

Promises Made, Promises Broken

An Investigation into the City's Below Market Rent Program

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1.0 Executive Summary

1. The City has a Below-Market Rent (BMR) policy that allows some non-profit community groups providing key services to Toronto residents to lease City space in a way that is cost-neutral to the City. In return, these community agencies provide important programs to Toronto residents at a lower cost than the City could provide.
2. Less than 1% of City properties are part of the BMR Program. Most of the City's real estate is occupied by City agencies, boards, commissions, corporations or divisions.
3. The BMR agencies pay a nominal rent of \$1 per year but must cover the operating costs of the facility. These costs include utilities, custodial care, repairs and security.
4. In February 2012, six non-profit agencies leasing space in the same City building (the Complainants) complained to the Ombudsman. They said that the City was raising their rent by 550%, requiring them to move from a rate of \$3.20 per square foot (psqf) to a new \$17.74 psqf rate. The Complainants said that despite repeated requests, the City had failed to provide an adequate explanation for the increase.
5. The Complainants contended that although the City staff had warned them orally over the past years that their rate would be increasing, the City's estimates changed constantly, City staff failed to provide promised information that would justify the new rates, and no written notice was ever issued about the proposed increases.
6. The Complainants said they were also told by City staff that, despite earlier assurances, the new rate was being applied retroactively, and that they were in arrears by \$85,758.54. As none of the agencies had the funds to pay this, staff told them they would have to seek City Council permission for a "one time grant" to cover the difference between their old and new rates.
7. When the motion went to Council, the Complainants found in the accompanying documents that staff had, without notice, increased the rate again, from the figure the City had used with them just four months earlier. They said they were not given adequate explanation for the new, higher number.

8. On May 17, 2012, the Ombudsman provided notice to the City Manager that she would be investigating the complaint, involving three divisions: Real Estate Services (Real Estate), Facilities Management (Facilities) and Social Development, Finance and Administration (SDFA).
9. The investigation found Real Estate and Facilities staff communicated extremely poorly with tenants and other staff. Real Estate changed the rate that was to be applied four separate times, failed to provide the promised data justifying the increases and did not apply policies consistently. There was a failure to meet basic standards of service. SDFA was the exception, and their staff tried to facilitate communication throughout.
10. The City never issued written notices to the Complainants about any pending increases in rent. The changes were mentioned only orally in meetings, at which City staff kept no records. Staff would promise to follow up with further information, but rarely, if ever, met those commitments.
11. The investigation found chronic delays within Real Estate and Facilities. Promised deadlines to provide information to the Complainants were missed by many months, and sometimes, years.
12. For example, after a meeting with the Complainants in February 2009 in which City staff reported that the new rate would be approximately \$9.00 psqf, Real Estate promised to provide a rationale for this number and confirm its accuracy. A year and a half passed with no information received.
13. City staff next met with the Complainants in August, 2010, and orally gave them a new estimate of operating costs, saying this would result in an increased rate of \$12.00 psqf. Real Estate promised to provide the historical costs of the building within one month to explain the new increase. The information was provided eight months later.
14. When the historical information for operating costs was finally provided in May 2011, it was so general it was of little use. The category of "contracted services" accounted for approximately 50% of the operating costs, but there was no breakdown. It included data from the year 2005, the most expensive year of all, yet the Complainants did not move into the building until November of that year.
15. City numbers for the building's operating costs changed repeatedly without explanation. For example, between May 2011 and April 2012, four

different estimates were given for the year 2010. Similarly, the Complainants were never told why the cost of providing security in 2010 dropped from \$21,477 to \$9,805.

16. In April 2011, the Complainants discovered, by accident, the City was now going to charge them a new rate of \$13.00 psqf. This was casually mentioned to a single tenant in an April 2011 email, as if this information was already known to them.
17. In a June meeting, sensitive tenant information about arrears was left on the meeting table by City staff for all to see, a possible breach of privacy.
18. The Complainants were informed at that meeting that the new rate was being applied six months retroactively to January 1, 2011, although the City had not yet provided leases for them to review. The leases materialized 11 months later, in December 2011.
19. A communications breakdown also occurred with the drafting of the motion for the "one-time grant" at the September 2011 session of City Council. While the \$13.00 psqf rate had been used in discussions with the Complainants for the previous four months, staff inserted a new, higher figure of \$17.74 in the Council motion. No one advised the Complainants of the change.
20. When the Complainants asked how the City had arrived at this new figure, staff stated that \$17.74 was \$13.00 psqf, plus HST. This explanation was wrong as it would have meant an HST rate of 36%.
21. The correct answer was not provided until three months later, when Real Estate explained that they had changed their method of calculating the square foot rental area. Staff never acknowledged the error.
22. When the motion went to City Council, the Real Estate Director and the Chief Financial Officer had received no prior briefing from staff.
23. Real Estate subsequently drafted a report recommending against the motion which they had assisted SDFA in preparing in the first instance. That report was full of inaccuracies and omissions. Staff failed to meet their own timeframes, as when Facilities promised in January 2012 to obtain data on custodial and security contracts within one week. It was not until April 2012 that this information was finally communicated.
24. City staff kept virtually no records of meetings with the Complainants. In most cases, the Complainants' own minutes were the only records.

25. Over seven years, Real Estate improperly charged one non-profit group over \$20,000 for property taxes, when none were owed. Although City staff identified the error in 2008, no correction was ever made, and the charges continued.
26. The Complainants were told if they could not pay operating costs, the only alternative was to apply to City Council for assistance. Other tenants who are not paying full operating costs have not been subject to the same requirement.
27. The Ombudsman made 22 recommendations including:
 - That the City work with the Complainants to draft a list of all outstanding promises, and that the commitments on this list be fulfilled by May 31, 2013.
 - That an information package be given to all BMR tenants, setting out what they can expect each year, including a breakdown of operating costs and related information, and how rent will be increased if full operating costs are not being recovered.
 - That the City establish a requirement for written notice regarding changes to rental rates, including a requirement for a minimum notice period.
 - That City divisions involved in this matter retain minutes of business meetings as appropriate and that a record-keeping process be established for their retention.
 - That the City refund the non-profit organization for all monies improperly charged in respect of property taxes and apologize to them for the error.
 - That the City provide the above organization with a written apology from the Chief Corporate Officer for the original error and the delay in fixing the problem.
 - That the City Manager provide a written apology to the Complainants for the manner in which they were treated by City officials.
 - That Real Estate review the staff report submitted to Government Management Committee in October 2011 and amend any errors or omissions required in a letter to the Complainants

28. The City Manager agreed to all of the Ombudsman's recommendations and said the investigation was "comprehensive" and "balanced."

2.0 The Complaint

29. In February 2012 my office received a complaint from a group of six community organizations leasing space from the City of Toronto through the City's "Below Market Rent" program (BMR).
30. The Complainants leasing office space alleged that the City was requiring them to pay a rate in excess of 400% of that paid throughout the term of their 2005-2010 leases. They complained that they were given inadequate notice of the increase, that there was unreasonable delay on the part of the City in providing an explanation of the new rate for operating costs, and that when the information did arrive, it was incomplete.
31. The Complainants said they had been notified orally, in general terms by City staff over the previous three years, that their operating cost charges would be increasing, and had been given a variety of oral estimates of what the cost might be. At each meeting, the City promised to "check" if the estimates were correct and to back these up with a break-down of costs. The Complainants said they received nothing until May 2011, and alleged that what they received lacked detail. The City did not provide written notice of a rate increase.
32. In May 2011, the Complainants were informed that the annual "additional rent"¹ would increase from \$3.20 per square foot (psqf) to \$13.00 psqf retroactive to January 1, 2011, and that, in fact, they were already in arrears. The Complainants said they could not afford this, and had not been given adequate notice of the additional cost. In September 2011, they obtained City Council's approval for a "one year grant" to cover the difference between \$3.20 psqf and the new rate for 2011. However, on the day Council documents became public, the Complainants discovered that the quoted rate had again increased, to \$17.74 psqf.
33. While some explanation was ultimately provided, the Complainants allege that they did not receive the information promised by the City in a timely way.

3.0 The Investigation

34. My office made preliminary inquiries with City staff about the complaint and the BMR policy in general.
35. I initiated an investigation, issuing a notice of investigation to the City Manager on May 17, 2012.

¹ BMR tenancy agreements stipulate a nominal amount of annual rent, such as \$1.00, but require the tenants to also cover operating costs, such as utilities, custodial services, repairs and security. This is deemed "additional rent" and is set at a pre-determined rate per square foot.

36. My office reviewed documents including governing policy and procedures. My investigator interviewed witnesses including the Complainants, City staff and Councillors.
37. The investigation considered the following issues:
- how the City arrived at the estimated operating costs for affected tenants
 - whether adequate notice was given for the increase in operating costs
 - whether the City provided sufficient information to the Complainants
 - whether there was an unreasonable delay in providing the requested information

4.0 The Context

38. The City of Toronto owns numerous properties throughout the city. In most cases in which the City acts as landlord, the Real Estate Services Division's (Real Estate) leasing unit² provides City space at market rate, and ensures that the City is maximizing profit opportunities through its rental income.
39. The vast majority of the City's properties are occupied by City agencies, boards, corporations and divisions.³ First priority for these properties is allotted to City government.
40. However, City Council has recognized a value to community agencies delivering some key services to Toronto residents that the government itself could not provide at so low a cost⁴. As a result, Council approved a BMR policy⁵ allowing some agencies that meet specified criteria, to lease space at a cost-neutral impact to the City.
41. The policy framework, established in 2002, states that the BMR policy is guided by three principles: fairness, openness and transparency, and accountability.
42. Space not currently required by the City may be leased to non-profit community and cultural groups.⁶ The BMR program is an exception to the

² The leasing unit of Real Estate serves four functions: property tax management, site management, lease-out of properties and City rental of outside properties. Their full complement is approximately 40 staff.

³ The Social Development, Finance and Administration staff report dated October 22, 2012, "Update on the Policy for City-Owned Space Provided at Below Market Rent" states that 99% of City spaces are occupied by City agencies, boards, divisions and corporations.

⁴ For example, groups providing services to at-risk youth, immigrant and low-income communities.

⁵ In June 1998, Council attempted to harmonize BMR practices, post-amalgamation, in a BMR policy. This first BMR policy was not actively used, as no new space opened up. The BMR policy was first adopted by Council in October 2002 and amended in 2005 and 2007.

⁶ In turn, when there is no appropriate City-owned space for operations of Toronto municipal government services, the City will become the tenant, leasing space from external groups.

general profit maximization principle of Real Estate. A Manager in Real Estate Services (Manager, Real Estate) reported that the City is landlord in approximately 1,200 leases. Fewer than 10% of those are BMR leases.

43. The process is a competitive one, due to the limited number of BMR properties, and to be eligible for space an organization must:
 - have non-profit status;
 - have programs and services aligned with a City of Toronto divisional mandate;
 - provide services for Toronto residents; and
 - have a mandate that is not the sole responsibility of a senior order of government.
44. Approved BMR agencies are responsible for paying the operating costs of their space, such as utilities, custodial and security, along with any property taxes that might be levied against the building. While each BMR lease notes tenants' responsibility for property tax, no BMR buildings are currently charged property tax.
45. The City is responsible for capital costs, keeping the property in a state of good repair, and meeting health and safety standards.⁷ The City forgoes any profit it might have earned in leasing the space at market rent, but is not to lose any money, as the overhead is paid by tenants. Appendix A provides details on the BMR policy history.
46. The City provided two different sets of information about the number of BMR leases it currently has. The Manager, Real Estate informed my office in August 2012 that there were 88 BMR leases. Social Development, Finance and Administration (SDFA) noted in its report to Government Management Committee that the number was 93. An SDFA Director, (Director, SDFA) wrote on October 26, 2012:

The City now has a total of 93 BMR tenancies, a net gain of 5 tenancies since amalgamation. The first comprehensive inventory of the tenancies that existed at amalgamation was completed in 2007 and identified a total of 88 BMR tenancies. Since that time, Council has approved an additional 22 BMR tenancies, and 17 tenancies have ended.

⁷ Report to Council on September 25, 26 and 27 2006. "Phase Two Implementation of the Policy on City-Owned Space Provided at Below-Market Rent."

47. In November 2012, the Manager, Real Estate confirmed the number was 88 leases.
48. At the conclusion of this investigation, the City responded to this fact and explained that the SDFA count included properties that Real Estate Services had not "formally" added to the BMR portfolio list.
49. These lease agreements are managed by Real Estate, with assistance and property maintenance from the Facilities Management Division (Facilities)⁸.
50. In about 60% of cases, the BMR relationship is "net and carefree." This means tenants pay operating costs, such as utilities, directly.
51. In just over one third of BMR leases,⁹ Real Estate explained that the City pays the operating costs, and seeks reimbursement from tenants through a contractually pre-determined monthly charge. This occurs in cases where there are multiple tenants in a building, where it would be difficult to meter out each cost to every tenant. In these multiple lease buildings, a lease provides a per-square foot rate that City staff have estimated will cover the tenant's proportionate share of operating costs based on previous years' costs.
52. Included in these leases is a clause that provides the City with the right to make an adjustment at year end, after performing a reconciliation. If the tenants have overpaid, they should receive a refund, but if they have underpaid, they would owe the City monies.
53. Real Estate's contact with tenants is mainly through a single designated Property Officer in charge of the BMR portfolio. Both current and previous Property Officers stated that the BMR portfolio was challenging, with a heavy workload. The Property Officer role includes non-BMR duties as well.
54. In addition to the leases managed by Real Estate, a second agreement is required by BMR policy. A "service agreement" is held by the appropriate City Division. SDFA provides management assistance to ensure tenants' programming is in line with the City's goals and the programs for which City funding or BMR eligibility is conferred.

⁸ Real Estate and Facilities Management were, until December 21, 2009, a single division, called "Facilities and Real Estate" (FRE). As much of the history of this complaint occurred prior to the re-organization leading to that split, the term FRE is used up to the date of December 21, 2009. After that date, this report identifies them by their current, separate divisions.

55. SDFA has general oversight of the BMR program, even if the host division is not SDFA. For example, although a BMR tenant may be providing a social service that advances the mandate of the Economic Development and Culture Division, SDFA would administer the process and advise that division on BMR issues.
56. SDFA staff have the most direct contact with BMR tenants in their role as a liaison between tenants and the City.
57. Some staff reported that tenants tend to first approach SDFA with issues, rather than Real Estate. The Manager, Real Estate suggested that this was because BMR tenants perceive Real Estate as "lacking in compassion."
58. The Executive Director, SDFA, explained that a major challenge with the BMR policy was that the City has to manage conflicting interests. He noted that Real Estate generally tries to "wring out as much money as we possibly can from every square inch of real estate that we have" but the City also has an interest in encouraging agencies to provide their services which contribute to building healthy communities. He said that SDFA tries to balance these interests.
59. The Director, Real Estate Services (Director, Real Estate), on the other hand, commented that it is easy for SDFA to say to tenants some exemption is "no problem" but in the end, it is Real Estate's budget that gets "hit", while SDFA's "never gets touched."

5.0 The Facts

60. The Complainants¹⁰ first leased space at another City-owned property. That building was, by all reports, in poor condition. At that location, the Complainants were collectively paying \$7,200 a year at the end of their tenancy in 2004- 2005.
61. Following municipal amalgamation in 1998, the Complainants' twice annual cheques were being returned to them by the new City of Toronto. The Executive Director, SDFA suggested to them at that time, that they should deposit their monthly payments into an escrow account as a "trust fund." The Complainants were told that this account could be used to

¹⁰ One new organization moved into the Complainants' current building in December 2005, a month after the others, and had not previously leased space at their previous location. Also, one tenant in the collective had recently moved out of the property, and is not included as a complainant, although they were a part of many of the early meetings and communications with the City.

supplement their monthly payments once they moved to a new City building that would inevitably have a higher overhead.

62. In 1999, Council approved the transfer of 14 Toronto Hydro properties to the City. One of these was the Complainants' current location. It was used by the City as short-term office space while the York Civic Centre was being renovated, and for some time afterward. Councillor Y said that she and Councillor X tried to get some of the space in that building for the Complainants, in order to ensure the community agencies could continue their work.
63. The Complainants moved to their current location in November 2005 when the City required them to vacate their original rental space so that the building could be demolished and used as a parking lot.
64. The Complainants signed five year leases, expiring on November 13, 2010. The City stipulated that the Complainants would pay the operating costs of the building at an estimated rate of \$3.20 psqf with the usual clause permitting the City to seek further payment at year's end if it found that the actual operating costs were higher than expected.
65. The operating costs were higher than they had been at their previous rental space, and the Complainants used their "trust fund" to pay the difference between their former rate and the new one. This fund was exhausted late in 2008 and from that point on, the Complainants paid the full \$3.20 set out in their lease without supplement from the trust account. The Complainants told my investigator they had understood that from that point on, they were paying the full operating costs.

5.1 December 16, 2008 Tenant Meeting with Councillors

66. The earliest documentation of conversations about increasing operating costs is from a meeting held with the Complainants on December 16, 2008. Some City staff reported that discussions about an inevitable increase in operating costs occurred prior to this, but no conversations were noted or documents provided.
67. On two occasions, senior managers in Real Estate promised to provide my office with documentation of the earlier discussions. None was delivered, even when my investigator followed up.
68. The December 16, 2008 tenant meeting included the two ward Councillors and dealt with a variety of issues. The tenants' minutes note that "we [the

Complainants] had been told by our CDO [Community Development Officer] that we are all going to have increases anyway as we are losing our subsidy- no-one seems to know what this means."

69. On December 18, 2008, Ms. G, the designated spokesperson for the Complainants, wrote to the Executive Director, SDFA, to ask a number of questions including why rent will be "substantially increasing at end of leases." She requested a meeting early the following month.
70. The Executive Director, SDFA agreed to a meeting and wrote to her the same day, stating that

With respect to the issue of operating costs, I have always been extremely clear with the tenant agencies of [the Complainants' address] that they will need to cover operating costs. The City allowed the agencies to use unpaid back rent as a source of funding to help agencies cover operating costs for a period of time while they secured the budget to pay the true operating costs. All agencies had literally years of notice they would need to cover these costs.

5.2 February 3, 2009 Tenant Meeting

71. The proposed meeting with Complainants occurred on February 3, 2009 and included both the ward Councillors, the Director, Real Estate, Manager, Real Estate, Executive Director, SDFA and a Community Development Officer.
72. Staff gave the Complainants an estimate of the current operating costs: \$9.00 psqf. The minutes, taken by SDFA staff, do not indicate when the new rate was to take effect, but witnesses thought the rate discussed would have been intended for the start of 2010 or when the leases expired at the end of that year.
73. The notes show that after questions from the Complainants about the increased rate, the City was to "go back and talk with Facilities about the cost and [confirm] the increases are correct" with a note that Facilities and Real Estate would work with SDFA on this task.

74. The Complainants said that in the two years following the February 3, 2009 meeting, they did not receive any information. Ms. H, one of the Complainants, stated that this was typical of the pattern of communication with the City:

We would have a discussion about things and they would say they were going to follow through and do stuff They never came back with any of the information that they say they would. We got nothing formal, no formal request, no letters, no new charts, nothing. It just drifted.

75. Between the February 3, 2009 meeting and the next one, a year and a half later, in August 2010, the City did not provide the Complainants with the requested information. The Manager, Real Estate believed there might have been some conversations that occurred that were not reflected in the documents, but neither he nor any other staff provided evidence of anything specific.
76. Within the City, there was some action after the February 3, 2009 meeting. The Property Officer then assigned to the file (Property Officer C), reported back to the Manager, Real Estate on February 25, 2009, with operating costs for the building. He quoted a rate of \$11.35 psqf for 2008, \$12.01 for 2007 and provided City staff with a break-down of utilities, janitorial and various contracted services, along with a chart showing his calculations of the psqf rate. The Complainants say they did not receive this information and there is no record of the City providing those calculations.
77. On May 14, 2009, Supervisor X in Facilities and Real Estate (FRE) sent an email while a financial review of City leases was underway. He asked staff to change the monthly installment to be recovered to the current rate, rather than the estimated amount in the 2005 lease.
78. Property Officer C wrote back to him saying he understood that "we are not ready to charge tenants the full operating costs." He noted that he was going to meet with the Manager, Real Estate about phasing in the actual operating costs.
79. There was no increase in the operating costs charged, and the Complainants were not advised of these discussions or asked to pay increased operating costs during this period.

80. On December 21, 2009, the Facilities and Real Estate Division was reorganized into two divisions: Facilities Management and Real Estate Services.

5.3 Summer 2010: City Efforts towards Compliance with BMR Policy

81. The new Real Estate Property Officer assigned the BMR portfolio (Property Officer A), says he was given carriage of the file in June or July 2010, with instructions to ensure that all tenants be brought into compliance with BMR policy. He told my investigator that he set out to bring consistency and was concerned that one group of tenants should not have an advantage over another.

82. He said it was impossible to do this for all properties at once. He estimated at the start "almost every file [he] touched" was not in compliance with BMR policy, that the portfolio was "a mess" and that some tenants were actually paying no rent at all. When asked how that was possible, he said:

I have no idea. Some of them didn't have leases and they were in City buildings; and it was a huge risk ... Some of them were historical agreements that were so old. There was a lease agreement but it was so out of date it wasn't on our standard template ... my job was to update those leases as quickly as possible or get them to sign a revised lease to mitigate the City's potential risk.

83. Other witnesses, including the Executive Director, SDFEA, understood some tenants were paying no rent and needed to be brought into compliance. Property Officer A estimated that there was only 10% compliance when he assumed the position, but that by the time he left in December 2011, it was closer to 90% compliance. The Manager, Real Estate gave a similar estimate of compliance.
84. One of the first properties that Property Officer A dealt with was the Complainants' rental property. He said that this was one of the "big ones" that he first inherited. Property Officer A was told that the Complainants were not paying actual operating costs and that the City had "always attempted to try to get them to pay what the actual costs were" but that the Complainants never did. He reported that his manager said the City met with them every year to try and get them to pay actuals, but the Complainants always refused.

5.4 August 30, 2010 Tenant Meeting with City Staff

85. The next meeting with the Complainants was August 30, 2010. The Director, SDFA, a Community Development Officer, a Corporate Management and Policy Consultant from the City Manager's Office, and Property Officer A attended.
86. The meeting minutes were taken by the Complainants, and note that City staff said the leases were up for renewal shortly. They discussed the process for completing SDFA service agreement packages and completing their eligibility review for BMR.
87. The minutes note that although FRE preferred to execute a new lease immediately, if it was not completed between December and February, "this is not a problem, we [Complainants] would just go into 'over-holding', the City has a number of agencies like this."
88. "Overholding" is a state in which tenants remain in a rental property after the lease has expired. The Complainants' 2005 leases each state:

If the Tenant remains in possession of the Leased Premises after the expiry of the Term with the written consent of the Landlord, the Tenant shall remain as an overholding tenant on a month-to-month basis, at the same Net Rent as that payable for the month immediately preceding the expiration of the Lease and subject otherwise to all the provisions of the Lease.
89. The City did not provide written consent to go into overholding, but the Complainants told my investigator that based on the information received at that meeting, they would continue to pay the same rate of \$3.20 psqf. The Director, SDFA also said that had been her understanding, based on the information given that day by FRE.
90. The minutes state that Property Officer A had access to the operating cost figures from 2008, but that the actuals for 2009 were not yet available. The Complainants recalled that he appeared to have documents with him which he would consult, but did not share. The notes do not mention an estimate of operating costs being given but subsequent emails suggest Property Officer A orally indicated \$12.00 psqf.
91. The minutes state there was an agreement that Property Officer A would provide the Complainants with historical operating costs "for all previous

years" and that he would try to get these to them in time for their next tenant meeting a month later, on September 27.

92. The Complainants are recorded as saying that historical operating costs were discussed at a previous meeting with the Executive Director, SDFA and "that such information was seen as a pre-requisite to any increase, and also that substantial increases needed to be phased in."
93. The Director, SDFA said that if a subsidy was needed, Council authority would be required and that a gradual phase-in was already happening for two other organizations in 2010.
94. The next day, Property Officer A asked for historical operating costs from a Facilities budgets and accounts analyst in the business support unit (Analyst A). Analyst A told my investigator that it is very easy to obtain a breakdown of a property's costs and that a search on SAP¹¹, the City's Enterprise Resource Planning software, allows him to do so immediately. He would then confirm the numbers in the system with the other analysts in charge of each of the four sections, Real Estate, Facilities Operations, Custodial and Energy Management¹².
95. He estimated that he received two to three such requests each month. Analyst A said that SAP contained records going to the start of the Complainants' residency at their current location, although project management work orders were only linked to the system from 2007 onwards.
96. The breakdown of property costs is detailed, and Property Officer A confirmed that it takes some time to distil the data from the business support unit and aggregate the numbers in a summary chart.
97. The requested information was provided to Property Officer A on September 8, 2010. Analyst A was unable to obtain security cost information from a support assistant in the corporate security group (Support Assistant). He advised Property Officer A to approach her directly. Both Analyst A and Property Officer A told my investigator that while it is generally easy to obtain building cost information, the exception was security data.

¹¹ SAP is an Enterprise Resource Planning software solution that manages key business functions in an integrated system, primarily financials (accounts payable, accounts receivable etc.), human capital (payroll, benefits, etc.), and operations (procurement, sales etc).

¹² A fifth section, Design, Construction and Asset Preservation (DCAP) also exists but is not accessed in a review of building costs.

98. On September 12, 2010, the Director, SDFA wrote to Property Officer A. She said the Manager, Real Estate had promised her that Property Officer A could get the historical operating cost information to her by mid-week. She wanted to present this to the Complainants before she left on her vacation.
99. The following day, Property Officer A made a request of the Support Assistant for the outstanding security figures. He asked for security costing on the building from 2005 to 2009. The Support Assistant responded later that day with a breakdown for 2010, totaling \$26,000.
100. The \$26,000 figure was broken down on seven lines in two categories, salaries and non-salary information.¹³ The Support Assistant explained that the figures provided were an estimate, as the year had not yet ended. She clarified that the salary figures were set costs, and represented a percentage of two supervisors' salaries (5% and 10% respectively) to the Complainants' offices, as these staff served multiple buildings.
101. The Support Assistant did not provide costs for 2005-2009 as Property Officer A had requested, but told him instead that he could calculate estimates for previous years by decreasing the two staff members' salaries by 4% and 2% per year respectively, to account for annual pay increases.
102. She explained that Security would provide a cost for each year and that at the time she was asked for this information, they were still working on establishing their costs charged for services. The Support Assistant said the City had moved to an invoice-per-service-request system after the City's contract with a provider expired in 2007 or 2008. In 2011, the City secured a new contract to cover all security costs in a blanket charge.
103. The Director, SDFA followed up with Property Officer A by email on September 22. He said he would get the information to her by the end of the week. On September 24, as she was about to leave on holiday, she wrote to him and said that as she had not yet received the information, he should send it to her associate, an SDFA Policy Consultant, who would handle the matter.
104. The historical operating costs did not reach the Policy Consultant or the Complainants in September. It was provided eight months after the request was made.

¹³ The seven categories were: building security supervisor, fire and life safety supervisor, security system maintenance, preventative maintenance, alarm monitoring, "mobile" and supplies.

5.5 2011 Follow-up to August 30, 2010 Commitment

105. My investigator asked Property Officer A what accounted for the delay. He remembered that it was partly due to some delay in receiving the security information. It is noted that the Support Assistant responded to Property Officer A's request on the same day he emailed her.
106. Property Officer A also thought that some of the delay was due to the time it took to confirm the square footage of the rented spaces. He reported that Real Estate did not have accurate figures for the specific rentable space of many of their buildings, including the Complainants' building. He suggested that often, the City only has the gross square footage.
107. Property Officer A explained that it takes time to aggregate the information received from Finance into an understandable spreadsheet with summary data for each year.
108. On March 1, 2011, the Policy Consultant sent an email to Property Officer A asking him "to remind her again" of what the additional rent (operating cost) rate was for the Complainants' building. He responded that day that he would get the actual costs for 2010 from Finance and advise her.
109. The following day, Property Officer A contacted Analyst A and asked him to provide all of the 2010 costs for the Complainants' building.
110. On March 7, 2011, Analyst A contacted the Support Assistant to ask for the updated 2010 security costs, attaching the estimate she provided in September 2010. She responded on March 11, 2011, with a break-down of actual costs for the previous year. The total was \$21,477, about \$4,500 less than the estimate she had provided to Property Officer A in September 2010.
111. On March 24, 2011, Property Officer A emailed the Policy Consultant and stated that

A review has been performed on the building's operating costs over the last 6 years. Based on historical information, the revised additional rent for each BMR tenant in the building is \$13.00 per square foot (retroactive to January 1st, 2011).¹⁴
112. He asked her to provide this information to the Complainants. The Director, SDFA and the Manager, Real Estate were copied on the email.

¹⁴ There was no reference to whether this included tax. It did not.

113. One week later, on March 31, 2011, Property Officer A provided the Policy Consultant and the Director, SDFa with a chart of the Complainants' debt based on the new costing. It identified arrears ranging from \$437.78 for the tenant with the smallest office space, to \$12,371.24 for the tenant with the largest space.
114. Property Officer A did not provide SDFa or the Complainants with the historical operating costs which he had promised seven months earlier.

5.6 First Communication of \$13.00 psqf Rate

115. Following the March 24 and 31 emails from Property Officer A, the Complainants were not all advised of the new rate for rent. However, on April 14, 2011, one tenant received an email from the Policy Consultant which mentioned the need to fund-raise to cover "your new rent at \$13 per sq. ft." Ms. J, Director of the organization, gave evidence that this was the first she had heard of this rate.
116. Ms. J immediately notified the other Complainants. On April 19, 2011, the Complainants met to discuss this new information. That day, the group representative, Ms. G left a voicemail for the Director, SDFa and also sent an email to ask for a meeting with the City, explaining they wished to discuss the email to one tenant mentioning a 400% increase.
117. The Director, SDFa replied, agreeing there had been a commitment made by the City to "sending information about the actual operating costs and a projection of what the 2011 costs would be" but not to a phase-in.
118. On April 20, 2011, the Director, SDFa emailed Property Officer A asking if he provided the historical operating costs promised the previous August.
119. On April 21, 2011, Property Officer A wrote that he provided cost figures in his March 31, 2011 email to the Policy Consultant and the Director, SDFa. He said that because he was unable to obtain the necessary information by the end of September to complete his calculations, "it was decided to wait until the New Year to provide actuals for 2009 and 2010 as well."
120. Property Officer A told my investigator that he had not advised the Complainants in the interim that he would be waiting until 2011 to provide the promised information. He did not make the request for 2010 numbers until he was contacted by the Policy Consultant in March 2011.

121. The Director, SDFFA told my investigator that it was "not atypical" for SDFFA to have problems obtaining information from Real Estate. It was her impression that the division was understaffed and that the BMR portfolio did not fit well within their revenue-generating mandate. She believed that this, combined with the time-consuming nature of BMR files, explained why she often had to do "a lot of pestering" to obtain information.
122. She also said it was typical that following an undertaking, staff would not follow up or update on progress or reasons for delays. She named this problem, "the quiet in the gaps."
123. On May 6, Property Officer A sent an email to the Director, SDFFA asking whether she had sent the Complainants the \$13.00 estimate, to do so immediately if she had not.
124. Both Property Officer A and the Director, SDFFA told my investigator that following that email, they had a conversation in which the Director, SDFFA explained that Property Officer A had only provided a chart of arrears, not the promised historical operating costs.
125. As a result, within an hour Property Officer A sent a second email to the Director, SDFFA and the Policy Consultant, "as discussed" providing a chart of historical operating costs for six years, from 2005 to 2010. The highest "rate per usable square foot" was in 2005 (\$15.67) and the lowest in 2008 (\$11.48). This was the first time historical operating cost information was shared.
126. At the bottom of the chart there was a line stating the estimated operating costs for 2011 would be \$13.00 psqf. It did not indicate how this figure was arrived at.
127. Costs for security were only listed for two years, 2009 and 2010, although no security figure was ever provided to Property Officer A for 2009. The figures he used were the estimate the Support Assistant had provided for 2010 (\$26,000), and her subsequent actual numbers for 2010 provided in March 2011 (\$21,477).

5.7 Historical Operating Cost Chart Sent to Complainants

128. On May 9, 2011, the Director, SDFFA forwarded the chart with operating costs to Ms. G.

129. Ms. G wrote back that day on behalf of the Complainants asking:
- why the 2005 figures (the costliest year) were used, when the Complainants did not move into the building until November 2005;
 - why security costs only existed for 2009 and 2010 and why they were so high;
 - whether the Complainants could opt out of some services (e.g. custodial) in order to lower costs;
 - why the cost of utilities had more than doubled over five years;
 - for a specific breakdown of the costs, rather than the general six categories: utilities, supplies, equipment, contracted services, security and other expenses;
 - that answers be provided prior to the next tenant meeting on June 14, 2011.
130. The Director, SDFA responded to Ms. G by email that day, stating she would ask her colleagues to answer the Complainants' questions. She copied Property Officer A and the Manager, Real Estate.
131. The Complainants told my investigator they had concerns that the "swing space" on the third floor was sometimes used by City staff, as for example, when the new garbage bins were introduced and about 50 staff were using the space. The Complainants worried that some of these costs might have been charged to them.
132. Property Officer A told my investigator that he agreed the 2005 numbers may have reflected previous tenants' use of space. He said he included it for context but "more than likely" he did not use it in averaging.
133. When the 2005 numbers are excluded from calculation, the average rate is \$12.58 psqf. Including the 2005 numbers results in an average of \$13.09 psqf.
134. A second email that day from the Director, SDFA to Property Officer A and the Manager, Real Estate reported on a phone call with Ms. G. The Director, SDFA wrote that the Complainants would be accepting the rate increase but "had understood that we communicated that the move from their lower rate to the actual operating costs would happen once Council approved their lease renewal, not starting the calendar year." The Director, SDFA noted that they had understood that the state of their lease was in "overholding" meaning the same cost and conditions of the previous lease would continue. She states that this "would be consistent to

how [another BMR tenant] for example had been treated and other overholding tenants who had some reduced or fixed rate.”

135. Later that day, Property Officer A emailed back an explanation of overholding, explaining that her understanding of overholding was correct, but noting that the 2005-2010 lease contained a clause that the Complainants were required to pay their proportionate share of operating costs. He stated the increase was not being introduced through a new lease; it was attempting to enforce the obligations of the current lease, which had not been enforced.
136. On May 12, 2011, the Director, SDFFA wrote to Ms. H, a Complainant, to respond to her complaints about the new rate of \$13.00 psqf. The Director, SDFFA expressed concern about the complaints, as she stated that over the past three years, staff had been trying to prepare the Complainants for coming into compliance with the BMR policy including their responsibility to pay for operating costs.

5.8 June 14, 2011 Tenant Meeting with City Staff

137. On June 14, 2011, a meeting was held with the Complainants. The Director, SDFFA, Property Officer A, the Manager, Real Estate and the Executive Director, SDFFA. The Complainants' minutes from the meeting show that staff said they had been “cleaning up BMR” and that the BMR policy must be followed. Staff asked the Complainants what further details were needed. The Complainants explained the requests they had already made on items such as security costs and a breakdown of the general categories of costs such as "contracted services". The Manager, Real Estate agreed to provide more information within a week and to look into when an energy audit could be performed on the building. The Executive Director, SDFFA supported the Complainants' requests for information, explaining that if they had additional information, they could reduce costs.
138. The minutes note that one of the Complainants picked up “copies of a printout that had not been distributed, but was in the centre of the table.” The Complainants explained this was a chart showing each tenant's arrears up to the end of June 2011. It was an updated version of the arrears chart. The minutes state this was the first occasion they had learned that they were considered in arrears.
139. A number of City staff interviewed said that privacy standards may have been breached by sharing this chart, as it disclosed the debts of every

agency. The Complainants did not see this as an issue, given they presented themselves as a collective.

140. The Director, SDFFA stated that Complainants "absolutely" should have been advised about being in arrears prior to June of 2011. She said that this was contrary to the understanding established at the August 30, 2010 meeting about what would happen in overholding. She said if she had misunderstood, that was her mistake, but Property Officer A had not corrected her when she expressed her understanding of the way overholding worked. She said that considering them in arrears, "was contrary to what was discussed."
141. The Director, Real Estate said he thought the Complainants would have been advised by letter of the increase. He said that such an error did not mean the Complainants should not have started saving and preparing based on the oral estimates given: "If we didn't provide them a written estimate when we should have, OK, maybe [that is] a mistake but it doesn't absolve you of your responsibilities."
142. The Complainants interviewed said they were shocked to find they were in arrears, particularly as they had not seen a copy of the new lease the City was to provide. Ms. K, a Complainant, reported that after receiving information that the new rate was effective retroactively and that the Complainants were all in arrears, her non-profit immediately halted the recruitment of a grant-writer.
143. Staff advised that Complainants would need to go to Council for direction to forgive the 2011 additional rent, and that they did not have authority to do so. The Complainants stated they would meet with their Councillors the following week.
144. The Director, SDFFA told my investigator she had concerns about the approach, and did not know if it was right for the City to start these Complainants off in their new lease from a position of debt. She thought it was unhelpful and suggested they could have just charged the new rate at the start of the new lease.

5.9 Follow-up to June 14, 2011 Meeting

145. Immediately following the June 14, 2011 meeting, Property Officer A forwarded the Director, SDFFA the email from the Support Assistant, setting out the security costs in 2010, to assist in explaining how he had arrived at the security figures in the chart. The Director, SDFFA wrote to the

Support Assistant on June 15, 2011, asking if it was practice to bill \$14,400 of staff time to tenants.

146. The Support Assistant's reply came a month later on July 11, 2011, explaining that the charge for a supervisor in the current year, 2011, was \$2,638. No explanation was provided for the \$12,000 difference in staffing costs.
147. The Support Assistant told my investigator that this was due to the fact that a new security contract had been negotiated with a contractor in 2011 and costs had been significantly reduced, as the City now paid a flat rate. Earlier, when she had provided an estimate to Property Officer A, there was no contract in place and invoicing was done on a work-order basis.
148. The Support Assistant said that all three sets of security numbers she had provided were "correct." The 2010 estimate was her best calculation at the time and the actuals were true reflections of cost. For 2011, she could then refer to the new lower contract costs.
149. The day after the meeting, on June 15, 2011, Property Officer A asked an accounts analyst (Analyst B), for a more detailed breakdown of the costs from 2005 to 2010, and provided Analyst B with the data earlier sent by Analyst A. Analyst B responded immediately and said it would be more difficult to obtain data for earlier years, as the information was not easily available.
150. The Manager, Real Estate, who was copied on this email, also responded on June 15, 2011. He instructed Analyst B to perform the enquiry for the year 2010 only, rather than for 2005-2010. No notice was given to the Complainants that the commitments made the previous day had been altered. Analyst B provided the requested information the same day.
151. The Manager, Real Estate told my investigator his decision to restrict the level of information being sought for the Complainants was due to the difficulty involved in accessing older data. He said he wanted to get the Complainants something, and he thought the older numbers were not as relevant.
152. On June 22, 2011, Property Officer A emailed the Director, SDF, copying the Policy Consultant, the Manager, Real Estate and the Executive Director, SDF, providing the additional information. He noted that \$36,600 of the \$93,118 was custodial and that the balance was mainly work

orders, specifying a few of these, such as filling a pot-hole and removing snow. He asked the Director, SDFA to share this with the Complainants.

153. On July 5, 2011, the Director, SDFA sent the Complainants the March 11, 2011 email from the Support Assistant with the security cost breakdown for 2010 and a revised chart of arrears. Ms. G responded that day, stating that they were still waiting for a breakdown of the contracted services category listed at \$93,118 for 2010.

5.10 July 5, 2011 Tenant Meeting with Councillors and SDFA

154. The Complainants met with Councillors X and Y and the Executive Director, SDFA. Their minutes indicate that they continued to ask how the operating costs were calculated, and why there were no security costs before 2009, yet now these costs were over \$20,000 with no apparent change in service.
155. The Executive Director, SDFA acknowledged that a transparent process was required and the Complainants had to agree to pay the operating costs going forward if they were to obtain any temporary relief from Council. The meeting participants agreed that a motion would be drafted to support the Complainants staying at the current rate for 2011. The Complainants' minutes indicate that the Executive Director, SDFA said he would send a draft motion to Councillor X.
156. Councillor X recalled that he and Councillor Y thought the Complainants had a "legitimate beef" as they were not given adequate notice of the arrears. He also reported that he did not know what shape the motion would take, or what the forgiveness would look like. He said that he and Councillor Y had committed to providing assistance in whatever form staff recommended.
157. The Complainants committed to paying operating costs on a go-forward basis in a July 7, 2011 letter to the Executive Director, SDFA. Ms. G told my investigator that this letter was written due to the threat of eviction.
158. They proposed the new rate would be effective January 1, 2012, and that any arrears would be forgiven. They asked FRE to provide a detailed breakdown of building operating expenses on an ongoing basis. They also included their complaints about process, lack of information provided and the late notice that they were in arrears. They recorded the impact the increased cost would have on their organizations, such as the termination of staff, reduction of services and fewer clients served.

5.11 Drafting the Motion to Council – July 2011

159. Following the meeting with Councillors, a motion was drafted by City staff, noting \$13.00 psqf was the actual price of operating costs at the Complainants' building. The motion was to go to Council on July 13, 2011.
160. On July 11, 2011, the Director, SDFA contacted Ms. G and explained that the plan had changed, and the motion would not go to Council at that time. She promised detailed information the following day. Ms. G shared this with the group.
161. On July 12, 2011, the Director, SDFA emailed the Complainants to explain that the motion did not proceed because Council was already dealing with three other BMR reports and there had had been questions about whether the City should even lease spaces at below market rent. She explained it would have been poor timing to ask for debt forgiveness.
162. The Director, SDFA also noted that the delay would provide an additional benefit, as it would allow further time for staff to determine the easiest way to “secure the waiving of the deferral” by the committee. She reminded the Complainants that their commitment to comply was the key to this motion succeeding and said there was “no more room to maneuver to maintain the status quo.”
163. Both Councillors said they were not involved in drafting the motion or any subsequent revisions. The Director, SDFA believes she would have informed the Councillors of the change through their assistants, either orally or by e-mail but does not specifically recall nor did she have any records of this.
164. Staff in SDFA, Real Estate and Legal Services revised the motion during July and August 2011.
165. Property Officer A said that although Real Estate was involved to make sure the numbers were correct, they also helped with the wording and framing of the motion.
166. On August 12, 2011, an email exchange between the Director, SDFA and Property Officer A occurred in which he requested, on behalf of the Manager, Real Estate and himself, that the motion remove “any reference to a percentage increase regarding the operating costs... to avoid any additional negative attention.”

167. The Director, SDFA asked what he meant by this, stating she thought it would not be possible to make an “effective case as to why Council should approve this exception.” Property Officer A explained that Council might wonder at how the costs could increase by 490% in one year and that would paint an inaccurate picture, as the costs had gradually increased over five years, while the Complainants continued to pay a lower rate. He told her that the Complainants had been asked to budget for the actual costs for at least the past two years.
168. The Director, SDFA felt Real Estate was asking to remove one of the most persuasive points on why the 2011 arrears should be forgiven, but Property Officer A said he thought that this change would improve the success of the Council motion. The wording was ultimately removed.
169. On August 26, 2011, Property Officer A received revised square footage figures from Design, Construction and Asset Preservation. Property Officer A updated the measurements for the building.

He also changed the method of calculating operating costs, assigning a psqf rate to the exclusive area used by each tenant, rather than to the "grossed up" area (which included a proportionate share of common spaces) as had been previously done. He explained to my investigator that he did this so that future office space expansions or contractions would not affect fellow tenants. This was not communicated to the Complainants or anyone else.
170. On August 29, 2011, Property Officer A wrote to the Director, SDFA to confirm the figure for the motion.
171. The figures were changed from the July 11, 2011 version of the motion which used a \$13.00 psqf rate, to a \$17.74 psqf rate for the one time grant. It also covered a 12 month period, while the earlier draft had been for only six months of debt.
172. On September 14, 2011, the motion was completed by staff, to be moved by Councillor X and seconded by Councillor Y.
173. On September 16, 2011, the Director, SDFA emailed the Complainants explaining the Motion’s purpose generally, and that she would share it with them once the Council agenda was made public. She explained the motion provided a grant of \$85,758.54 and carries forward a fund to be used against any property taxes levied in future. Her email did not note the

psqf rate. She told the Complainants that this was a one-time only arrangement:

But please let me put this clearly in this email. This type of movement re: BMR costs is not likely to happen again. Divisions have been remarkably cooperative to make this happen on our end based on your commitment in your letter that should Council agree to the 2011 relief, as of January 1, 2012, you are all now paying the actual operating costs and therefore, are in full compliance with the BMR policy. The commitment is also stated in the NOM [Notice of Motion] so that there can be no miscommunication on what the deal is going forward...

174. Ms. H responded that day, thanking the Director, SDFa and expressing discomfort again about the lack of information on how the amount was arrived at, what was included in the lump sum categories, and that the Complainants were still waiting for information that would allow them the opportunity to manage their operating costs.

5.12 Council Agenda made Public

175. On September 19, 2011, the motion was released publicly with the Council agenda, and the Director, SDFa sent a web-link to the Complainants.
176. On September 20, Ms. G emailed the Director, SDFa and left her a voicemail. She wrote in her email that she was "seeking urgent clarification re the \$17.74 per square foot occupancy cost" and noted that during every meeting through the summer, the cost recovery was listed at \$13.00.
177. On September 21, 2011, the Director, SDFa responded, stating that she believed \$17.74 was an estimate only, and that the actual costs would be determined as the year progressed. She said that any difference was because this figure included tax. She asked Property Officer A to confirm.
178. Property Officer A responded that day:

[The Director, Community Resources] is correct. The \$13.00 estimated rate that was provided in the past was an estimate based on the fluctuating historical numbers of the property and did not include HST. Every year throughout the lease term, reconciliations will be performed to ensure that your organizations pay the

appropriate amount based on actual costs that were paid at the facility by the City of Toronto.

179. Ms. G thanked them for their quick response and did not seek further clarification.
180. Property Officer A and the Director, SDFA stated in their interviews with my investigator that \$17.74 is not equivalent to \$13.00 plus HST and that they had been in error.
181. Property Officer A said he did not identify a problem but if the Complainants had caught the error at the time, he would have looked into it and explained further.
182. The Director, SDFA told my investigator that SDFA staff did not call the Complainants to explain in detail the finalized motion because this was the role of Real Estate. She acknowledged that this was "... wasn't handled well, in terms of [the Complainants'] surprise" and that instead, once the calculations had been completed and the final amount was determined, the Complainants should have been informed.
183. The Manager, Real Estate told my investigator that the Complainants were not advised of the \$17.74 because there was no time for consultation. He also said that the figure used in the motion did not matter, as Real Estate is able to provide an estimate and then perform a reconciliation for the actual costs at year end. He agreed that the Complainants should have been informed.

5.13 September 2011 Council Meeting

184. At its September session, Council did not approve the motion to waive referral to Government Management Committee. As it failed, the motion was referred as required to that committee.
185. The Director, SDFA said that at "the 11th hour," the Chief Financial Officer/Deputy City Manager (CFO), asked what the motion was about, and SDFA discovered that he had not been briefed by his staff.
186. The Director, SDFA explained the situation was "unusual and difficult." The Executive Director, SDFA was frustrated that after the coordinating work SDFA had conducted, that the partner divisions had not advised their superior.

187. Following Council's consideration of the motion on September 22, 2011, the Executive Director, SDFA emailed the Director, Real Estate, copying a number of senior officials:

I had hoped that at least one of the corporate functions involved in this would have advised the DCM / CFO [Deputy City Manager / Chief Financial Officer] prior to consideration of notice of motions today. This would have provided an opportunity to resolve any concerns.

188. He wrote, that from the Speaker's comments, he understood a staff report from Real Estate would be presented at Government Management Committee, and offered to comment on the draft.
189. The Director, Real Estate recalled the matter was last minute and that he only found out about the motion at Council. He recalled that the CFO had not been informed and did not want to support the motion. He remembers having Councillors "on [his] back" and telling the Executive Director, SDFA to deal with it. He did not understand why the Executive Director, SDFA could not have approached the CFO.
190. The Manager, Real Estate said he thought that SDFA should have advised the CFO, as that was the division supporting the motion.
191. The Director, Real Estate told my investigator that he had spoken to the Executive Director, SDFA and said that if he wanted to draft the motion, it was his call, but Real Estate did not support it, as the \$85,758.54 loss would have to be absorbed by them. He said,

It's really difficult for staff when we're given direction one way to be fiscally responsible, don't let things go, count every penny, do not order coffee, right? And then on the other side of the coin it's just waive the magic wand and get rid of \$80k worth of costs.

5.14 Real Estate Report to Government Management Committee

192. A staff report, dated October 6, 2011, drafted primarily by Real Estate was presented to Government Management Committee with the Director, Real Estate as the contact and the then Chief Corporate Officer (CCO), as signatory. Contrary to the motion drafted by SDFA with input and feedback from Real Estate, this report did not support the motion. Instead, it recommended that the CCO "enforce the terms and conditions of the overholding lease agreements for 2011..." and that Council authorize the

CCO to “negotiate a repayment schedule for the 2011 accumulated rental arrears... failing which the tenancy shall be terminated.”

193. The staff report states:

A subsidized rate of \$3.20 per square foot of leased space was provided to each organization. This allowed a sufficient amount of time for them to budget and obtain additional funding for the actual costs of the facility in future years.

194. The 2005 leases did not state that \$3.20 was a subsidized rate. Rather, the leases refer to the estimated additional rent for operating costs. The Complainants reported that they were not told \$3.20 was subsidized but the Director, Real Estate said it was:

Clearly it's subsidized. And so if people want to say it's not subsidized, they can go ahead and say that, but I know it's subsidized. It's a game. And this is why I start getting angry at this point, because it's a game. And they're using up valuable city resources, meaning staff, going around in circles when we have all kinds of other work out there that we're behind on. And it makes me really upset because they take those additional resources to deal with and I say to my staff: "No. This is the line. We're not going past it."

195. The staff report also stated that Real Estate had advised all organizations

on several occasions that the actual operating costs of the facility are significantly higher than the subsidized rate (estimated costs are \$17.74 per square foot in 2011 inclusive of HST).

196. The report also noted a number of meetings. As to the February 3, 2009 meeting, it stated that the Complainants were advised of their obligations and notified of the "actual present and estimated future operating costs of the facility." The minutes from that meeting only note an estimated \$9.00 psqf estimate provided orally to the Complainants.

197. The Executive Director, SDFR, who attended that meeting, said this statement in the report was a problem, as no actual operating costs were given at that meeting.

198. In reference to the August 30, 2010 meeting, the staff report notes that “the organizations were advised of the historical operating costs of the facility and how that would impact future costs to each organization...”
199. The minutes from that meeting, and witnesses’ recollections confirmed that the Complainants were not advised of historical operating costs at that time.
200. The staff report stated that “on March 31, 2011, historical costing data of the facility was subsequently provided to the tenants for the years 2005 - 2010.”
201. The evidence indicates the Complainants were provided with the data on May 9, 2011.
202. With respect to the June 14, 2011 meeting, the report stated: “During the meeting, the estimated operating costs of the facility for the year 2011 were discussed and various tenant questions were answered regarding the calculation of the estimated operating costs.”
203. The Executive Director, SDFa, who attended the June 14, 2011 meeting, told my investigator that the meeting was not that clear, that some tenant questions were unanswered and that staff promised the Complainants that answers to their questions would come later. He said, "This was not the report I would have written..."
204. The staff report stated that granting an exemption from the BMR policy to these tenants would lead to “inequitable treatment among all BMR tenants and the certainty that more BMR tenants will make similar cost reduction requests” and that this would be “eroding the City’s policy on BMR tenants.”
205. The Director, Real Estate indicated that he had read and commented on drafts of the staff report, but that he relied on his staff for the accuracy of the details. He said it was drafted by the Manager, Real Estate or Property Officer A.
206. Property Officer A said he did not draft the report.
207. The Director, Real Estate said it was a "rushed report" and it might not reflect "... the intent of the motion and flesh out that side of the story" but it did reflect his division’s point of view. He said that if the Executive Director, SDFa felt strongly about this, he could have also submitted a

report to Government Management Committee, but admitted that "you don't want to have two competing reports."

208. The Complainants told my investigator they were surprised some staff had written a report opposing the motion. The Director, SDFA told my investigator that it was the first time she had experienced two sets of staff opposing each other in a public report.
209. Councillor Y said this was not uncommon, and that Council often sees competing staff reports, as public servants proposing a City program or initiative may have different ideas of feasibility than those concerned primarily with financial capacity.
210. The Executive Director, SDFA said he was not asked to comment on the staff report and that it was clearly a CCO report from a single perspective, and did not include SDFA views.
211. The Manager, Real Estate explained that when BMR policy is not followed, it is Real Estate that has to carry the costs. He noted that at a time of cutbacks and budget pressure across the City, Real Estate wanted "explicit direction" from Council:

Real Estate is saying, Council, what we have here is a bunch of tenants who aren't willing to pay and so we want Council specifically to direct us to enforce [the terms of the lease]

212. In spite of the Real Estate staff report, on October 12, 2011, Government Management Committee met and adopted the motion to authorize the one time grant without amendment.
213. Council adopted the motion without amendment on October 24, 2011.

5.15 Ongoing Tenant Requests for Information

214. On November 10, 2011, Ms. G emailed the Director, SDFA reminding her that the Complainants were still waiting for the cost breakdown, promised by City staff at the June 14, 2011 meeting. She asked if the process could be expedited so that the information would be available for their November 28, 2011 tenant meeting.

215. The Director, SDFa responded on November 16, 2011, stating that as Property Officer A was leaving his position in Real Estate, this would slow things down. She wrote,

It appears challenging for Real Estate to break down those larger categories that they gave you during the June meeting.

She promised to try and get the information and noted "\$13 + HST = \$17.74."

216. She also wrote that "the BMR deal" was that Complainants pay actual operating costs, and that they should be budgeting for \$17.74 at least for the first quarter of 2012 and noted

...we will try and get Real Estate to provide actuals to you ASAP into the new year for January and February while we are working on potential efficiencies to reduce the costs.

217. The information was not made available for the Complainants' November 28, 2011 meeting. On November 30, 2011, Ms. G emailed the Director, SDFa reminding her that they were still waiting for the promised documentation, and mentioned that their minutes show actual breakdowns were first promised in 2009.

218. On December 5, 2011, the Director, SDFa responded, saying "I understand how frustrating this process is, especially without the required detailed information" but clarified that SDFa staff do not work in Real Estate, and that they help to "mediate, broker and problem-solve when you encounter issues with Real Estate and Facilities." She agreed that the Complainants should have detailed breakdowns and that SDFa was working with Real Estate to obtain it. She stated again that the estimate was \$13.00 plus HST and "that totals about \$17."

5.16 Real Estate Provides Lease, 2010 Costs and Rate Explanation

219. In December 2011, Property Officer A began to copy his successor, (Property Officer B), on correspondence. She was scheduled to take over the role in the spring of 2012.
220. On December 7, Property Officer A sent the leases to the Complainants, with a start-date of November 1, 2011. The prior lease had expired in November 2010. This is the first copy of a new lease that the Complainants had received.

221. Ms. H confirmed receipt, noting “for the record” that issues remained outstanding. The rate was different than what they were told to budget for, the information was different than what they had been told before the motion went to Council, and she said her agency could not handle the "525% increase". She stated that there was still no breakdown of costs, despite an undertaking by the City given as early as 2009.
222. On December 8, 2011, Property Officer A responded to Ms. H, stating that the Complainants had the rate information in the September 2011 Council report, so he was not sure why they could not budget accordingly. Property Officer A also stated that he understood the Complainants had asked for a more detailed breakdown, but that “the breakdown that was provided is what was received by Real Estate Services from the City division that compiles and provides the information.” He said this was standard information.
223. The Complainants understood from this that the ongoing promises of information were no longer going to be fulfilled. Ms. G wrote to Property Officer A, stating that as they were now receiving different information from that provided in June and because they still did not have the promised documentation, the agencies would each be taking the matter to their respective Boards of Directors.
224. That day, the Manager, Real Estate wrote to the Director, SDFA asking, “Is there any way to stop the endless stream of complaining we get over this issue?” He notes that he would have expected “a little gratitude over Council’s generosity.”
225. The Director, SDFA responded on December 9, 2011, agreeing that the request for information might be used as a “loophole” by the Complainants, but also making a request that Real Estate provide the promised information.
226. She wrote in part:
- Please just get the costs breakdowns so that they can assess how they can keep costs a little more affordable on their usage side... It has taken me 2.5 months to get operating costs actual breakdowns for [another BMR property] and these guys have asked for over a year now. The system is broken on our side too and it is tiring for the tenants as well.

227. Four days later, on December 13, Property Officer A emailed the Complainants a more detailed breakdown for 2010.
228. Ms. G responded the next day, saying “now at least we have something to begin working with” but wrote that they were promised data from 2005-2010. She asked for this and then requested clarification on some matters including how Real Estate moved from the \$13.00 psqf to the \$17.74 psqf figure. She also asked for a breakdown of a further two categories: repairs and maintenance at \$44,000 a year, and custodial services at \$3,671 a month.
229. On December 16, the Manager, Real Estate emailed the Director, SDFa in response to Ms. G's correspondence: “We cannot have these tenants continuing to play this game.” The Director, SDFa wrote back the same day saying she will call them but notes that she herself is not sure why the rate increased from June to December. She noted that she had thought it was HST, but now realized it was not.
230. On December 19, Property Officer A emailed Ms. G, stating that he had called her and left two voicemails to discuss the concerns of her December 16, 2011 email. Ms. G responded that
- Your comment that you left 2 messages for me—one last week and one minutes ago is a little misleading. Your message of last week – still on my answering machine – came in on Friday well after 5 pm – technically today.
- She asked Property Officer A to respond in writing.
231. On December 20, she wrote again to ask for the information.
232. On December 22, the Director, SDFa wrote to Property Officer A about the series of emails from Ms. G on which the Director, SDFa had been copied. The Director, SDFa asked Property Officer A or Property Officer B to answer the Complainants' questions, saying that “I know this is tiring but their questions are legitimate as tenants. If we simply give them the info they request in a timely manner, we remove their ability to stall.”
233. That day, Property Officer A wrote to say he had already called Ms. G several times and left voicemails encouraging her to call him. The Community Development Officer, and the Director, SDFa both wrote back the same day, explaining that the Complainants were requesting

information in writing, and asking Property Officer A to provide a written response.

234. Property Officer A responded that Ms. G's recent emails were being sent to his junk folder, so he had missed the requests for a written response.
235. That same day, Property Officer A emailed the Complainants, stating he could not provide further information because the City's records did not contain the additional breakdown of costs for older years.
236. He also explained the \$17.74 rate was due to a new square footage calculation. This was the first time the Complainants were informed of why the rate increased from \$13.00 to \$17.74 psqf between June and September 2011:

In the new lease agreements, each organization's "exclusive" square footage within the building is referenced. The previous agreement contained a "grossed up" square footage figure that included each organization's proportionate share of the common areas of the building (based on their proportionate share of the exclusive square footage of the building). In following this new method, the total square footage of the building has decreased (no longer includes the common areas of the building) causing the costs per square foot of the building to increase. Therefore, although the costs per square foot are higher than previously estimated, the overall costs to each organization are the same (rate increased but square footage decreased for each organization within the building).

237. The Complainants pointed out to my investigator that this statement was not correct, as the different calculation methods did not result in the same cost. The \$17.74 rate usually resulted in a lower overall cost to the Complainants. For example, the largest tenant would have paid \$3,462 per month under the old method of "grossed up" square footage (\$13.00 psqf) calculation. Under the new exclusive square footage calculation (\$17.74 psqf), the rent would be \$2,859 per month.
238. Property Officer A told my investigator that the Complainants' 2005-2010 leases were the only ones he had dealt with that used grossed-up measurements rather than exclusive area measurements. He said it caused problems when one tenant had expanded into the common space.

He recalled he had made the change in calculation method prior to the completion of the motion to Council.

239. He did not advise the Complainants of this before the September Council session, and thought he might not have done so because he believed they were being apprised of the various drafts of the Council motion. He also said it would not ultimately mean a higher charge to them, as the higher rate was matched with an accordingly smaller square footage in the new calculation. He said "it had no impact on them whatsoever" and that he would have told them if it meant the Complainants had to budget for an increased cost.
240. In hindsight, Property Officer A recognized that he should have advised them of the revised calculation method, but his heavy workload was also a factor.
241. The Manager, Real Estate told my investigator he expected there would have been ongoing dialogue with the Complainants about any change in square footage, and that he thought they would have been advised before the September Council motion. While he was copied on the email correspondence, with respect to the questions about the \$17.74 rate, he did not question staff's explanation that this figure represented the \$13.00 rate plus HST. He said he is typically too busy to check his staff's calculations and must trust them.

5.17 2012 Complainant Requests and Involvement of Facilities

242. Ms. G responded to Property Officer A on January 5, 2012. She reminded him that Real Estate had promised a breakdown of costs year over year. She said he was now telling the Complainants this was not possible. She therefore revised the request.

At this present time, therefore, we are focusing on 2010 and 2011, since it seems the figures for the past 2 years should be readily available.

243. She again requested the break-down of janitorial services, repairs and maintenance, and asked how security costs could be so high at \$26,295.
244. On January 12, 2012, the Director, SDFa responded to the Complainants with some information and promises of more data. She told the Complainants that she had spoken with the Director, Facilities Operations (Operations Director), who would confirm the details of custodial and

security services. She told them that the Operations Director needed one week to obtain the promised information.

245. On January 25, Ms. G wrote to the Director, SDFA and copied the other staff involved with a “gentle reminder” that the details were due and asked for an update.
246. On February 15, the Director, SDFA emailed the Operations Director about the status of the requested information. He replied that he had the details but was talking with Real Estate about them.
247. On the same day, the Operations Director wrote to Property Officer A: “I have received a request from [Director, Community Resources] to review the cost recoveries at [the Complainants' address]. What are their square footages and what costs are we supposed to recover?” He did not ask about security or custodial contracts, the two items the Director, SDFA asked him to provide.
248. Property Officer A responded but noted this type of request should have been directed to Real Estate staff. Property Officer A also noted that the request to the Operations Director was that he look into janitorial and security services. Property Officer A asked if this had been completed.
249. On February 15 and 16, 2012, the Operations Director continued to send emails to Property Officer A and Property Officer B, trying to determine common square foot area, total rented square footage and other details.
250. On February 16, the Operations Director suggested that, based on his calculations, the Complainants had only paid 12% of the operating costs over the last year. Property Officer A explained Council's one time grant and provided information on that history.
251. Later that day, the Operations Director wrote to the Director, SDFA: “boy are you in for a shock” and explained to her that Real Estate had not recovered full operating costs for 2011 due to a Council directive.
252. As the Director, SDFA was the primary author of that motion, she was already aware. She indicated that she was still waiting for him to provide the two things she had asked for, namely, security and custodial information.
253. The Operations Director told my investigator that he thought the Director, SDFA was looking for a way to decrease costs from the \$3.20 psqf figure

the Complainants had been paying, and that she would be "in for a shock" when he told her the figure was much higher, namely, in the \$17.00 range.

254. My investigator asked the Operations Director why he did not provide the information requested by the Director, SDFSA. He said that those were easy questions to get answered and he did so in a "phone call or two." He had no records of these activities but said:

I was never going to give [the Director, SDFSA] just the information she asked for, I was going to give her a solution and an opportunity to broker a meeting where we go down and we have a face to face and talk out the issues.

255. On February 16, the Support Assistant emailed Analyst A, in response to a conversation about the earlier quotes for security costs. The previous correspondence was not provided, although it is clear the Operations Director was involved. She wrote: "[the Operations Director] is right, our previous costs would have been hard to defend as it included outdated costs of in-house and contract security that is no longer there."
256. In her interview, the Support Assistant told my investigator that her information referred to the new estimates for 2011. She said that new contracts were now in place with providers that covered all services in one package, at a cost savings.
257. On February 17, 2012, Property Officer B asked her predecessor, Property Officer A if the revised security rates would change the \$15.40+HST psqf figure (\$17.74). Property Officer A affirmed that it would and explained that the previous estimates in the \$20,000 to \$25,000 range were now replaced with more accurate costing figures that were \$10,000 to \$15,000 less. However, he noted that he was sure the costs in general would increase each year.
258. The Complainants brought their complaint to the Ombudsman's Office on February 28, 2012.
259. On March 7, the Director, SDFSA emailed Ms. G and explained that the Operations Director thought some cost reductions were possible but that he did not yet have the information prepared. She said he was working on it.
260. On March 14, Property Officer B requested the 2011 operating costs from Analyst B. He did so two days later.

261. On March 22, Property Officer B provided these figures, set into the Real Estate standard chart format, to the Director, SDFA and the Operations Director. She asked for permission to send the information to the Complainants, but wanted to know if there would be any other changes.
262. The new numbers incorporated the most recent security information at significantly lower cost, including a lower rate for 2010. Other costs, such as utilities, had increased. The 2010 operating costs had been re-calculated at \$15.48, down from \$17.11 provided on December 13, 2011. For 2011, the psqf rate was \$17.13.
263. On March 27, the Director, SDFA asked Property Officer B to send the information to the Complainants. She also asked the Operations Director whether he had found the information on janitorial and security services.
264. Responding to the March 27, 2012 email thread, the Operations Director asked Property Officer A to refresh his memory about how to calculate the proportionate share of the Complainants' common area costs. Property Officer A explained and the Operations Director stated that this led to the \$17.13 psqf figure. He said he was trying to figure out what services were included in the \$45,000 spent on custodial services.
265. Property Officer A wrote to Property Officer B asking her to decide how to resolve this with the Operations Director. At this point, ten weeks had passed since the Operations Director's undertaking to get the Director, SDFA custodial and security details within one week.
266. The Operations Director wrote to the Director, SDFA on March 27, saying he would forward the cost reduction for security and work order charges. He repeated the known figure for janitorial services, and said that this was already low. Reducing services would "almost certainly result in a reduction in service below acceptable levels." He suggested meeting with the Complainants.
267. The Director, SDFA wrote that she would set up a meeting. She told my investigator that although the Operations Director was responsive to her enquiries, she found that in this case, the answers "never follows the timeframes that we set." She said it could take many emails to get something done.

5.18 April 18, 2012 Tenant Meeting with City Staff

268. A meeting was held on April 18 with the Complainants, the Director, SDFA, two Community Development Officers (A and B), the Manager, Real Estate, Property Officer B, the Operations Director and the Manager, Operations.
269. Property Officer B provided the new break-down for 2011 in a document that also presented the 2010 break-down with different numbers from Property Officer A's December 13, 2011 chart. For example, the security costs for 2010 were now estimated at \$9,805 down from the previous estimate of \$26,295.
270. The Complainants told my investigator they were never given an explanation of why there had been such significant changes to the numbers. Ms. H said:

It made no sense and so the hugely, widely fluctuating numbers made no sense to us and how they were finding those answers and the fact that we were getting different tables at different times. One table showed the same amount but the categories changed. So we have no confidence that City actually basing these figures on any true costs. And that's when we started to push for more in-depth information. If what they have been producing to us made sense and the increase was a reasonable increase, we would never have gone down this route, because it would have seemed to be fair ... How can we take forward to our boards ... We don't even understand it; we don't have any concrete information on how it can fluctuate so much in those short periods of time? ... we do know we have to pay the true occupancy costs but they are falling down on their end and not giving us proper info, not processing it properly, and treating us with basic disrespect.

271. Ms. K stated that there was a
- lack of understanding about how non-profits budget ... We can't just take money and start building and setting it aside for fundraising. We have to show that what you gave us, we spent every single penny of it ... we had to let go of a lot of people immediately to be able to protect ourselves in this.
272. The Manager, Real Estate acknowledged to my investigator that there was a delay, but referred to this as being a Facilities issue. He said that he

did not want to provide any inaccurate data, that the financial software was "not the most friendly system in the world" and that there were challenges in obtaining data.

273. He cited under-staffing, noting in his July 2012 interview with my investigator that he was short six or seven staff and down from five supervisors to two, while in a hiring freeze and dealing with high staff turnover rates. In October 2012, he advised my office that he hoped to be hiring new staff.
274. The Director, SDFFA' minutes from the meeting were shared with the Complainants. They stated that a plan had been made to go forward, including the following:
- ongoing information to the Complainants, including utility information twice a year;
 - quarterly updates would be provided by Facilities on repairs and maintenance costs;
 - Facilities was to send a list of 2011 repairs and maintenance costs to Ms. G for understanding the scope and type of requests;
 - Facilities would perform an energy audit, and review security;
 - staff were going to re-measure the area to confirm square footage;
 - at the end of each calendar year, a reconciliation would be performed and any overpayment returned to the Complainants, or any underpayment billed to them. If the Complainants were overcharged, the next year's costs were to go down.
275. The Complainants reported that at the meeting, the Manager, Real Estate stated that "for most groups in our situation he would provide reconciliation statements over the years, so that they could understand what those costs were, but never thought it useful to provide it to us since we were being subsidized anyway."
276. The Complainants expressed frustration to my investigator at the fact that it appeared there was still confusion. City staff seemed to mix up the trust fund the Complainants had paid into prior to 2005. This was used from 2005 to 2008 as a bridge to paying the full operating costs of their new facility. They reported that no one had ever told them that \$3.20 psqf was a subsidized rate.
277. At the meeting, Property Officer B brought a chart comparing the two different square foot calculation methods. This showed that whether the

City used exclusive square footage or common area “grossed up” methods, the overall costs were similar, although not identical. For example, one Complainant's monthly charge came to \$747.79 using the new exclusive square footage calculation, but under the older grossed-up method, the rate would have been \$1,059.12.

278. Property Officer A had re-measured the spaces before sending the leases in December 2011. In only one tenant's case, exclusive square footage had increased upon re-measurement, from 1,127 sqf to 1,232. The tenant representative interviewed said their group had not been told that their square foot area had increased following re-measurement.
279. On April 26, 2012, Property Officer B emailed the chart to the Complainants.
280. Ms. G wrote to the Director, SDFA on June 26, 2012, to ask why they had not yet received the information promised at the meeting two months prior. She requested amendments to the Director, SDFA' minutes for accuracy, a breakdown of the square foot rate and information on contracting out janitorial services.
281. Four months after the April meeting, the Complainants reported in their August 2012 interview with my investigator, that most items remained outstanding. There had been no utilities information provided, although it was the eighth month of the year and this was to come twice a year. There was no update on repair or maintenance costs, which was to happen quarterly. There had been no energy audit completed or information on security being reviewed.
282. In August 2012, when the Operations Director was interviewed by my investigator, he noted that although the promises to the Complainants had not yet been met, he and the Manager, Operations, had spoken the day before and were going to set up a meeting with the tenant representative.
283. He said that the "twice annual" utility information would be provided, and that the "quarterly" information on maintenance would instead be a six month update.
284. In August 2012, the Complainants told my investigator that they were still waiting for the information from the City. However, Property Officer B said it was her understanding that the only outstanding issue was the lease, which was with the City's legal division to respond to some questions raised by the Complainants.

285. The Director, SDFa reported that while she had thought the April 18, 2012 meeting resulted in some standardized protocols, three months after the meeting, the Complainants still did not have the information promised by Facilities.
286. She said that the Complainants were not the only tenants to have complained about not getting cost information. She gave an example of tenants at another BMR location who only wanted to know what costs were included in the operating cost figures provided by the City, so they could decide if a model of contracting out some work, such as janitorial services, would work better for them. The Director, SDFa said that Facilities refused to give a breakdown of costs included in operating rates, saying that "every arrangement is different so we're not going to create a list." She said Facilities must have a database and questioned: "why then is it so difficult to regularize some way of the sharing of that information to tenants?"

5.19 September 6, 2012 Tenant Meeting with Facilities Management

287. On September 6, the Manager, Operations met with the Complainants to provide further information, including a chart of utility costs, an analysis of those costs, and charts showing the operating costs for 2011 and 2012. The minutes show he had requested an energy audit three weeks before but had received "no reply." He agreed to quarterly reports and said that this was done for other tenants. The minutes indicate that he made a number of commitments including:
- e- copy of the documents that were distributed at the meeting;
 - regular quarterly updates on building expenses, with the next one promised for the end of September;
 - investigate the cause of increase in hydro charges;
 - check the differences in the charges for gas, water, etc since 2009;
 - an energy audit;
 - estimated costs going forward for regular expenses;
 - a meeting with Security to respond to questions related to security charges;
 - cut the hedges by the front entrance.
288. The Manager, Operations was to meet with the Complainants again on November 1, 2012, but was unable to attend at that time. Ms. G reported that as of November 9, none of the documents promised by the Manager,

Operations had arrived. The only item completed as requested was that the shrubbery in front of the building had been cut.

5.20 Reconciliations not performed between 2005-2010

289. Between 2005 and 2010, Real Estate did not exercise its contractual right to perform an end-of-year reconciliation for the Complainants, nor did it request payment for any shortfall. As a result, the rate remained at \$3.20 for the entire period.
290. The Director, Real Estate said it was his understanding that his staff would be performing an end-of-year accounting for BMR leases:
- They should be. I know in the past we've had trouble with that in terms of accumulating costs and being able to communicate that. But, I think in this instance, we were actually on top of it as to giving them estimates of what we felt they had to pay... I don't know if it happened every year, but I do recall in the last few years, [Real Estate staff] were saying "we've given them the numbers, we don't understand why they're not paying." So I know it's happened; the reconciliation has happened recently. And I don't think we asked them to go back to 2005, I think we gave up on 2-3 years worth of additional rent. But in the last 2 years we've been asking.
291. The Manager, Real Estate confirmed that there were no annual reconciliations performed between 2005 and 2010 because the Complainants claimed there was an historic agreement to pay \$3.20 for the duration of the lease, and the City honoured that. The Complainants did not tell my investigator about an historic arrangement.
292. The Manager, Real Estate said that generally, reconciliations are performed by an automatically triggered work order in the City's accounting software and that this was a process already being performed annually.
293. Finance staff in Facilities and the property managers in Real Estate stated that there is no automatic process. Property Officers must initiate a request.
294. Property Officer A told my investigator that there should be a reconciliation performed at the end of every year for all "partial building tenant[s]". Property Officer A and Property Officer B explained that reconciliations are not performed every year for every property. Property Officer B said that

there are inadequate resources to perform annual reconciliations, so instead this happens when leases come up for renewal.

295. Real Estate staff consistently reported that failing to conduct an annual reconciliation does not prevent them from doing so at any time, as set out in the lease.

5.21 Attitude of City Staff towards the Complainants

296. Most City staff expressed their view to my investigator that the oral warnings and estimates of operating costs, with promises to verify and confirm the numbers later, constituted adequate notice. Staff said the Complainants knew their costs would be increasing; it was their responsibility to budget accordingly.
297. The Manager, Real Estate said that the oral advice of \$9.00 psqf in 2009 with the 2010 and 2011 figures of \$12.00 and \$13.00 psqf should have been adequate for the Complainants to budget. He said it was not uncommon for an estimate to be provided in this way, and if the Complainants did not like the numbers they were given, they could audit the actuals. He said that the oral estimates should have given an idea of the "order of magnitude" that the increase would be, even if it was not precise. The Manager, Real Estate told my investigator that the Complainants had been warned and that they were stalling.
298. The Executive Director, SDFa and the Director, SDFa both agreed that the Complainants should have budgeted for a new rate of \$9.00, \$12.00 or \$13.00, based on earlier estimates.
299. In September 2011, as the motion for a one-time grant was going to Council, the Manager, Real Estate responded to an email from a finance manager in Facilities, who asked for an explanation of how the operating cost had increased from \$3.20 to \$17.74 psqf. The Manager, Real Estate wrote that "the cost did not go up – the tenants have just refused to pay the proper amount ..."
300. The impression that Councillor Y received, based on her updates from City staff, was that the Complainants were being "difficult" and that the City had regular dialogue with them, and had warned them of the increased operating costs. The Councillor also understood that the City had provided written notice to the Complainants about the increases.

301. Property Officer B noted that staff were frustrated with the Complainants, that if they had been market-rate tenants, they would have been evicted. She thought the matter was taking too many City resources¹⁵.
302. Property Officer A felt that the Complainants had been "getting a break" for many years at the \$3.20 psqf rate and that Real Estate could have gone "further back" to demand other monies owing for previous years.
303. The Director, Real Estate had a similar opinion. When asked if he recalled the Complainants being given a \$9.00 psqf estimate in February 2009 and not getting back to them with confirmation of whether the figure was correct, he said:
- We may have told them that number because I don't know where they got that number from. I think we probably told them that number. ... SDFA was going to look at the cost. That would have been with [the Manager, Real Estate] and the Facilities Management people. .. Here they are asking for a 3 year phase-in ... I remember that discussion at the time and I remember saying "well, what has these last 5 years been? That WAS the phase in".
304. The Director, Real Estate felt that the Complainants were dragging their feet.
- I have an issue with that because, as far as I'm concerned, it's a game that is played. Once they have a foot in the door, it's hard to say no. Just because of the organization we are, they know it's hard to say no, they know it gets political. They know they can push their weight around because of the social issues.
305. The Director, SDFA, the primary liaison with the Complainants, called them a "high maintenance group" with lots of challenges, compared to other BMR tenants. However, she noted that one of the largest failings of the BMR portfolio was the
- ability to provide clients with that information on a regular basis... Right now, the requests are seen as burdensome as opposed to our responsibility, and that is a problem.
306. The Complainants stated that the attitudes of some City staff were troubling and said that the City believed they were just trying to avoid paying their rent. Ms. H reported that one staff member attended on site to assist with a technical property issue and made a comment that referred

¹⁵ The Complainants also noted the draw on their own resources in trying to obtain information from the City.

to them as "a bunch of agencies that are trying to avoid paying what they owe." She said she was very upset, as they believed they were just trying to get clear information.

307. The Complainants explained that while they thought SDFFA saw the agencies as an "ally" or "partner," Real Estate and Facilities saw them as a "bother" and felt they did not understand how BMR tenants fit into their portfolio of work.

308. The majority of staff interviewed by my investigator thought that the 2011 Council decision for a one-time grant was a form of a "phase-in" to the actual operating costs, as it gave the Complainants time to plan and budget. The Executive Director, SDFFA said it was better than a phase-in, as it was essentially an additional year at a subsidized rate, rather than a gradual increase over time up to \$17.74:

My expectation would have been that the agencies would be doing their own business planning...building their annual budget knowing that it wasn't going to last forever. That's transition; it allowed them time to do their own budget planning to be able to afford, [or] to start to find a different place to live.

309. When asked if the Complainants had enough information with which to budget, as they had been only given oral estimates, the Executive Director, SDFFA thought it would be inappropriate for the head of an agency to say they could not plan using the information available to them. He suggested that they could have set up unrestricted reserves, and suggested the agencies may have been "playing the victim."

310. The Executive Director, SDFFA reported that the City had been working with the Complainants for many years:

We've been doing that since 2003. In one form or another we have been phasing these people in for ... getting close to a decade. Whether it's forgiveness or increase, we've been working with these tenants to mitigate and manage since '03.

311. He explained that allowing the Complainants to pay funds into a trust account prior to 2005, and then to use these monies against the new higher rent until 2008 was also a phase-in. This meant that the Complainants paid no rent for some of their time at their previous space, as the payments went into a bank account to be used later for rent at their new space.

312. The Complainants said the perception of staff that they were trying to avoid paying was unfair. They said the City would only provide oral estimates, and then promise to check on their accuracy and provide an explanation for how the City arrived at the numbers. The information would never arrive, so the Complainants were left to make repeated requests.
313. They also stressed that of the oral estimates given, none were sufficiently formal for them to take to their Boards of Directors for budgeting purposes. In spite of this, the Complainants reported tightening up their budgets generally and taking such action as cancelling the hiring of new staff, reducing complement and limiting services.
314. One Complainant, Ms. L, a Complainant, noted that the agreement with funders is one of "no surplus, no deficit" so that it was impossible to put aside an amount of money in case an increase occurred.
315. All tenant representatives said they did not have enough information from the City to approve a new budget. Ms. H said they would have needed something "concrete and exact" because it would mean they would have to lay off staff in order to accommodate the increased operating costs.

5.22 Other BMR Tenants

316. The Director, SDFA explained that BMR is currently a "one size fits all policy" but in practice there are a wide variety of tenants and properties that may not fit ideally into the model.
317. Some properties had historical arrangements with the City, such as cases where tenants contributed to major capital improvements, or where they had originally owned the land and given it to the City at no cost, while the latter paid for the building.
318. The Director's briefing note, dated September 15, 2010, considered two other BMR tenants not in full compliance with the BMR policy. It proposed a gradual four or five year increase to bring them into compliance.
319. My investigator asked City staff about these two examples.

5.23 Comparator A

320. My office compared the situation of another BMR tenant (Comparator A) with that of the Complainants. In 2007, Council approved the renewal of

Comparator A's lease, so long as it complied with BMR policy. However, the Director, SDFA explained that they had "refused the terms" of the BMR lease that the City attempted to impose on them, and as a result, had been in overholding since December 31, 2007.

321. While in overholding, Comparator A occupies City property outside a lease agreement. It is paying an amount that does not cover the actual operating costs of the building. According to the Director, SDFA' briefing note, Comparator A has an annual shortfall of \$365,036. The tenants have reported that they cannot afford the costs and would have to stop operating if the City held them to the BMR policy.
322. Unlike the Complainants' situation, this issue has not been brought to Council to receive a grant to cover the arrears, which are over four times that of the Complainants' shortfall. This has been the status for the last four years.
323. The Director, SDFA explained that Real Estate had wanted to evict Comparator A because they would not pay the full operating costs, but because it is a "powerhouse," providing critical support to the community, this has not happened.
324. She explained that the dispute with Comparator A is at a standstill. SDFA also produced documents relating to the efforts of the City to bring Comparator A into compliance. One of these was the September 15, 2010 briefing note, proposing a "phased in" approach to bringing Comparator A into compliance over a period of a five year lease.
325. My investigator asked the Director, Real Estate why Comparator A was not being brought to Council for consideration, since it was not paying operating costs. He said that Comparator A should be, but that his staff was tied up with the Complainants' issues and did not have the resources to deal with it at the same time.
326. He noted that the portfolio was large, and he suspected 30-40% of BMR tenants were in overholding. He had concerns about missing revenue opportunities as a result of the status quo.
327. On the basis of the experience with Comparator A, the Director, SDFA said that she would have thought that, while in overholding, the Complainants would not have been responsible for the difference between what they were paying and the actual operating costs.

328. There are some historical differences between the Complainants' situation and that of Comparator A. One is that Comparator A reportedly did not have a clause in their original lease committing them to covering operating costs. However, that lease has since expired and the BMR policy requires tenants to cover full operating costs.
329. Staff said another difference was that Comparator A tenants made a "significant" capital expansion investment in the building. The briefing note of September 15, 2010, suggested that Facilities absorbed \$1,051,018 of Comparator A's operating costs, noting this was the approximate value of the capital investment by the tenants to the City building.
330. The Complainants also have also been recognized for their investment in the building, particularly the largest tenant, who raised approximately \$1,085,000 through grants and fundraising to renovate an entire level of the property. City staff said this investment is not of the same scale as the investment made by Comparator A tenants.
331. Property Officer A explained that any special graduated plan to bring tenants into compliance would require Council authority, and were proposals of SDFR, not Real Estate. He did not believe in exceptions to BMR policy, stating this was unfair to BMR tenants who did comply with the policy. He said that he tried to enforce BMR compliance and leases in all cases.

5.24 Comparator B

332. As a result of revitalization in their community, two non-profits leasing City BMR spaces were displaced from their offices. They were moved into a new space, a location with higher operating costs than their previous space.
333. Council approved a four year graduated increase for these tenants at its August 2010 session, by adjusting the Children's Services operating budget. The intent was to stabilize tenant funding. The agreement was to cost the City \$120,960 over four years. Ultimately, the tenants found that their operating costs were not as high as predicted by Real Estate. The actual operating costs were later determined to be 54% of the City's estimate. The plan for a four year gradual increase was changed to accommodate the actual operating costs.

334. A briefing note from the Director, SDFa, dated August 6, 2010, explained the following issues potentially raised about the special Comparator B arrangement:

Question: Subsidizing the BMR tenant's additional rent is contrary to BMR policy which clearly states that tenancy at BMR spaces must be at no net cost to the City.

Answer: Some organizations provide valuable services to the community. Many of them have very limited budget also... City subsidy to pay additional rent must be justified if not doing so means the inability of the community service provided to survive. [The] Auditor General's July 8, 2006 report recognizes the need to consider the financial capacity of the organizations to pay operating costs and the importance of allocating BMR space to organizations providing services which will most benefit City of Toronto residents.

Question: What is the point of the gradually decreasing rent subsidy?

Answer: The gradually decreasing rent subsidy is a strategy to assist BMR tenants who anticipate [having] difficulty paying the additional rent to align with the "no net cost to the City" BMR policy. It allows time for the tenant to gradually adjust to the drastic increase in rent through a progressive effort to raise funds. On the last year of the lease, the tenant is expected to have complied completely with the BMR policy. The strategy also ensures that the valuable services provided by the BMR tenant to the community are not disrupted.

335. The Director, SDFa explained that the Comparator B groups were treated differently because they were being forcibly moved from one location to another, and did not have the opportunity to plan or budget for the increases.
336. She said that for the Complainants, SDFa had not thought of the problem in the context of a gradual increase.

5.25 Auditor General's Review of Lease Administration

337. On July 8, 2006, as part of the Auditor General's 2006 annual work plan, a report was released "to assess whether leased city-owned property was being managed effectively, and to ensure that lease arrangements were in

compliance with city policies and other legislative requirements.” Additionally, properties that fell within the ‘policy on City-Owned Space Provided at Below-Market Rent’ were evaluated for compliance.

338. The report identified a number of areas requiring improvement in the City’s leasing operations relating to lease and financial information, the management of lease agreements, the below-market policy and the billing and collection of rental income. Twenty-five recommendations were made, six of which pertain to BMR leases.
339. The scope of the audit covered the period January 1, 2005 to March 31, 2006 and focused only on the leases handled by the former Facilities and Real Estate Division, and Parks, Forestry and Recreation, as these divisions manage the bulk of the City’s leases.
340. A three-year implementation plan was developed in 2002 by the team established to oversee the implementation of the BMR policy. The plan was to have new standardized leases and service contracts for all current tenants by the end of the three years. A 2006 joint report to the Policy and Finance Committee from SDFA and the Facilities and Real Estate Divisions was to address these standard lease terms and conditions, to ensure tenants' activities are consistent with City objectives.
341. In the 2006 Auditor General report, six areas for improvement with accompanying recommendations were identified. The report highlighted the need for an eligibility assessment of all BMR leases; a financial assessment to determine the amount of rent subsidy for each tenant; criteria for evaluating be clear and measurable; that an assessment be conducted to establish priorities for BMR; that subsidy amounts for BMR leases be reported; and that eligibility reviews for BMR tenants begin to be consistently followed and documented.¹⁶
342. The Auditor General's office confirmed that both Real Estate and SDFA divisions have met their obligations flowing from the review, so far as they relate to BMR properties.¹⁷

¹⁶ See Appendix B for further details.

¹⁷ One outstanding recommendation that the City Manager consider how the recommendations resulting from a governance review may affect the management of the City’s lease portfolio, is outstanding, but not specific to BMR properties. This continues to be under review by Real Estate and the Parks, Forestry and Recreation divisions.

5.26 BMR Policy Review

343. SDFA completed a review of the BMR program, resulting in an October 22, 2012 report to Government Management Committee¹⁸. This process included consultation with stakeholders such as United Way Toronto and the Ontario Trillium Foundation, as well as City divisional staff and BMR tenants themselves.
344. The staff report suggested that the traditional "landlord-tenant" model of BMR may not be appropriate and that the BMR non-profit agencies delivering services may be better understood, valued and governed by a different model that evaluates them as a social benefit to the community (Return On Investment or ROI). This would replace the current model of framing BMR space's value as "Opportunity Cost," a calculation that looks at how much income the City may have "lost" by not leasing these spaces at a profitable market rent. The report states that a move to measuring ROI would help to ensure that the spaces are allocated in a manner that maximizes the benefit of the space.
345. The report noted that both Real Estate and Facilities were developing new communication materials to help BMR tenants understand the process better.

Facilities is developing communication materials that will help prospective BMR tenants understand the operating costs they will be responsible for, the variation in these costs that must be expected, and cost reporting and payment cycles. Non-profit organizations typically have very constrained budgets, and these materials will help prospective tenants determine whether they have enough flexibility to accommodate likely fluctuations in operating costs. Facilities and Real Estate are also working together to develop a quick reference sheet that helps tenants engage City maintenance processes where appropriate.

346. The report makes clear that these are projects to be started in 2012 and completed by January 2013. SDFA staff provided the final BMR policy report to my investigator in October, 2012, before it was presented to Executive Committee.

¹⁸ This review was undertaken at the direction of Council in July 2011 prior to the initiation of this investigation. Council made a request that Executive Committee forward a report on the review of the City's BMR Policy to Government Management Committee.

347. Broader policy issues were deemed out of scope for the BMR review and referred for examination by the Community Infrastructure Service Efficiency Study, to be started by the end of 2012.

5.27 Different Operating Costs Estimates for the Same Years

348. In my investigator's document review, a number of different estimates for operating costs were discovered for the Complainants' property, covering the same period. These were sometimes arrived at by different staff, and sometimes by the same employees.
349. For example, in November 2008, an estimate of operating costs was given by Property Officer A's predecessor, Property Officer C, for the year 2007 at \$9.80 psqf and for 2008 (which had not yet completed) at \$10.09 psqf. On February 25, 2009, Property Officer C provided figures based on the actual 2008 costs, and estimated the operating cost was \$11.35 psqf.
350. These figures were different from those provided by Property Officer A on May 9, 2011. There, the 2007 operating cost was \$12.15 psqf and the 2008 figure was \$11.48 psqf.
351. Property Officer A said that the numbers should be objective and the same regardless of who performs the calculations, unless the year had not yet finished, leaving some costs unknown. He said that an estimate within \$0.10 would be satisfactory.
352. He reported that the differences between his numbers and those of his predecessor might have been explained in a number of ways. He supposed that his predecessor might have had different numbers for the square foot area of the building, that perhaps he was missing security information, to which finance staff do not have direct access; or that his predecessor had not included supplies in the calculations.
353. There were also differences between the two property officers involved in the provision of four different estimates provided of the 2010 operating costs. This occurred over a ten month period.

354. The following chart provides some examples.

Date	Document	Quoted 2010 operating cost (psqf)
May 9, 2011	Chart given to Complainants showing past 6 years' operating costs	\$12.76 (tax not noted as included or excluded)
September 27, 2011	Motion to City Council (estimate for 2011 based on 2010 data)	\$17.74 (HST included) * This number is estimating 2011 operating costs based on the most recent data from 2010
December 13, 2011	Calculations given to Complainants by Property Officer A	\$17.11 (HST included)
March 22, 2012	Calculations given to Complainants by Property Officer B	\$15.48 (HST included)

5.28 City Charges One Complainant Property Taxes

355. The building in which the Complainants lease space, like all City BMR locations, has never been assessed by the Municipal Property Assessment Corporation (MPAC) for tax purposes. Property taxes were not levied. The City does not charge tenants property taxes, but in case of these being invoked at any point, the leases contain a clause regarding payment.
356. Thus, in addition to the \$3.20 psqf covering operating costs, there was a clause in the 2005-2010 lease that required payment of a second amount attributable to property taxes (\$2.62 psqf).
357. This amount was not to be charged to the Complainants, so long as the building was not assessed by MPAC.
358. In error, from the inception of their tenancy in December 2005, the City charged property taxes to one non-profit organization.
359. Ms. L reported to my investigator that her organization paid approximately \$250.00 per month in property taxes, and had done so since they moved into the building in December 2005. She said that she had asked the City for a breakdown of the payments made, but this had yet to be addressed.

360. Documents disclosed as part of this investigation showed that as early as April 2008, Real Estate staff recognized the error, and confirmed with Revenue Services that the property had been fully tax-exempt since 2003.
361. In response to staff's investigation of this matter, Real Estate Supervisor X sent an email on April 29, 2008, to Real Estate Accounting Clerk Q, stating that an error had occurred, and that charges should cease. He wrote that his email would serve as authority for the change. He said that no past charges would be reversed at that time, as he needed to check with his manager about whether these would be credited, or how they would be handled.
362. Accounting Clerk Q confirmed that she had stopped the realty tax charges that day. However, on May 1, 2008, the Manager, Real Estate wrote to the group saying "let's wait and do an adjustment at end of term."
363. My investigator asked the Manager, Real Estate if this had been corrected. Based on his records, no adjustments had been made. He also confirmed that payment continued to be received by the City, four years after the error had been identified. He told my investigator in November 2012, that an end-of-year adjustment would be made.

6.0 Ombudsman Findings

364. While there are under 100 BMR tenancies in the City portfolio, representing 1% of the properties, the issues raised by these Complainants are very serious, and involve organizations that provide key services to communities, often among the most marginalized groups in Toronto.
365. The 2002 BMR policy framework identified the guiding principles of fairness, openness / transparency, and accountability. My investigation reveals that the City has failed on all counts.
366. This investigation is in large measure a story of deficient performance, poor communication and unacceptable delay. It is not about the conduct of non-profit organizations.
367. While the Complainants have clear accountability to budget and forecast their operations properly, I am far from convinced that they should shoulder responsibility for the circumstances of this matter.

368. When the Complainants asked too many questions, they were pestering officials. When they communicated too often, in the eyes of some City employees, they became a problem, "dragging their feet" and "refusing to pay."
369. When the Complainants received some notice, albeit flawed and imprecise, from the City, they were then blamed for not budgeting properly.
370. No matter how incorrect, flawed or missing the information was on the part of the City, the Complainants were wrong and to be blamed.
371. Only the staff of SDFA worked hard in trying to keep the lines of communication open, pursuing information from City colleagues, seeking answers and looking for resolution.
372. The evidence in this investigation reveals a pattern of incompetence and inexcusable conduct which was exacerbated by the attitude of senior management in Real Estate towards the Complainants.
373. This is not the first time my office has investigated a complaint and been told by City officials, that while the public service's actions may have been flawed, it is the complainant who should bear the responsibility, regardless of the City's actions. This pattern of "blame the victim" is highly troublesome.
374. I acknowledge that Real Estate was short-staffed during a public service hiring freeze. I also recognize that a new employee assumed responsibility for the challenging BMR portfolio, but the resulting poor service is inexcusable.

6.1 Delay

375. From the outset, the evidence shows a pattern of the City promising to deliver information, only to leave the Complainants waiting.
376. The records show that the Complainants regularly followed up with the City, asking for information and reminding staff of deadlines.
377. There was chronic delay within the Real Estate and Facilities Divisions. Conversely, SDFA persisted in its attempts, trying to overcome the other divisions' shortcomings, through repeated reminders, meetings, and communicating with the Complainants to obtain promised information.

378. Promised timelines were missed by months and in some cases, even years. There was an abject failure on the part of Facilities and Real Estate to provide even the most basic courtesy updates, far less deliver on their commitments and undertakings.
379. No information was provided to the Complainants for 18 months following the February 2009 meeting with them, although records show some internal enquiries were made.
380. At the August 2010 meeting, the Complainants were instead told a new estimate of \$12.00 psqf, and offered a fresh promise to verify this number by providing an historical breakdown of costs. Real Estate staff agreed to provide this within a month if possible, and failed to do so.
381. Instead, the promised information, upon which the Complainants could rely and plan, was not provided to the Complainants until May, 2011, eight months later. Indeed, work on this only appeared to re-start after SDFA revived the request in March of that year.
382. While the Complainants met with City staff in August 2010 and were told that the "whole process" of obtaining a service agreement and leases would be complete by November 2010, the month their leases expired, they did not even receive the lease agreement to review until December 2011 – 13 months later.
383. A private landlord could never operate in this way and hope to stay in business. In government, there is a special onus as keepers of the public purse.
384. Staff of Real Estate and Facilities proposed unrealistic timelines. They promised to get information within a week. Months passed and no reasons were given for the delays.
385. Real Estate staff promised to pursue an energy audit. Fifteen months later, the Complainants were told at a meeting with a Facilities employee that one had been requested only three weeks prior to the meeting.
386. Real Estate committed to obtaining detailed historical operating costs. The Manager, Real Estate directed his staff to only obtain the data for 2010 and no one advised the Complainants. After seven months of waiting for the detailed breakdown of operating costs for the six year period, the

Complainants ultimately received only one year of data in December 2011.

- 387. In April 2012, after City staff promised quarterly and twice-annual information, along with other commitments, these never materialized at all or did not do so within promised timelines.
- 388. Work on these commitments only started up again, when my investigator called City staff to be interviewed. Not only is this poor public service, but it is profoundly troubling to see public servants only responding because my office becomes involved.

6.2 Poor Communication and Treatment

- 389. Poor communication was evident throughout this investigation, along with a failure to meet basic standards of service. SDFA was the exception.
- 390. No written notice of a pending increase in operating costs was ever issued. Communication of changes was done orally, in meetings, and always with a promise that the City would follow up which they rarely, if ever, did.
- 391. The Complainants were left with estimates, a paucity of information and unacceptable levels of accuracy with which to plan.
- 392. A number of City staff told my investigator that the Complainants were at fault for failing to budget despite the lack of information and changing estimates they had been given. City staff noted, for example, that if the Complainants were told of an estimated \$9.00 rate in February 2009, they should have budgeted for that amount, even though the City never followed up with the Complainants as promised, to confirm whether that estimate was correct.
- 393. Then in August 2010, when the Complainants were told that the figure was closer to \$12.00, the opinion of City staff was that they should have planned for that amount, even though staff did not provide the promised historical breakdown of costs until eight months later, telling the Complainants at the same time that they were already in arrears.
- 394. The numbers provided in the May 2010 chart were of such generality their utility was limited. For example, the category "contracted services" was approximately 50% of the operating costs, ranging from \$93,118 to

\$185,310 over the six years in the chart and unhelpfully combined repairs, janitorial and maintenance costs.

395. The actions of the public servants involved did not reflect an understanding of the shoe-string budgets upon which non-profit organizations often operate.
396. Errors by staff are understood. Mistakes happen in organizations, but the bungling, errors and sloppy communications revealed by this investigation are unacceptable.
397. The City improperly charged one tenant, a non-profit group, approximately \$260 in property taxes a month for seven years. Using that figure, my office calculates that at the date of this report, they paid more than \$20,000. The error was discovered by City staff in 2008 and yet no correction was ever made.
398. It is staggering to think that tenants are improperly charged funds that are not owed, and when the error is discovered, no attempt at resolution is made.
399. I note that the first time the Complainants heard of the new \$13.00 psqf rate, it was casually mentioned to a single tenant in an email as if this information was already known to them.
400. The Complainants were understandably shocked. As in most instances, attempts to communicate and clarify were driven by the Complainants, not the City.
401. The Complainants were informed that they were in arrears six months before they received a copy of the new lease. Their understanding, based on a meeting with Real Estate and SDFa staff, was that until a new lease was signed, they would continue to pay the same amounts they had previously. SDFa staff concurred with this understanding.
402. The City's stated reason for charging the higher operating cost without a new lease, was due to the reconciliation clause in the old lease. Yet, that was never communicated to the Complainants with whom Real Estate staff had met with months earlier.
403. Sensitive tenant information left on the meeting table by City staff for all to see breached rules of privacy. This is just another example of carelessness. While accounts differed, it is factual that the Complainants

received the chart, constituting a potentially serious breach of privacy on which the City is fortunate not to have had a complaint filed.

404. Estimates of operating costs changed repeatedly. The Complainants were never given a reason. For example, once Real Estate staff discovered that the security numbers previously used "would have been hard to defend," new numbers materialized the following month. The Complainants were not told why the original security cost estimate for 2010 was changed from \$21,477 to \$9,805.
405. Equally regrettable was a lack of communication surrounding the drafting of the motion for the September 2011 Council session. No one provided the Complainants with information about the changed figures used in the motion. While only a \$13.00 figure had been used in discussions with the Complainants since May, the motion used a figure of \$17.74.
406. There is a baffling reticence on the part of Real Estate to share operating cost and other property information. This may, in part, be due to practical difficulties in obtaining certain types of data. Whatever the reasons, it must be rectified.
407. Furthermore, the lack of standardization for what information is to be provided to BMR tenants is unacceptable.

6.3 Poor Communication within the City

408. While SDFA staff, for the majority of time, were good communicators and worked tirelessly with the Complainants and City colleagues, communication challenges abounded between divisions.
409. SDFA staff were the principle drafters of the Council motion, but they relied on Real Estate for technical information. It is evident that not only was Real Estate providing the content for the motion, staff were actively working for a particular outcome, namely, the protection of City assets.
410. When the motion went to Council, Real Estate staff had not briefed their superiors. The Director gave evidence that he did not know about the motion until the day it went to Council and his superior, the Chief Financial Officer had received no briefing at all.
411. Again, employees failed to do their jobs.
412. Real Estate subsequently drafted a report recommending against the motion which they had assisted SDFA in preparing in the first place.

6.4 Staff Performance

Inaccurate Information

413. When the Complainants finally received the long promised "historical operating costs," it came in a summary chart. There were numerous questions about the data, reasonably put by the Complainants, that aptly identified some serious problems.
414. The year 2005 was included in determining 2011 estimated operating costs even though the Complainants did not move in to the property until November 2005. To add insult to injury, 2005 was the year with the highest operating costs.
415. No information was provided for the cost of security services from 2005 to 2008. In 2009, they are included in the chart but they are inaccurate.
416. Yet, the City had always provided security services to the building.
417. Security provided Real Estate with data which the latter incorrectly applied on the chart. Staff did not perform the suggested algorithm to estimate costs for 2005 to 2008. Staff did not include any security costs in his figures for those years.
418. The chart with operating costs was so general, it was not helpful. There was a lump sum for utilities, covering gas, hydro and water and one for contracted services which includes repairs, maintenance and janitorial work. It was not possible to discern whether there was a spike in one utility cost or whether costs could be reduced by contracting some services out. There was no explanation as to why "contracted services" were \$185,310 in 2005 but only \$96,616 in 2006.
419. The chart did not indicate whether the figures included tax. Only from the time of the September 2011 motion did Real Estate begin to note which figures included tax. Between May 2011 and April 2012, four different estimates were given of operating costs for 2010.
420. Similarly, estimates for 2007 and 2008, provided in 2008 and 2009, differed from the numbers estimated in 2011. No wonder the Complainants did not rely on the numbers and continued to seek explanations.

421. When the Complainants raised alarm bells about the \$17.74 psqf rate quoted in the Council motion, staff from both Real Estate and SDFa assured them that this was the same as the \$13.00 psqf rate, plus HST. This was completely wrong, and would have meant a 36% taxation rate.
422. Instead, the correct answer was not provided until three months later, when Property Officer A explained that Real Estate used exclusive square footage to calculate the rental area. There was no acknowledgment that the earlier explanation was incorrect.
423. Following this string of errors, City staff then had the gall to assert that the Complainants were "playing games."
424. Senior staff in SDFa and Real Estate responsible for BMR provided different numbers when asked to verify the number of BMR tenancies: 88 and 93. When asked to clarify, both stood by their own numbers.
425. The fact that two divisions within the City provided me with differing numbers of BMR tenancies is astounding. I note that this matter will now be fixed as a result of this investigation.
426. The portfolio of the BMR Property Officer is a significant one. It may just not be possible for one person to meet all of the obligations, but this does not excuse sub-standard performance.
427. The Complainants are a group of not-for-profit tenants providing services to community members, many of whom are marginalized. The organizations' funds are scarce and their opportunities for fund-raising are limited. It is not unreasonable for any organization to require accurate estimates of costs, but in a below market rent situation, this need is far more pressing, given their financial realities.

Inaccurate Information in Staff Report to Government Management Committee

428. Real Estate staff drafted a report recommending against the motion which they had recommended in the first instance.
429. The report said that the Complainants were paying "a subsidized rate of \$3.20 per square foot" so that they could budget for higher costs in the future. However, there was no mention in any document of \$3.20 being a subsidized rate. The lease says that \$3.20 was the City's estimate of the actual operating costs.

430. The staff report confuses the self-funded trust account used to help the Complainants reach capacity to pay \$3.20 psqf, suggesting instead the final \$3.20 rate was a bridge rate to something higher.
431. The staff report misrepresents the content of meetings held with the Complainants, suggesting information was shared and that the Complainants were notified of the new rates. The evidence consistently shows that staff did not have answers or information at many meetings, and at each one, they left promising to provide the Complainants with answers, which they rarely gave.
432. Further, the staff report inaccurately gives dates that information was shared with the Complainants, and suggests historical data were shared when they were not.
433. I note the report is silent about Real Estate's continuous delays and the fact that the Complainants are still waiting for information promised by City officials.

Record Keeping

434. While the City was able to produce voluminous documents about BMR tenancies, there were virtually no records of meetings with the Complainants. In most cases, the Complainants' own minutes were the only records.
435. SDFA provided minutes from two single meetings, both from 2008, and one unrelated to the matter in question. My investigator had to rely on the Complainants' records of meetings in order to question or support witnesses' recollections.
436. On February 3, 2009, minutes were taken by an SDFA staff member. These minutes were provided to my office by the Complainants.
437. At another meeting in April, 2012, SDFA staff did send an email to the Complainants summarizing the meeting and agreeing to various items.
438. I am concerned about the lack of record-keeping revealed by this investigation and note that neither Real Estate nor Facilities staff took any minutes whatsoever.

Acting Outside Authority

439. The Director of Facilities Operations was asked to look into the contracts for security and custodial services, and promised an answer within one week.
440. There is no record of such enquiries taking place, although the Director says he made some calls. Records show SDFa had to follow-up to locate the information.
441. The evidence shows that instead, the Director began work on a wholly different task. He decided to perform calculations of square footages and operating costs, tasks that other City staff had already done, and which were neither required nor requested.
442. It is not surprising that after years of requests for information, the Complainants came to my office.

6.5 Staff Attitudes towards the Complainants

443. Throughout, Real Estate noted that the Complainants' requests were "unreasonable."
444. Yet, each time the Complainants asked for information, Real Estate agreed to provide it. If staff believed the Complainants were being unreasonable, one wonders why they agreed to satisfy their request in the first place.
445. Real Estate staff were very negative about the Complainants. They contended the Complainants did not want to pay what was due, that they were stalling, looking for loopholes or otherwise engaged in inappropriate behaviour.
446. Real Estate staff noted the draw on City resources in dealing with the Complainants. Yet, there was no recognition on their part of the incredible amount of time and resources that these under-resourced non-profit groups spent, and continue to spend, to obtain information, and to follow up on broken promises.
447. One senior staff referred to an "endless stream of complaints," that the Complainants were "playing a game" and had been refusing to pay the true operating cost for years. Much of this was inaccurate, as they had not

been asked to pay a higher rate from 2005 to 2010, in part because Real Estate never performed a reconciliation of their costs.

- 448. The statements of the Manager, Real Estate, likely influenced the attitude of staff. Some of his comments were made to staff new to the portfolio and may have tainted their relationship with and coloured their opinions about the Complainants.
- 449. The Director of Real Estate expressed similar views, supporting his staff, and signed off on a staff report that contained inaccurate information and misrepresented certain events. He was apparently relying on his manager.

6.6 Differential Treatment

- 450. While this investigation did not include a comprehensive review of other BMR properties, City staff commented on some of the other "outlier" cases, which reportedly represent about 10% of the BMR portfolio.
- 451. Differential treatment may be acceptable if there are legitimate reasons for doing so, but I note that at least in some cases, there is inconsistency.
- 452. Current BMR tenant Comparator A is in overholding outside a lease. The City has asked the organization to pay the actual operating costs for that building, and it is my understanding that they have refused. Comparator A continues to pay the same rate, which does not cover operating costs, contrary to BMR policy.
- 453. Yet, the Complainants are told they were in arrears for 2011, that the only way to deal with this was through Council approval of a "one time grant" and that effective January 2012, they would be responsible for actual operating costs.
- 454. It is problematic that one tenant is treated with strict deadlines, and the other continues with no imposition of a deadline. The quantum of the investment made by one tenant group does not alter the inconsistency and lack of rules governing decision-making on BMR tenancies.
- 455. The actions of the City are troublesome. On the one hand, it forces the Complainants to go to Council to request a "one time grant," yet on the other, the City allows other BMR tenants to avoid paying operating costs.
- 456. The October 22, 2012 report "Update on the Policy for City Owned Space Provided at Below-Market Rent", acknowledges some shortcomings of the

BMR policy, and recognizes that it is not flexible enough to work for all tenant groups. It directs staff to consider a range of governance models, appropriate for the variety of community spaces and groups. It is reassuring that the City recognizes the issue and is planning for changes.

457. The Complainants were singled out for different treatment despite the similar circumstances of other tenants.
458. The City has provided no convincing rationale for forcing these Complainants to have a debt formally forgiven, while other BMR tenants continue to accrue debt.
459. I respect the need for differential treatment in some circumstances. In no way should my findings in this investigation be construed as a rationale for eliminating the BMR policy. It gives crucial support to organizations providing key services to City residents. Rather, the City needs to have appropriate, transparent criteria to justify exceptions to its rules. This will make the BMR policy fair and transparent in its application.
460. SDFA is aware of the inconsistency, and has committed to addressing it. The City cannot have a BMR policy that only some tenants follow. If special circumstances mean a different relationship is necessary, this must be incorporated into BMR policy. It cannot be worked out piece-meal.
461. The Complainants were unfairly burdened by the City's actions or lack thereof. They had to reduce staff, services and budgets. Furthermore, with their scarce resources, the Complainants expended a lot of time and resources chasing City officials for reasonable and proper information with which to plan and meet their obligations.

7.0 Ombudsman Conclusions

462. The Toronto Municipal Code Chapter 3, 3-36 provides that the Ombudsman, in undertaking an investigation, shall have regard to whether the decision, recommendation, act or omission in question may have been:
 - A. Contrary to law;
 - B. Unreasonable, unjust, oppressive or improperly discriminatory;
 - C. Based wholly or partly on a mistake of law or fact;

- D. Based on the improper exercise of a discretionary power; or
- E. Wrong.

- 463. I have considered these definitions in reaching my conclusions.
- 464. The delay, poor communications, quality and accuracy of information, and staff performance are unreasonable and I find the combined impact on the Complainants to be unjust.
- 465. The provision of inaccurate and often incorrect information is unreasonable.
- 466. The broken commitments and empty promises were unacceptable and did not meet basic standards of public service, including the duty to communicate regularly.
- 467. There was a consistent failure to advise the Complainants when timelines would be met. All of these factors were unreasonable in the circumstances.
- 468. Advising tenants orally of major changes in their operating charges with no written notice was unfair. It demonstrates a lack of diligence and understanding of how non-profit agencies work.
- 469. A director of a not-for-profit organization should not be expected to have his or her Board make budget forecasts based on the say-so of the City. The City does not work in this fashion and it is unreasonable to expect BMR tenants to do so.
- 470. It betrays a heavy-handedness on the part of City staff who felt free to dictate changes without proper explanation.
- 471. Discovering sensitive information through an inadvertent email and a chart improperly left on the table, is unacceptable.
- 472. Communication within City divisions was equally poor.
- 473. The confusion over the accuracy of security data was problematic and the failure to find a solution to this problem is unreasonable.
- 474. Some of the information in the staff report to Government Management Committee was wrong. It incorrectly stands on the record and misrepresents the City's actions and communications with the Complainants.

475. The lack of record keeping at business meetings is unreasonable and a failure in public servants' responsibility to record events and decisions, both to be able to explain their actions and decisions to others and to defend themselves in the course of doing so.

8.0 Ombudsman Recommendations

476. Taking into account all of the evidence gathered through this investigation, I make the following recommendations:
1. That the City work with the Complainants to draft a list of all outstanding promises, to be completed by March 25, 2013 and that the items on this list be completed by May 31, 2013.
 2. If there is to be variation to the BMR policy for some tenants, staff and Council must have a transparent rationale and clear criteria to guide the differential application of the policy. The development of these should be addressed in the upcoming Community Infrastructure Service Efficiency Study, administered by the Executive Director, Social Development, Finance and Administration.
 3. That annual reconciliations be performed by Real Estate and provided to tenants with a standardized feedback sheet on operating costs.
 4. That the City establish a requirement for written notice regarding changes to operating charges, including a requirement for a minimum notice period.
 5. That staffing and overall resources be reviewed to ensure that the BMR portfolio is properly handled within Real Estate, Facilities and SDFSA.
 6. That an information package be given to all BMR tenants, setting out what they can expect each year, including matters such as annual reconciliations, a breakdown of operating costs, and related information.
 7. That an internal review be conducted and procedures developed by Real Estate and Facilities about how, what and when information is provided to other divisions and tenants.

8. That City divisions involved in this matter retain minutes of business meetings as appropriate and that a record-keeping process be established for their retention.
9. That the City's corporate guidelines on record-keeping be enforced through a directive issued by the City Manager to all divisions.
10. That senior managers of Real Estate and Facilities hold their staff to the City's corporate standards of communication.
11. That a communication protocol be developed to formalize the relationship between Real Estate, Facilities and Social Development Finance and Administration, on their respective communication responsibilities with tenants.
12. That senior managers of Real Estate and Facilities, along with their superiors, be appropriately briefed on any staff reports affecting their areas of operation prior to tabling at Council.
13. That senior managers of Real Estate and Facilities hold their staff to account for their job responsibilities including, but not limited to setting achievable timelines, meeting them and communicating appropriately and consistently with stakeholders, internal and external.
14. That senior managers of Real Estate and Facilities be held to account by the Chief Corporate Officer for their leadership and performance responsibilities.
15. That the Chief Corporate Officer ensure the counseling of relevant employees in Real Estate and Facilities take place with respect to matters raised by this investigation.
16. That Real Estate review the staff report submitted to Government Management Committee in October 2011 and make any amendments or corrections required, in a letter to the Complainants no later than March 15, 2013.
17. That the City refund all property taxes to the affected organization for all monies improperly charged.
18. That the City provide the above organization with a written apology by March 15, 2013 from the Chief Corporate Officer for the original error and the delay in fixing the problem.

19. That a written apology be provided to the Complainants from the City Manager by March 15, 2013, for the manner in which they were treated by City officials.
20. That the written apologies recommended above be provided in draft to my office for review and be issued in final form no later than March 11, 2013.
21. That all draft protocols and documents referenced in the above recommendations be provided to my office for review prior to finalizing them.
22. That the recommendations be completed no later than six months from the date of this report, with the exception of 1, 16, 18, 19 and 20.

9.0 The City's Response

477. Pursuant to s. 172(2) of the *City of Toronto Act, 2006*, I provided the City with an opportunity to review a draft of my investigation report, so that City officials could respond to the tentative findings and recommendations.
478. My office met with City officials to receive their feedback and clarification on some points. Following these discussions, the City Manager responded by letter dated February 26, 2013 (Appendix C).
479. In summary, that response stated that my report was "comprehensive and balanced" and that "staff are committed to implementing these recommendations within the mutually agreed timelines."

(Original signed)

Fiona Crean
Ombudsman
March 25, 2013

Appendix A - BMR Policy Background

1998 Policy Framework

Historically, many leases of City-owned space to community organizations at below market rent were made informally, on a program by program basis without the guidance of Council policy direction.

Following amalgamation in 1998, the City took steps to harmonize BMR practice. Although the seven former municipalities were engaged in some practice of BMR space provision, only the former City of Toronto had a formalized policy and procedure for administering requests. However, the lines of responsibility for organizations in City-owned BMR space were unclear and the practice of ad hoc arrangements established by former municipalities continued.

In 1998, Council adopted a policy, "Use of City-Owned Property by Non-Profit Corporations at Below Market Charges." This was to guide the City in determining eligibility for available BMR leased space.

The policy was not actively used, and only one new BMR tenant was accommodated between 1998 and 2002. That single case was at the explicit request of Council. Due to the limited BMR spaces available, the incumbent tenants had kept their spaces, and no new tenancies were created under the 1998 policy.

As a result, the BMR policy was revised by Council in 2002, initiating a three-phase plan, resulting in further updates to the policy in 2006 and 2007. The 2002-2007 changes were to rationalize the available spaces, to ensure all tenants met eligibility criteria, and to strengthen the vetting process of eligible tenants.

2002 Policy Framework

"A Policy for City-Owned Space Provided at Below-Market Rent" was adopted by Council in October 2002 in response to a report from the Chief Administrative Office to the Policy and Finance Committee.

Within this framework, a space allocation hierarchy was determined:

- 1) City administration, program and service delivery
- 2) City Agencies, Boards and Commissions
- 3) Purchase of Service agencies
- 4) Organizations that provide programs and services congruent with the City's mandate

The framework identified guiding principles for the policy: fairness, openness, transparency, and accountability. It required lease agreements to be administered by Real Estate and Facilities, and the creation of a service contract between the tenant and the City, to be administered by the City division responsible.

The 2002 policy refined BMR eligibility to require tenants meet the following criteria:

- 1) non-profit status
- 2) programs and services that are aligned with departmental mandate
- 3) service delivery for Toronto residents; and
- 4) for the mandate not to be the responsibility of senior levels of government

The policy attempted to create a consistent set of financial arrangements for all BMR tenancies. For example, new leases were to have standard terms requiring tenants to cover utility and property tax payments. The City would later refine and formalize these requirements in the three phase implementation plan.

The policy required the creation of an implementation team to review conditions under which lease arrangements should include provisions for contributing to a capital maintenance fund. It required reports to Council disclosing the opportunity costs of providing the space and other assistance being provided by the City to the tenant.

Lastly, the policy established the responsibilities of the City, aligning each BMR tenant to a partner City division. Based on the types of programs and services delivered by the non-profit tenant, the most connected City division would be responsible for overseeing that BMR tenant, including determining eligibility and space allocation.

Policy Amendments

Through subsequent reports, Council refined the BMR policy framework and authorized the extension of existing BMR lease agreements. In 2002, a multi-division implementation team was formed to coordinate the divisional procedures for administering space at below-market rents in a three phase plan.

Phase 1

In 2005, Council adopted “Phase One implementation of the Policy on City-Owned Space Provided at Below-Market Rent.” This first phase included further refinement of the eligibility criteria, a review of existing below-market rent tenants, a financial review and analysis of their eligibility to occupy City space under the policy, and follow-up site visits. Phase one implementation also concluded that a basic financial review was insufficient for determining a non-profit organization's ability to contribute to capital and

operating costs and prescribed a deeper analysis into an organization's financial reserves.

The eligibility criteria were amended to require:

- 1) incorporated non-for-profit or charitable status
- 2) activities of the organization serve City residents
- 3) activities of the organization support City objectives
- 4) mandates are not the responsibility of senior levels of government

Phase 2

Phase two of the implementation work plan involved the development of assessment criteria and service contracts, as well as the standardization of terms and conditions as they related to rent, occupancy costs, taxes and capital costs.

The assessment criteria are necessary for matching eligible tenants to the most appropriate available spaces. BMR determination is to be made based on

- a) the degree to which organizations are aligned with City and divisional goals and objectives; and
- b) the likelihood of organizations achieving their stated objectives

The policy standardized the terms and conditions of BMR tenancy and set out the division of costs relating to tenants in City-owned properties. BMR organizations were now required by the policy to pay the operating costs and property taxes for the space they occupied. The City was required to pay the capital costs, maintain the property in a state of good repair and meet health and safety standards.

Phase 3

The most recent report was submitted to Council on November 19-20, 2007 entitled "Providing City-Owned Space to Community Organizations at Below-Market Rent". Changes to the policy included the proposal of an implementation framework for the inclusion of community use in the City's surplus property disposal process, and the outline of a selection process for surplus City-owned space available for occupation at below-market rent by community organizations.

Appendix B – Auditor General's Review of the Administration of Leases on City-Owned Property

The Auditor General's report of 2006 uncovered several significant issues with respect to the reporting process, and gaps in service to BMR tenants. With respect to eligibility, these gaps included a failure to complete an inventory of BMR leases and the omission of leases from the eligibility review, resulting in an incomplete assessment of the eligibility of many BMR tenants.

There were problems with financial assessment of BMR tenants. Some organizations were found capable of paying market rent yet were recipients of rent subsidy from the City. The report suggested non-profits and charitable organizations had different capacities to pay rent and noted that difference should be reflected in the financial assessment.

The Auditor General determined the criteria for assessing the merits of an organization to determine its BMR eligibility should be clear and measurable. The criteria established by Council provided that the activities of the organization must serve Toronto residents and they must conduct activities supporting City objectives. The Auditor General found these were neither specific nor measurable, and thus, opened too large a door for eligible organizations.

The City was criticized by the Auditor General for not assessing the benefits derived through BMR subsidies. A ranking of BMR applicants had begun but was incomplete. Further, he wrote that "the City has no process in place to identify gaps in services where the allocation of below-market space would most benefit its residents." The Auditor General recommended prioritizing BMR spaces to tenants that stand to benefit the most.

Another issue identified by the Auditor General's review report was that subsidy amounts for BMR leases were not being reported to Council, as part of the requirement to disclose the opportunity cost for providing that space. Without this information, the Auditor General found that determining the amount of the grants in-kind was not possible. The report recommended that grants in-kind should be incorporated into the system.

Eligibility reviews for BMR tenants did not appear to be consistently followed and documented: "There was no evidence on file that site visits were conducted for most below-market leases." Furthermore, the information confirming the review of lease agreements and audited financial statements were not always in the lease file.

In his review, the Auditor General made the following findings related to BMR leases:

1. “Eligibility should be assessed for all below-market rent leases”

The Auditor General identified inventory of BMR leases yet to be completed, leaving some leases to be “omitted from the eligibility review.” Accordingly, the eligibility assessment of 42/98 staff identified BMR tenants remain outstanding.

2. “Financial assessment should determine BMR”

While BMR tenants are responsible for paying a “nominal rent” and their own operating costs, there were some organizations found to be unable to pay their own operating costs. In those cases, the City assumes the cost. The Auditor General asked that a financial assessment be done of those applying for BMR in order that correct rent subsidy amounts would be assigned.

3. “Clear and Measurable Criteria for Determining Eligibility are Needed”

The Auditor General found that most non-profit and charitable organizations were meeting the eligibility criteria due to the fact that “the criteria, ‘activity supports City objectives’ and ‘activities serve City residents’ are neither specific nor measurable.”

4. “Assessments should be conducted to establish priorities for below-market rent”

The report noted that no assessment of benefits being derived from BMR had been conducted nor was there a process in place to begin assessing benefits and gaps in services where BMR allocation would be of most benefit to residents.

5. “Subsidy amount for Below-market rent leases should be reported”

In accordance with BMR policy, council should be advised of the amount of other City grants provided to organizations with individual BMR lease agreements. The Auditor General’s report found this not to be the case. Rent subsidy amounts had thus far not been determined, making subsequent efforts to determine “grants in-kind provided by the City for individual lease agreements or for City as a whole” impossible.

6. “Eligibility reviews for BMR tenants should be consistently followed and documented”

The Auditor General’s report found “no evidence on file that site visits were conducted for most BMR leases” nor was the “information confirming the review of lease agreements and audited financial statements” always in the lease file.

Appendix C – The City's Response



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City Manager

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February 26, 2013

Fiona Crean
Office of the Ombudsman, City of Toronto
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Toronto, ON M5G 2J5

Dear Ms. Crean:

Further to your request, please find below the City's written response to your investigation report into the City's Below Market Rent (BMR) policy. I appreciate the time extension which you provided for our review of the draft report and to prepare comments.

We found your investigation to be comprehensive and balanced. The recommendations that you have made in your report further support staff's continuous improvement approach to provide transparent, effective and timely service to the City's BMR tenants. Staff are committed to implementing these recommendations within the mutually agreed timelines.

The City has already taken proactive steps to address the issues identified in the Ombudsman's report and to strengthen the City's customer service approach with BMR tenants:

- In October 2012, staff provided an update report on the BMR portfolio to Council and identified the need to develop more effective communication tools for current and prospective BMR tenants outlining the City leasing process, City approach to operating costs and reporting cycles, and how best to engage City maintenance processes.
- The review report also identified for City Council larger questions about the City's approach to BMR that are being explored through the Community Infrastructure Study currently under way.
- In December 2012, staff in Real Estate Services, Facilities Management and Social Development, Finance and Administration (SDFA) started developing a Service Level Agreement to clarify roles and improve communication processes moving forward.
- As part of this process, the SDFA is redefining its oversight responsibilities with other BMR divisions and moving forward, will act as the lead customer relations division for the BMR portfolio.
- Additionally, Real Estate, Facilities Management and SDFA are exploring how to use the holistic tenant support model being employed at the community hub at 21 Panorama Court as a 'best practice' model to engage and support BMR tenants. In this model, all divisions are at table working jointly with tenants to identify the range of leasing, operations and capital issues, develop appropriate responses, and communicate openly about the milestones to resolutions. SDFA acts as convener and lead customer relations representative for the City.



Thank you for the opportunity to provide input into the report. Real Estate Services and SDFA also very much appreciated the opportunity to discuss your findings with you in person prior to the finalization of your report.

Yours truly,



Joseph P. Pennachetti
City Manager

c: Chris Brillinger
Josie Scioli
Joe Casali
Denise Campbell