



Ombudsman
Toronto

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Ombudsman Toronto Enquiry Report

Enquiry into a Noise Complaint to MLS

February 8, 2017

Complaint Summary

1. The complainant contacted Ombudsman Toronto by email on March 1, 2016 concerning the handling by Municipal Licensing & Standards (MLS), North York District of her October, 2014 noise complaint.
2. The complainant lives in a semi-detached house and shares an adjoining wall with her neighbour. She had complained to MLS about "construction noise" coming from next door.
3. MLS wrote to the neighbour on October 28, 2014 informing them of the complaint and of the specific prohibition against construction in Chapter 591-2.1. of the Toronto Municipal Code, which states that noise resulting from the operation of construction equipment or any construction is not permitted at specified times of day, including all evenings and nights and all day Sunday and statutory holidays.
4. A MLS Municipal Standards Officer (MSO) sent the complainant noise logs on November 24, 2014 for her to complete, with email instructions to log only general noise, such as loud music, dogs barking, doors slamming and furniture being dragged, and not to include what the complainant had described to the MSO as "hammering, drilling and other related construction noise".
5. MLS received the complainant's noise log, containing entries between October 4, 2014 and November 20, 2014, on December 18, 2014. The next notation in the MLS file is from March 20, 2015 when the noise log was provided to the division's Prosecution and Investigation Support Unit for review. There was no documentation of the review recorded in the MLS file, such as who conducted the review, what it consisted of, or its results.
6. MLS returned the noise log to the complainant on April 10, 2015 for minor revisions. She returned the revised log on April 22, 2015, and expressed frustration that the "construction noise" was not being looked at by the City.
7. On May 4, 2015 the Acting Manager sent the complainant an email advising that the noise about which she was concerned would not be considered

"construction" noise, but rather, noise produced from general home repairs/renovations, more suitably captured under the general prohibition of the By-law (Chapter 591-2). The Acting Manager further told her that the information she had provided on her noise log would be processed and legal charges against her neighbour would proceed. The noise log was not however revised to include the residential home renovation noise, which was her primary concern. The MLS file shows that no further action was taken by the division until July 7, 2015, when charges were drafted; however, by that time the six-month limitation period had passed and charges could not be laid.

8. MLS sent a letter of apology to the complainant on March 23, 2016, after she had escalated her concerns to the Acting Director of the MLS Investigations Unit.
9. The complainant contacted Ombudsman Toronto to complain about the process and the delay associated with her case. She was also concerned that she had not been told that there was a six-month time limitation for noise complaints.

Steps Taken

10. During the course of our Enquiry, we gathered information from the individual reviewing officer, MLS management and Legal Services.
11. We also requested statistics from the Acting Director of Investigations to capture any other files within the past five years that did not proceed to prosecution because the time to lay a charge had expired. He provided a list of eighteen summonses for which MLS was unable to proceed due to the statute of limitations. He also advised us that their database (IBMS) is not set up to capture investigations that do not proceed due to missed time limits.

Analysis and Issues Identified

12. Our Enquiry identified four issues with the current enforcement process:

Communication

13. The reviewing MSO and the MLS supervisor provided conflicting information to the complainant about the complaint process, which added to her confusion and frustration.

Delay

14. Despite having the complainant's evidence in hand, MLS failed to complete its review and lay a charge before the time permitted to do so had expired.

Record Keeping

15. A lack of documentation made it difficult to determine what caused the significant delay in this case.

Lack of Clarity in Process

16. Finally, there appears to be a lack of understanding among MLS staff about the approach of MLS to the investigation of noise complaints triggered by residential home renovation. We also received mixed responses about who is responsible for contacting Legal Services for direction, and when such consultation should occur.

Ombudsman Recommendations

17. In consideration of the information gathered through this Enquiry, I make the following recommendations:
 1. MLS should immediately assign a supervisor to review the complainant's ongoing noise complaint. This person should act as a direct contact for the complainant and ensure that the delays and confusion that occurred in the initial review of this complaint are not repeated.
 2. MLS should work in consultation with the City's Information and Technology division to explore the availability of a tracking or a bring-forward system to identify statutory limitation periods for By-Law violations and complaints.
 3. MLS should take steps to enhance documentation practices for individual files, to ensure that all relevant actions are recorded.
 4. MLS should provide clarification to operational management and staff, as well as to the public, about how to deal with complaints regarding residential home renovation noise.
 5. MLS should have a protocol in place for consultation with Legal Services. The protocol should clearly identify the respective roles and responsibilities of MSOs and their managers.
 6. MLS should identify relevant time limitations on the complaint forms it provides to complainants. This information should also be posted on the MLS website. Instructions that accompany noise logs should identify the general six-month limitation period, and how this could impact the complaint.
 7. MLS should provide Ombudsman Toronto with an update on steps taken since the Licensing and Standards Committee passed a motion on October 25, 2016 asking the Executive Director, MLS to report back on the feasibility of implementing an alternative dispute resolution process as a mandatory requirement for certain types of neighbour disputes that arise over a municipal By-law contravention.

Division Response

18. We gave MLS an opportunity to review our draft findings and recommendations. Regarding our individual recommendation (1), MLS had already taken steps on its own initiative to assign a supervisor as contact for the complainant in order to ensure that the review of her current concerns would move through the process smoothly.

19. The Executive Director accepted all of our systemic recommendations (2-7).

Follow-Up

20. Ombudsman Toronto will follow-up with MLS on the implementation of our recommendations in six months.

(Original signed)

Susan E. Opler
Ombudsman