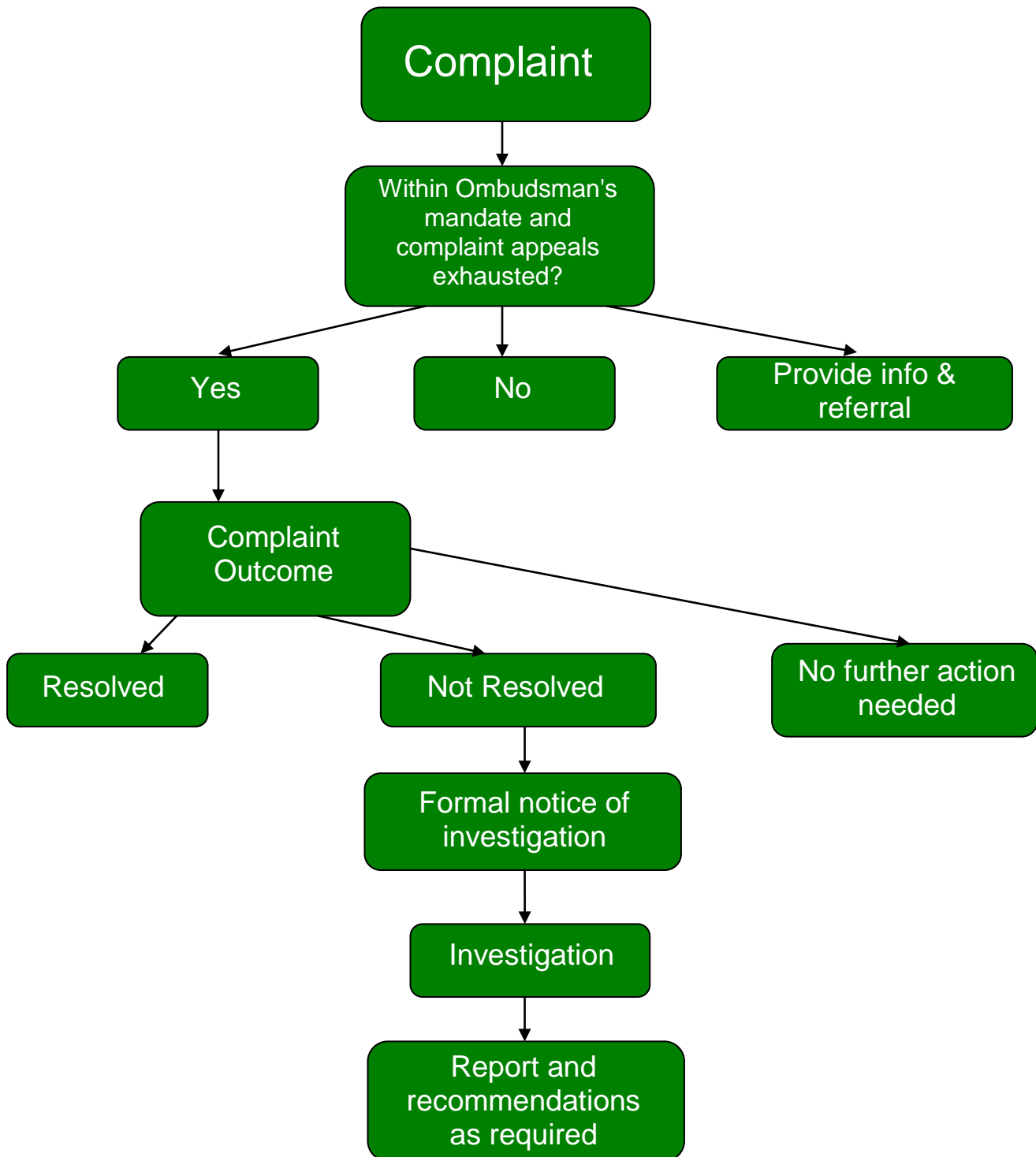
One of the underlying goals of the Ombudsman is to work together with the Toronto Public Service to improve the public administration. Cooperation is the key to achieving that goal.

The Ombudsman's office has a broad mandate to investigate complaints about the administration of city government. The Ombudsman can also launch investigations without waiting for a complaint. The courts have defined the Ombudsman's mandate to be wide-ranging:

Everything done by government authorities in the implementation of government policy.

The Ombudsman's office reviews complaints to determine whether individuals have received fair and equitable treatment. While the reports of systemic investigations can attract a lot of public attention, much of the office's time is spent promoting flexible and less formal approaches to dispute resolution.

2.0 Complaint Process



Note: Examples of no further action would include situations where the public service has acted reasonably or where the Ombudsman's staff consider that given the circumstances there is nothing further to be done.

3.0 What can you expect when you get a call from the Ombudsman's Office?

All complaints and inquiries are first screened by staff of the Ombudsman's office to determine whether we have jurisdiction. Once jurisdiction is confirmed, you may get a telephone call or an email. The purpose of this initial contact is to gather information and understand what happened with the complaint.

3.1 What can you expect from us?

1. We will tell you why we are calling, what the complaint is about and who the complainant is. Our only aim at this stage is to understand what happened. We have no opinion about what occurred.
2. We will ask questions like:
 - What is the story from the Public Service's perspective?
 - What happened? How did the situation develop?
 - When did the alleged problem(s) occur?
 - Was there a specific event that brought this to a head?
 - What legislation, policy, procedure, regulation, process or practice is involved?
 - Are you the decision maker? Why did you or didn't you make this decision?
 - What decisions if any have already been made about the complaint disposition?
3. We might ask you questions that do not seem relevant to you; you can ask why we need the information and we will tell you. Regardless of the question, however, you do need to answer, even if it is to say, "I don't know."
4. You might be asked questions that you don't think you should answer because of concerns about residents' privacy. It is quite acceptable to express your concerns and we will always explain our request. You do though have an obligation to respond.
5. You can expect us to be courteous and respectful at all times.
6. You can expect us to fully explain the process and provide you with our most educated estimates about timelines for completing the complaint inquiries.
7. We will be taking notes and might need to call you back for clarification or with more questions.

4.0 What can you expect if you are contacted during an investigation?

If a complaint cannot be addressed through informal resolution, we may conduct a formal investigation. A formal investigation is also undertaken when the complaint is complex, involves multiple issues or the problems are systemic or system wide.

The Ombudsman has the power to enter premises, review documents and require people to give evidence under oath. This authority is derived from the *City of Toronto Act* in which s.19 of the *Ombudsman Act* applies.

The process goes like this:

1. The Ombudsman will notify the City Manager or head of the relevant agency, board, commission or corporation in writing that an investigation is beginning.
2. You might be called because our investigator thinks you may have information or expertise about the issue in question, or simply because you are in the workplace.
3. A meeting will be set up at a time and place that works for both you and the investigator.
4. At the meeting, the investigator will explain the process, as well as your rights and responsibilities.
5. During the interview, the investigator will take notes and in some cases may tape record your responses. The recording is to provide the investigator with verbatim records that she can rely on when analysing all the evidence that has been gathered. The recordings are for the investigator's use only.
6. Sometimes the investigator will bring along a note taker, to allow the investigator to concentrate on the questions.

4.1 What are your responsibilities whether you are a manager or an employee?

- If you are not immediately available, you should get back to us promptly.
- You must answer our questions to the best of your ability.
- You need to provide information and the relevant context to the fullest extent possible.
- You will provide the entire file or set of documents as requested.¹
- You will freely offer up any other information or data that you think may be helpful.
- This is a confidential process. You are not to tell others about the questions we have asked, or the information you have provided.

4.2 Are you supposed to notify your supervisor or manager about the request for an interview?

If you need time away from your duties to answer our questions, then you should tell your supervisor the reason for your absence and the amount of time the meeting is expected to take.

4.3 Should you report back to your supervisor after you have spoken to us?

No. The substance of what you tell the Ombudsman's office is confidential.

4.4 What if your supervisor inquires as to what was said?

That is improper. You should immediately call the Ombudsman staff and let them know.

When we contact you it is important to be straightforward and helpful and set out the facts and the policies, as you know them. There is no need to be defensive. We can be your best protection against unwarranted complaints. We are all here to serve the public and your assistance will make sure this happens.

¹ For investigations where there may be a significant volume of documents, such as reports, surveys, Council material, the division or agency may ask you to let a central coordinating manager know what you have given the investigator.

5.0 As a supervisor, what should you do when one of your employees is contacted by Ombudsman staff?

1. Support and encourage the employee.
2. Explain the process to them. If you need more information, you can check our website at ombudstoronto.ca, speak to your manager or call us to find out. The key here is to help everyone see this not as a problem, but as an opportunity to improve service to the public.
3. Tell the employee it is important to help the Ombudsman's office with their inquiries and participate in the investigation.
4. Remind the employee that what they tell us and the questions we ask them are confidential and they should not speak about it to coworkers or yourself.
5. Give the employee the time off to speak to Ombudsman staff.
6. You do have a right to know when your employee is out of the workplace, but you cannot ask them about what happened during the interview.

6.0 Confidentiality

In accordance with Section 173(1) of the *City of Toronto Act, 2006*, the Ombudsman and staff are obliged to maintain secrecy and confidentiality about all matters that come to their knowledge in the course of their duties.

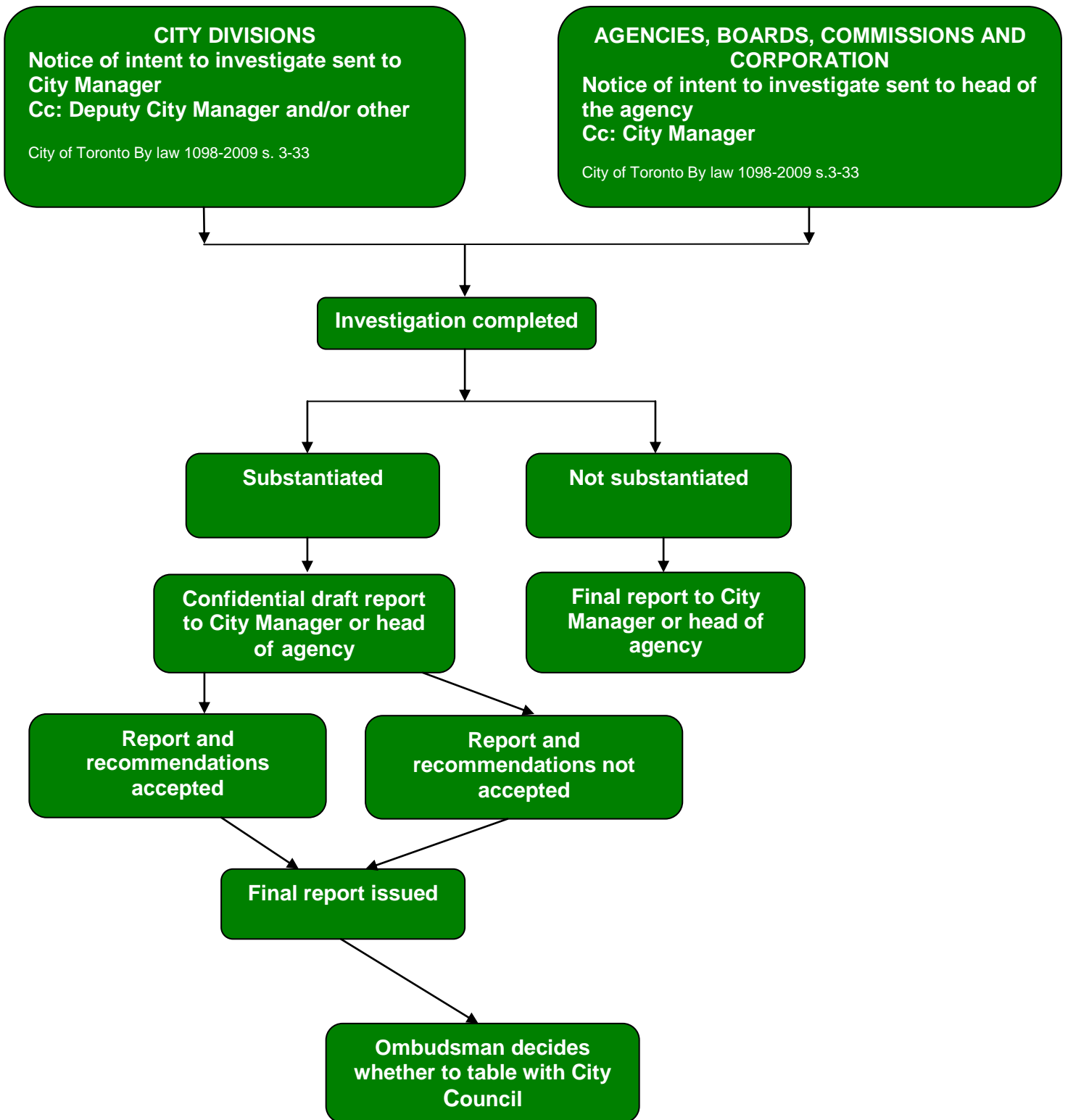
Confidentiality will be maintained throughout the complaint process except as required to carry out our mandate in order to protect the interests of the complainant, the public servant, and any others involved in an Ombudsman inquiry or investigation.

Confidentiality is not the same as anonymity. It is a fundamental right for an individual complained about to be aware of the source of the allegations.

7.0 Municipal Freedom of Information and Protection of Privacy Act

In accordance with Section 173(3) of the *City of Toronto Act, 2006*, the Ombudsman is exempt from the *Municipal Freedom of Information and Protection of Privacy Act, 2006*. This means that materials in the City's possession that would be protected under freedom of information legislation can be accessed by the Ombudsman's office.

8.0 Investigation Protocol



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For more information about the Office of the Ombudsman see the Defining Fairness Handbook on our website www.ombudstoronto.ca.