



Town of Whitby Policy

Policy Title:	Frivolous or Vexatious Complaint Policy
Policy Number:	MS 430
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Approval:	Council
Point of Contact:	Andre Gratton, Manager of Enforcement Services

Policy Statement

The Town of Whitby, in accordance with its core values of accountability and respect, seeks to provide exemplary service to all members of the public and resolve complaints in a timely manner.

Purpose

Complaints which are Frivolous or Vexatious consume a disproportionate amount of Town time and resources and impede staff from attending to other essential issues. This policy establishes the process to be used by all Town staff when handling Frivolous or Vexatious complaints.

Scope

The staff process for the handling of Frivolous or Vexatious complaints applies to complaints or expressions of concern related to by-laws, policies, procedures and rules or regulations initiated through any avenue available to the public for submitting complaints to the Town, with the exception of the exclusions noted below.

Commissioners and managers/supervisors are responsible for ensuring that relevant staff are aware of and trained on this policy and any accompanying guidelines, procedures, and protocols.

Exclusions

This policy does not apply to complaints about Town staff. For complaints related to Town staff, please refer to the applicable Corporate Policy and/or Procedure.

Complaints involving elected officials should be forwarded in accordance with the Council Code of Conduct.

1. Definitions

For the purpose of this policy:

- 1.1. **“Frivolous or Vexatious”** means the complaint is initiated with the intent to embarrass or annoy the recipient or is part of a “pattern of conduct” by the complainant that amounts to an abuse of the complaints process.

What Constitutes a Pattern of Conduct?

A **“pattern of conduct”** occurs when, on more than one occasion, a complainant engages in one or more of the following:

- Brings complaints concerning an issue which staff have already investigated and determined to be groundless; or brings complaints concerning an issue which is substantially similar to an issue which staff have already investigated and determined to be groundless (e.g., with respect to the same neighbour or same property), or
- Engages in unreasonable conduct which is abusive of the complaints process, including, but not limited to:
 - Harassing, verbally abusing or otherwise seeking to intimidate Council Members or staff dealing with their complaint, in violation of the Town’s Public Code of Conduct Policy and Procedure; the Town’s Respect in the Workplace Policy; and any other relevant Town policies which may be applicable or take effect from time to time;
 - Making excessive or multiple lines of enquiry regarding the same issue (e.g., pursuing a complaint with staff in multiple Town departments and/or a Council Member simultaneously) while their complaint is in the process of being investigated;
 - Repeatedly challenging the findings of a complaint investigation, complaining about the outcome and/or denying that an adequate response has been given;
 - Refusing to accept that an issue falls outside the scope of the Town’s jurisdiction;

- Making unreasonable and/or aggressive demands on staff by, for example, insisting on responses to complaints and enquiries within an unreasonable time-frame;
- Making statements or providing representations that the complainant knows or ought to know are incorrect, or persuading others to do so;
- Demanding special treatment from staff by, for example, not following the normal chain of command and immediately demanding to speak to a manager or supervisor;
- Using new complaints to resurrect issues which were investigated and completed in previous complaints;
- Changing the basis of the complaint as the investigation progresses and/or denying statements he/she made at an earlier stage;
- Refusing to co-operate with the investigation process while still wanting their complaint to be resolved; or
- Failing to clearly identify the precise issues of the complaint, despite reasonable efforts of staff to help them clarify their concerns.

2. Responsibilities

Employee Responsibility

Staff must establish, through the documented words and/or actions of a complainant (e.g., emails, letters and staff notes reporting a conversation or incident) that the complaint is Frivolous or Vexatious before applying the processes outlined in this policy.

If an employee believes that a complaint is Frivolous or Vexatious, the employee should consult with their manager/supervisor, provide any supporting materials (e.g., emails received from the complainant) and advise the manager/supervisor of the steps that have been taken to resolve the issue, including:

- The length of time that staff have 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; and

- The nature of the complainant's behaviour.

Note: Employees may choose to contact their manager/supervisor prior to a pattern of conduct being established if the complainant's behaviour is extreme.

Manager/Supervisor Responsibility

Managers/supervisors are responsible for reviewing the information provided by staff and determining if the complainant's behaviour should be escalated to the Commissioner.

Before escalating to the Commissioner, the manager/supervisor must be satisfied that:

- The complaint has been properly investigated;
- Communication with the complainant has been adequate; and
- The complainant is not attempting to provide any significant new information when contacting staff.

Commissioner Responsibility

The Commissioner is responsible for reviewing the information provided by the manager/supervisor in a timely manner. The Commissioner may contact other Town Commissioners or Directors to determine if the complainant is contacting multiple Town staff/departments.

If, after reviewing the circumstances, the Commissioner determines that action under this policy should be taken, he or she will determine the appropriate action(s) in accordance with this policy. A warning letter will be sent to the complainant indicating that the actions outlined in the letter will be put into effect if the complaints of a Frivolous or Vexatious nature continue. If the complaint includes multiple issues, the letter may also outline the priority assigned to resolving and responding to the complaints.

Maintaining Detailed Records

Staff are responsible for maintaining detailed records of their interactions with complainants (e.g., 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 Town staff in accordance with this policy. Records must be retained in accordance with the Town's Records Retention By-law.

Staff are reminded that the retention of such records assists in any legal action that may be necessary to support this policy, and is of assistance if a complaint is submitted to the Town's Ombudsman regarding the conduct of staff or the application of this policy.

3. Permitted Actions

Types of Action to Restrict Complainant Impact on Staff

Actions available to the Commissioner for a Frivolous or Vexatious complaint under this policy may include, but are not limited to:

- Limiting the complainant's correspondence with staff 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 a particular point of contact at the Town (where possible, other staff members should be advised not to respond to the complainant but to refer them to the point of contact).
- Requiring any face-to-face interactions between the complainant and staff to take place in the presence of an appropriate witness.
- Requiring that the complainant produce full disclosure of documentation or information before staff will further investigate a complaint.
- Instructing staff not to respond to further correspondence from the complainant regarding the complaint or a substantially similar issue, and informing the complainant of same.
- Instructing staff 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, and informing the complainant of same.
- In the appropriate circumstances, instructing staff to severely reduce or completely cease responses to further complaints and correspondence from the complainant.

If deemed appropriate, the Commissioner may set up a face to face meeting with the complainant and relevant staff (if applicable) in order to identify any misunderstandings and attempt to resolve the issue.

Procedure if Frivolous or Vexatious Complaints Continue

If a Frivolous or Vexatious complainant disregards the warning letter and continues to exhibit a pattern of conduct that falls within this policy, or continues to submit complaints deemed to be Frivolous or Vexatious, the Commissioner will advise the CAO that any actions outlined in the warning letter(s) will take effect, up to and including the complete withdrawal of any services in response to the complainant for a fixed or indefinite period of time.

The Commissioner will advise the Senior Leadership Team, the Mayor and the appropriate ward Council Member(s) of the action the Town has taken in response to continuing Frivolous or Vexatious Complaints or a pattern of conduct, and the reasons for it.

Extreme Behaviour

The Town's Public Code of Conduct Policy and Procedure, and the Respect in the Workplace Policy should be consulted if a complainant's behaviour threatens the safety or security of staff. Durham Regional Police Services should be notified of such behaviour by the complainant. In such a scenario, progressive steps to educate or warn the complainant do not need to be taken, and staff are permitted to immediately and indefinitely withdraw all applicable services to the complainant.

New Complaints

Complaints on a separate/new issue from a person who has come under this policy will be treated on their individual merits. The Commissioner, in consultation with the relevant Commissioner(s), will decide if any restrictions which are currently in effect should be applied to the new complaint.

This Policy is hereby approved by Council Resolution # 222-20 on this 2nd day of November, 2020.