

**Fairness Investigations by Ombudsman Toronto
of the Toronto Police Service**

Memorandum of Understanding

Between:

OMBUDSMAN TORONTO
(hereinafter referred to as "Ombudsman Toronto" or the "Ombudsman")

and

TORONTO POLICE SERVICES BOARD
(hereinafter referred to as the "Board")

and

TORONTO POLICE SERVICE
(hereinafter referred to as "TPS")

(individually referred to as a "Party" and collectively as "the Parties")

A. Background

1. On August 18, 2020, the Board approved 81 recommendations for police reform that were contained in a report by Chair Jim Hart, titled "Police Reform in Toronto: Systemic Racism, Alternative Community Safety and Crisis Response Models and Building New Confidence in Public Safety." Recommendation 29 directed the Chair and Executive Director to engage with the City Manager and discuss additional and alternative approaches to ensuring transparent auditing of police practices and policies.
2. On April 8, 2021, following talks between the Board and Ombudsman Toronto, Toronto City Council voted unanimously to request that the Board and TPS negotiate a Memorandum of Understanding with Ombudsman Toronto to independently conduct policy and program reviews, and approved additional funding to Ombudsman Toronto for this purpose.
3. The mandate of the City of Toronto's Ombudsman is to independently investigate possible unfairness and maladministration at the City of Toronto. The Ombudsman is an independent Accountability Officer of City Council, who legislatively reports to Council as a whole. The Ombudsman leads the team known as Ombudsman Toronto.
4. The Board and TPS recognize the importance of accountability and transparency in how policing services are delivered in the City of Toronto, alongside the need

to continuously strengthen internal systems. The Board and TPS acknowledge the benefit of having Ombudsman Toronto work constructively to provide independent fairness reviews specifically by conducting investigations with regard to the fairness of TPSB Policies and TPS procedures, processes and practices, identifying issues and opportunities, making recommendations and following up on implementation, with the goal of achieving better services for the public.

5. This Memorandum of Understanding (the “MOU”) establishes and provides details concerning the working relationship among the Parties.
6. The Parties acknowledge that the legislative authority of the Ombudsman does not extend to TPS or the Board. Accordingly, the Ombudsman Toronto will conduct investigations pursuant to the terms of the MOU.

B. Scope:

7. Ombudsman Toronto may investigate any matter where the Ombudsman believes, on reasonable grounds, that the quality of service to the public has been, or could be, unfairly affected by the implementation of Board policies or TPS procedures or the administration of TPS services. TPS and the Board will support Ombudsman Toronto in completing these investigations under the MOU, in a way that ensures the independence of the Ombudsman.
8. The Ombudsman may decide to investigate a matter at the request of the Board or TPS. The Ombudsman may also independently identify matters to investigate.
9. In deciding what matters to investigate, Ombudsman Toronto shall select TPS services where there is a demonstrable public interest, a high level of contact with the public, and where there is the potential to improve Fairness in services for the public. These services may include, but will not be limited to, the example Investigation Subjects included as Schedule A.
10. Ombudsman Toronto will not investigate:
 - a. complaints from members of the public, TPS personnel, or any other person;
 - b. questions of police conduct (including those covered by Part V of the Police Services Act or Parts X or XII of the Community Safety and Policing Act, 2019);
 - c. employment/labour relations issues; or
 - d. a matter being investigated by another agency or office (for the purpose of this section, including but not limited to the Office of the Independent Police Review Director, the Special Investigations Unit, the Inspector General of Policing, the Toronto Auditor General, a coroner’s inquest, and an independent civilian review, or their successors), or a matter falling under the jurisdiction of another agency or office (unless said agency or office explicitly refused investigation of the matter), or a matter currently before the court, or where there are other adequate remedies under the law or existing administrative practices which address the subject matter.

For added clarity: where a matter falls in part under the jurisdiction of another agency or office, this will not preclude the Ombudsman from investigating those aspects of the matter that fall outside of the jurisdiction of that other agency or office.

11. Ombudsman Toronto will not to duplicate the work of any other agency or office as defined above in section 10.d.
12. Should the Board Office or TPS identify duplication of work by another agency or office as defined above in section 10.d, or that a proposed investigation falls under the categories included in section 10 above, Ombudsman Toronto will schedule a meeting with the Board Office and TPS Designates to arrive at a mutually agreed decision as to whether the Ombudsman's intended investigation should proceed, and if it is to proceed, its scope.
13. If the parties cannot reach agreement, the matter will be escalated to the Ombudsman, the Chief of Police, and Board Chair to make a final determination as to whether the intended investigation should proceed. In the event that the intended investigation does not proceed, the TPS Chief and/or the Board Chair shall write to the Ombudsman to provide their rationale as to why the intended investigation should not proceed. The Ombudsman shall report all such incidents, including the TPS and Board's rationale not to proceed, to Toronto City Council as part of the Ombudsman's Annual Reporting function.
14. Where, in the process of an investigation, Ombudsman Toronto identifies evidence of possible misconduct, the Ombudsman shall immediately communicate the information to the OIPRD or the Chief of Police, as appropriate

C. Definitions:

15. The following definitions apply to the MOU:

Board Office means the staff team supporting the Board, represented by the Executive Director and Chief of Staff of the Board or their delegates.

External Expert means subject matter experts who can provide expertise on a general topic or analysis (e.g., statistical analysis, legal analysis), and does not include witnesses who are providing factual information about a particular event or process they participated in or witnessed directly.

Investigation means Ombudsman Toronto's review of a procedure or process, a service, a program, a standard, policy implementation, or training, to examine whether it is operating with Fairness. Each Investigation will follow the following process, as described in this MOU: (1) Preliminary Inquiry Phase (see Part E); (2) Investigation Phase (see Part F); (3) Reporting Phase (see Part G); and (4) Monitoring Phase (see part H).

Investigative Report or **Report** means the written report resulting from an Investigation, describing the Ombudsman's findings and recommendations, if any.

Investigation Subject means the policy, procedure, process, service, program, standard, policy implementation, or training of the TPSB or TPS which is subject to an Investigation under the MOU.

Fairness means administrative fairness. Ombudsman Toronto focuses on three aspects of administrative fairness, recognized in administrative law: Fair Process (including clear communication and an explanation of the outcome and reasons for it), Fair Outcomes (including properly based on the rules, policies and procedures), and Fair Treatment (including that people are treated in an equitable, inclusive and accessible way). Ombudsman Toronto will focus on the manner in which Policies, procedures and processes are designed in a way that satisfies the need for administrative fairness.

Management Response means the formal written response prepared by the Board Office, and/or Chief of Police or TPS Designate, as appropriate, to the Final Investigation Report, noting whether there is agreement with the recommendations, and listing the planned actions and estimated timing to address each of the Investigative Report recommendations the TPS and/or Board agrees with. The Management Response will be included as an appendix to the Final Investigation Report.

Notice of Intent to Investigate means the letter the Ombudsman sends to the Board and TPS, providing formal notification that Ombudsman Toronto is starting an Investigation.

Personal Information has the same meaning as the term as defined by the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA").

Record(s) has the same meaning as the term as defined by MFIPPA.

TPS Designate refers to a person or persons as identified by the Chief of Police to represent him or her with respect to matters covered in the MOU.

TPS Personnel refers to sworn (uniform) members, civilian members, cadets, volunteers, and auxiliary members.

D. Term, Review and Assessment

16. The term of the MOU is for five (5) years from the date of last signature.
17. Two (2) years into the term of the MOU, the Parties will review the terms of the MOU to determine whether they wish to make any changes to its terms, to improve the effectiveness of the relationship between the Parties, provided that any such adjustments are agreed upon by all Parties.
18. The Parties agree to revisit the MOU before its expiry to determine whether they wish to amend or renew the MOU.

19. The Board or the Ombudsman, may terminate this MOU upon thirty (30) days written notice to the other Parties.
20. Subsequent to a breach of any of the terms or provisions of this MOU, a Party which did not commit the breach may terminate this MOU at any time.

E. Preliminary Enquiry Phase

21. The Ombudsman will precede each investigation with a Preliminary Enquiry, an informal process to determine whether to commence an investigation, and assist in scoping the issue(s). Ombudsman Toronto will inform the Board Office and TPS about the proposed scope and the prima facie rationale for the initiation of the enquiry. During the Preliminary Enquiry Phase, Ombudsman Toronto will gather information related to a potential Investigation Subject from sources Ombudsman Toronto deems relevant, including TPS. During this phase, Ombudsman Toronto will communicate with the TPS Designate/staff and the Board Office to identify information it requires from TPS.
22. Requests for information during the Preliminary Enquiry Phase, will follow a process identical to that described below in the Schedule B (Information Sharing Agreement).
23. During this phase, Ombudsman Toronto may consult with representatives of Toronto's communities, at the Ombudsman's discretion; however, no TPS information that is not already in the public domain will be shared during such consultation.
24. If, in the course of the Preliminary Enquiry Phase, it appears to the Ombudsman that further enquiry is unnecessary, the Ombudsman may at their discretion decline to investigate further, and will advise the Board of their decision.

F. Investigation Phase

Notice of Intent to Investigate

25. Before starting the Investigation Phase of any Investigation, Ombudsman Toronto will schedule a meeting with the Board Office and TPS Designate to inform of the proposed Investigation, allow the Board and/or TPS to identify potential duplication or conflicts, discuss the Investigation's scope, and answer any questions the Board Office and/or the TPS may have.
26. After meeting with the Board Office and TPS, Ombudsman Toronto will consider any feedback provided by the Board and TPS and determine the Investigation's scope. Before conducting any other work on the Investigation, the Ombudsman will issue and deliver to the Board and TPS a Notice of Intent to Investigate. The Notice will identify the Investigation Subject and the scope of the Investigation.

Status Updates

27. Ombudsman Toronto will write to the TPS Designate and the Board Office at least once every ninety (90) days, beginning with the date of the issue of the

Notice of Intent to Investigate, to provide an update on the Investigation and to ensure there is regular ongoing communication. Ombudsman Toronto may collate updates on multiple concurrent investigations into a single communication. Updates should include information on:

- a. Expected timelines for the conclusion of the investigation;
- b. Outstanding requests for information; and
- c. Any concerns the Ombudsman has with regards to the progress of the investigation or the cooperation of the Board, the TPS, or members thereof.

28. If the Ombudsman identifies during an Investigation any issue or concern that, in the Ombudsman's opinion, is high risk or critical and requires the immediate attention of the Board and/or TPS, the Ombudsman will report to the Board Office and/or Chief of Police at the first appropriate opportunity so that responsive action can be taken.

Access to Information

29. TPS, the Board and Ombudsman Toronto agree to the terms of the information sharing agreement included as Schedule B to this Memorandum of Understanding.

G. Reporting Phase

30. In the Investigation Report, the Ombudsman may disclose such matters as in the Ombudsman's opinion are required to establish the basis for the Ombudsman's findings and recommendations; however, no personal information shall be made public or included in any Investigation Report.

31. At the conclusion of an Investigation, the Ombudsman will provide TPS and the Board Office with the Preliminary Investigation Report and provide TPS and the Board an opportunity to review and make representations respecting the findings and recommendations.

32. TPS and the Board Office will limit access to the Preliminary Investigation Report to personnel necessary to respond to the Preliminary Investigation Report.

33. Ombudsman Toronto will schedule a meeting with the Board Office and TPS twenty (20) business days after providing them access to the Preliminary Investigation Report to allow TPS and/or the Board to make representations on the Preliminary Investigation Report regarding any factual inaccuracies, confidentiality concerns, additional evidence for consideration, tone, or any other issue related to the content of the Preliminary Investigation Report. If the TPS or the Board require more time to respond they will advise the Ombudsman and reasonable adjustments to timelines will be made.

34. The Ombudsman will consider all representations by TPS and the Board Office on the Preliminary Investigation Report. The Ombudsman alone will decide on

the content of the Final Investigation Report, with the exception of matters identified by the Chief of Police which may fall under the law enforcement disclosure exemption under MFIPPA (section 8) or where disclosure of a piece of information is otherwise subject to confidentiality or secrecy requirements established by statute, contract, court order or other legal source.

35. Ombudsman Toronto will provide a copy of the Final Investigation Report to TPS and the Board Office. Upon receipt of the Final Investigation Report, the Chief of Police and TPS Designate, and the Board Office will have 10 business days to provide a Management Response, in which the Chief of Police and the Board will note whether TPS and/or the Board accept the recommendations.
36. The Management Response may also include an action plan on how to address the recommendations accepted by TPS and/or the Board. If TPS requires more time to respond, TPS will advise the Board. If the Board requires more time to respond, or is informed that TPS requires more time, the Board will advise the Ombudsman and seek an extension. Ombudsman Toronto will include any Management Response as an appendix to the Final Investigation Report.
37. TPS and the Board Office will preserve the confidentiality of the Final Investigation Report until the Ombudsman makes the Final Investigation Report public.
38. The Ombudsman will keep the Final Investigation Report confidential and not make the Final Investigation Report public or submit the Final Investigation Report in accordance with section 39 until all steps in sections 30 to 36 have been completed and a Management Response has been provided in accordance with sections 35 and 36.
39. The Ombudsman will make its report public by submitting the Final Investigation Report (including the Management Response) as an agenda item for a public meeting of the Board. Once made public by the Board as part of a meeting's agenda, the Ombudsman may provide its report to other organizations or people at its discretion including posting it on the Ombudsman's website and in social media. If the Ombudsman submits its report to City Council, the Ombudsman will advise the Board Office of which City Council agenda the Final Investigation Report will be added to prior to submitting it as an agenda item.

H. Monitoring Phase

40. Ombudsman Toronto may follow up with the Board Office on any recommendations from an Investigation Report that TPS or the Board has agreed with in a Management Response, to determine the progress TPS or the Board has made to implement them.
41. The Board will report to Ombudsman Toronto on a regular basis (as agreed on a case by case basis as part of the Management Response) on the status of the implementation of any recommendation from an Investigation Report with which TPS or the Board agreed. These reports will take the form of written updates

from the Board Office and/or meetings among Ombudsman Toronto, the Board Office and the TPS as necessary.

42. These reports from the Board Office will continue during the term of this MOU until the Ombudsman is satisfied that the Board and/or TPS has taken adequate steps to address the recommendations. Ombudsman Toronto will notify the Board in writing when the Ombudsman is satisfied that the Board and/or TPS has taken adequate steps to address the recommendations and that reports from the Board Office are no longer required.
43. The Ombudsman may report publicly on implementation of the recommendations by TPS. The Ombudsman will submit a report on the implementation to the Board, and will not make the report public by other means, until it is made public by the Board as part of a meeting's agenda.

I. Other Considerations

External Experts

44. Ombudsman Toronto may use an external expert to ensure that an Investigation is thorough and accurate. Ombudsman Toronto will notify the TPS and Board prior to Ombudsman Toronto retaining any external expert to provide services under this MOU. Where TPS and/or the Board has a concern about an external expert (including conflict of interest) or wishes to suggest a potentially more suitable expert, TPS and/or the Board will advise Ombudsman Toronto. The Ombudsman will consider TPS'/Board's input, but the selection of the expert rests solely with the Ombudsman.
45. Ombudsman Toronto shall obtain Undertakings of Confidentiality from external experts, which meet or exceed the safeguards and confidentiality provisions set out in the MOU. When an external expert's involvement in an Investigation is at an end, the external experts will destroy or return to Ombudsman Toronto any TPS and/or Board records in their possession, including any derivative records.
46. Ombudsman Toronto will be responsible for all costs associated with any external experts it retains.
- 47.

Issues or Problems

48. In the event of any issues or problems which may arise during the course of work under the MOU, the Parties agree that their staff will escalate them to the Chief of Police, Board Office or the Ombudsman, respectively. If necessary, any matter that cannot be resolved otherwise will be dealt with in consultation among the Ombudsman, the Chief of Police, and the Board.

Ombudsman Toronto Protections

49. TPS and the Board agree that no proceeding for damages or otherwise lies against the Ombudsman, Ombudsman Toronto, or Ombudsman Toronto staff or external experts for work carried out in good faith under the MOU, and pursuant

to this MOU, and the provisions of the *City of Toronto Act*, MFIPPA and any other relevant legislation, and that TPS and the Board will not pursue such a proceeding.

External Complaints

50. In the event that Ombudsman Toronto receives any complaints from members of the public about TPS or the Board, Ombudsman Toronto will inform the complainant of the appropriate mechanisms for filing complaints, including referral information to relevant complaints handling bodies, as appropriate.

Criminal Record Checks

51. The Parties agree that Ombudsman Toronto shall provide TPS with a list of Ombudsman Toronto staff and external experts (when identified) who are expected to be involved in any work considered under the MOU. No Ombudsman Toronto staff person or external expert shall commence work under this MOU until TPS has been notified of their work and the following has occurred:

- a. The OPP will conduct a Criminal Record Check on all Ombudsman Toronto staff and all external experts involved in work under the MOU. All Ombudsman Toronto staff and external experts who will be involved in the Investigations or have access to TPS records will voluntarily subject themselves to this check.
- b. Before any Ombudsman Toronto staff or external subject matter expert is involved in any work considered under the MOU, or that is required at a TPS location, the Ombudsman Toronto staff or external experts will have been cleared by the OPP with a Criminal Record Check.
- c. Before any external expert is involved in any work considered under the MOU, Ombudsman Toronto will ensure the external expert has signed confidentiality agreements which, at a minimum, parallel the requirements of the MOU, including the safeguards, confidentiality provisions, and record destruction requirements as set out in the MOU.

Other Statutory Obligations

52. Nothing in this MOU will supersede or override statutory obligations under any relevant legislation, including but not limited to, the *Municipal Freedom of Information and Protection of Privacy Act*, the *Police Services Act*, the *Comprehensive Police Services Act*, the *Community Safety and Policing Act* (CSPA), or the role and powers of the Inspector General [of Policing] under the CSPA.

Representatives

53. The following are designated as the representatives for each Party under the MOU, and any notices will be delivered as follows:

In the case of Ombudsman Toronto to: The Ombudsman
Ombudsman Toronto

375 University Avenue, Suite 203
Toronto, ON M5G 2J5
Telephone: 416-392-7062
Fax: 416-392-7067

In the case of TPS to:

The Chief of Police
Toronto Police Service
40 College Street, 7th Flr.
Toronto, ON M5J 2G3
Telephone: 416-808-8016
Fax: 416-808-8002

In the case of the Board to:

The Chair of the Board
Toronto Police Services Board
40 College Street, 7th Flr.
Toronto, ON M5J 2G3
Telephone: 416-808-6784
Fax: 416-808-8002

Severability; Execution

54. In the event one or more provisions contained in the MOU is subsequently declared invalid or unenforceable by a court or other binding authority, such provisions will be severed and not in any way affect the validity or enforceability of the remaining provisions.
55. This MOU may be executed by electronic signature that is received by the Board in a file format acceptable to the Board. Such electronic signature shall be deemed to be an original signature for the purpose of this Agreement with the same legal effect as an original signature.
56. The MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
57. The MOU may be transmitted by electronic mail or such similar device and the signatures in the transmission will be treated as binding as if they were originals. Each party undertakes to provide the other party with a copy of the Agreement bearing original signatures upon demand.

IN WITNESS WHEREOF, this Memorandum of Understanding has been signed on behalf of the Parties by their duly authorized officers on the dates noted below:

OMBUDSMAN TORONTO



Name: Kwame Addo
Title: Ombudsman

Date: January 13, 2023


TORONTO POLICE SERVICE

Per: 

Name: Myron Demkiw
Title: Chief of Police

Date: 2023/01/12

TORONTO POLICE SERVICES BOARD

Per: 

Name: Ainsworth Morgan
Title: Chair of the Board

Date: 2023.01.10

Schedule A

Example Investigation Subjects

- Criminal records checks
- On-line reporting
- Neighbourhood officers
- Hearings (ease of access to services and information)
- Recruitment – effectiveness of reach out to diverse communities
- Wellness
- Victim Services
- All programmes designed to reach out to at risk and marginalized communities

Schedule B

Information Sharing Agreement

Definitions

“**authorized users**” means the Toronto Ombudsman, his staff and any other individuals who have been identified by the Ombudsman or his designate(s), as:

- specifically requiring access to the personal information referred to in this Agreement in the performance of their assigned duties under the MOU, and,
- who have been cleared by OPP with a background check.

A current list of authorized users as of the date of this Agreement can be found in Schedule B1. Any changes to the list of authorized users must immediately or as soon as is practicable thereafter be communicated to all parties in writing.

“**designate or designates**” refers to a person or persons as identified by the Ombudsman.

“**personal information**” has the same definition as in Section 2 of MFIPPA

Section A: Purpose

1. The Parties entered into a Memorandum of Understanding (MOU), which establishes and provides details concerning the working relationship among the Parties. The Board requested that the Ombudsman conduct independent fairness investigations of the TPS, to help improve the service provided by the TPS to the public.
2. TPS and the Board collect, retain, use and disclose personal information in accordance with the Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”).
3. As there are no legislative authorities that extend the Ombudsman’s powers, duties and disclosure abilities under the City of Toronto Act, 2006, or Ombudsman Act to the work done by the Ombudsman under the MOU, the purpose of this Information Sharing Agreement (the Agreement) is to document the terms and conditions of the disclosure of personal information by TPS to the Ombudsman and its authorized users, operating as consultants of the Board for the purpose of the MOU, in compliance with the MFIPPA.
4. The Ombudsman may need access to certain personal information in the custody and control of the TPS to fulfil its duties under the MOU, namely to effectively conduct fairness investigations of TPS as part of the Board's responsibility to ensure the provision of adequate and effective police services in Toronto.

Section B: Access, Disclosure, and Ownership of Personal Information

5. Ombudsman Toronto will make requests for records to the Board and/or TPS when the Ombudsman believes the information contained therein is required to fulfil Ombudsman Toronto's obligations under this MOU.
6. The Parties agree that the following process shall be followed with respect to requests for information:
 - a. After issuing a Notice of Intent to Investigate, Ombudsman Toronto may issue a Request for Information to TPS and/or Board. The Request for Information shall include the following:
 - i. Identification of all information and records requested for use in the Investigation;
 - ii. Where the information is personal information, materials or other information displaying compliance with sections 14 and 15 of this Schedule B;
 - iii. The authorized user at Ombudsman Toronto to whom TPS will send the requested information and records, and the method of delivery of the requested records and information
7. Ombudsman Toronto shall send the Request for Information in writing to the TPS Designate and/or Board Office.
8. The TPS Designate and/or Board Office will produce a response with the decision of the TPS under section 15 within fifteen (15) business days of the request being received. TPS will make the final decision in determining whether TPS will disclose the personal information to the Ombudsman, considering its obligations under MFIPPA. At its discretion, TPS may provide the Ombudsman with anonymized records or records with personal information redacted and/or replaced with other identifiers which do not disclose personal information. Any decision by the TPS and/or Board to withhold information requested by the Ombudsman, in whole or in part, will be communicated to the Ombudsman with an explanation of its rationale.
9. During the Investigation Phase, Ombudsman Toronto may continue to gather information relevant to the Investigation Subject. This may include collecting records, including: data, statistical analysis, emails, briefing notes, reports, memoranda, and any other document that may be relevant to the Investigation in accordance with the process set out in this MOU. It may also include conducting interviews with TPS personnel and/or Board staff, and members of the public. Other methods for gathering information may also be used, as determined by Ombudsman Toronto, provided Ombudsman Toronto complies with this MOU at all times.
10. The parties agree that:

- a. TPS and/or the Board will not provide Ombudsman Toronto with access to information or records that are not in the custody or control of TPS and/or the Board. Should Ombudsman Toronto wish to obtain access to 3rd party records or systems, Ombudsman Toronto will request access from these from the 3rd parties in accordance with the Board's obligations under MFIPPA. TPS and/or the Board will support Ombudsman Toronto in any such access requests.
- b. TPS and/or the Board will not grant access to any information or records that are subject to any legal privilege such as: solicitor-client privilege, public interest privilege, litigation privilege or settlement privilege, or subject to confidentiality or secrecy requirements established by statute, contract, court order or other legal source. Where TPS and/or the Board withhold information on one of these bases, it will so inform Ombudsman Toronto and advise of the nature of the basis if possible. If possible, TPS and/or the Board will attempt to redact or sever the portions of its records that meet the conditions above, in order to provide the remainder of the records to Ombudsman Toronto.

11. The authority for disclosure of personal information by TPS to the Ombudsman and its authorized users is Section 32(d) of MFIPPA which states that:

Section 32

An institution shall not disclose personal information in its custody or under its control except, (d) if the disclosure is made to an officer, employee, consultant or agent of the institution who needs the record in the performance of their duties and if the disclosure is necessary and proper in the discharge of the institution's functions;

The Board is the institution with custody or control of the records. The Board is responsible for overseeing TPS to ensure the provision of adequate and effective police services in Toronto. As per Section A of this Schedule, the Ombudsman is a consultant to the Board for the purposes of conducting fairness investigations of TPS to further the Board's oversight responsibilities. The Ombudsman may need access to certain personal information collected by the TPS in order to carry out this mandate.

12. The requirements of Section 32 of MFIPPA are applicable only insofar as the facilitation of sharing personal information between the parties and do not impact the Ombudsman's ability to conduct independent investigations under this agreement,
13. The parties agree that as the Ombudsman is acting as a consultant of the Board for the purposes of this MOU, all records disclosed by TPS or the Board to the Ombudsman, or copies thereof created by the Ombudsman in the course of the MOU, will remain, at all times, in the custody and control of the Board. The Ombudsman will handle all records in accordance with the Board's obligations under MFIPPA and shall not collect, retain, use or disclose the Board's records, or create or collect any additional information or records, in any manner that is contrary to or otherwise not in compliance with the Board's obligations under MFIPPA. Should the

Ombudsman receive a request for access to records provided by the TPS or Board to the Ombudsman in the course of the MOU or copies thereof created by the Ombudsman in the course of the MOU, the Ombudsman will forward such a request to the Board.

14. The Ombudsman acknowledges the obligations of the Board under S.28, S.29, S. 31 and S. 32 of MFIPPA apply to the Ombudsman in its collection, use and disclosure of personal information when carrying out the MOU and to how the Board and TPS will manage personal information in its custody and control. As such, requests the Ombudsman makes for personal information will only be made to the TPS where the information is necessary to the investigation being conducted and the investigation cannot be conducted without access to that personal information. That is to say that the personal information requested is necessary and not merely helpful to the achievement of Investigations to further the Board's oversight responsibilities.
15. The TPS acknowledges that when personal information is requested by the Ombudsman it must, pursuant to S.32 of MFIPPA, be satisfied that the Ombudsman needs the records for the performance of its duties and the disclosure is necessary and proper in the discharge of the Ombudsman's functions.

Section C: Confidentiality, Security, Use, and Ombudsman Toronto Reporting

16. The Ombudsman will limit access to personal information provided by TPS to the authorized users listed in Schedule B1. These are staff or contractors of Ombudsman Toronto who have received OPP clearance with background checks to the satisfaction of TPS. The Ombudsman will ensure that only those authorized users working on the investigation(s) that require that personal information to complete their investigation responsibilities will be given access to it.
17. The list of authorized users may be updated as needed by the Ombudsman or his designate(s) and will be communicated to TPS and the Board in writing before access to personal information is granted to them.
18. Authorized users shall not contact any individual to whom personal information in a TPS or Board record relates directly or indirectly without the prior written authority of TPS and the Board.
19. Authorized users will not release personal information transferred by TPS without prior written approval from TPS and the Board.
20. Personal information obtained under this Agreement or as a result of the Ombudsman carrying out an Investigation under the MOU shall only be used to support the preparation of investigation working papers, analysis, reports and other investigation documentation for the purposes described in Section A of this Schedule.
21. Secure methods will be used when transferring and retaining personal information to protect it from unauthorized access, collection, use, disclosure, or disposal during

transport or transmittal. All electronic records in possession of authorized users will be kept encrypted on secured devices or drives using 256 bit encryption, and transmitted using methods with 256 bit encryption, and all physical records will be kept in a secure location to which access is only given to authorized users. All personal information transferred to the Ombudsman will be stored and accessed only in Canada.

22. The Ombudsman agrees to

- a. use at least the same degree of care to protect the TPS's Confidential Information as the Ombudsman uses to protect its own Confidential Information of a like nature, but in any event will not use a standard of care that is less than a reasonable standard of care (taking into account all laws and regulations pertaining to the protection of Personal Information to which the Ombudsman is subject);
- b. without limiting (a), implement administrative, physical, and technical safeguards to protect the TPS's Confidential Information (stored or in transmission) from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage (including securing physical facilities, data stores, networks, applications and platforms);
- c. not make any changes to the safeguards described in (b) that decreases the level of protection that they provide (as a whole);
- d. not disclose the TPS's Confidential Information to any person other than the Ombudsman's staff or external experts who have a need to know it for the purposes of carrying out an Investigation in accordance with this MOU, and who are bound by the Ombudsman to keep the Confidential Information of third parties confidential, at least to the same extent as set forth in the Agreement; and
- e. maintain a disciplinary process the application of which addresses any breach of this Schedule by its staff and external experts.

23. Where information is considered highly sensitive and confidential, TPS may require the Ombudsman to review such information in an on-site meeting only. Only the Ombudsman Toronto staff who require access to the information to complete their Investigation responsibilities will be given access by TPS to review such information, and the Ombudsman will make no copies of such information unless authorized by TPS.

24. Any investigation communication (e.g. reports and letters) prepared by the Ombudsman shall not include any personal information and will be written and/or presented in such a way that no individual can be identified. Where personal information is required to be reported on, it will be anonymized and will only be reported as aggregated data.

25. The Ombudsman or their designate(s) will advise TPS and the Board immediately of any breach or violation of this Agreement or circumstances, incidents or events that to its knowledge have breached or will breach any terms of this Agreement, jeopardized or may in future jeopardize: (a) the privacy of individuals; and/or, (b) the

security of any computer system in its custody that is used to store and access the personal information.

Section D: Information Management

26. Ombudsman Toronto and every person acting under the instructions of the Ombudsman shall not use, disclose, disseminate or reproduce or in any way making known to third parties or to the public any information of the TPS or Board of any kind that is communicated to or acquired by the Ombudsman in the course of carrying out Investigations under MOU, except:
 - a. as may be strictly required for the purposes of carrying out an Investigation, or as expressly permitted in advance by the TPS in writing, or
 - b. as may be required by law to be disclosed pursuant to a court or tribunal order or other legal compulsion and, if so compelled, the Ombudsman shall only furnish the portion of the information that it is legally required to furnish..
27. Ombudsman Toronto will only use the information provided to it by TPS and/or the Board in connection with the MOU and it may disclose the information only on a strictly need-to-know basis to its staff and/or external experts solely for the purposes of conducting Investigations and reporting in accordance with this MOU. Ombudsman Toronto will not use the information for any other purpose. Ombudsman Toronto acknowledges and agrees that use of the information for any purpose other than Investigations and reports described in this MOU would be detrimental to the interests, business and affairs of the TPS and Board and accordingly is prohibited.
28. Where the Ombudsman is required by law to disclose any such documents, data or information, the Ombudsman shall promptly notify the TPS and Board upon such legal requirement being imposed to permit the TPS and/or Board an opportunity to seek an order or other remedy to prohibit or restrict such disclosure
29. Ombudsman Toronto will insure is has appropriate processes and controls in place to ensure that Ombudsman Toronto staff and external experts maintain confidentiality, as required by the MOU. Every Investigation by the Ombudsman shall be conducted in accordance with the MOU and MFIPPA as it applies to the Board, and Ombudsman Toronto assumes full responsibility for ensuring that all of its staff and external experts comply with the obligations set out in this MOU and all applicable legislation.
30. Authorized users will ensure that any working papers or investigations documentation that requires the use of personal information is appropriately coded or redacted to ensure no personal identifiable information is retained in the working paper files or anywhere else in the Ombudsman Toronto's Office.

31. The Ombudsman will ensure that all records it receives from the TPS or the Board are kept separate and apart from all records it receives from any other institution or source, including the City of Toronto. All records created or retained by the Ombudsman in relation to its performance of its obligations under the MOU will be kept separate and apart from all other records of the Ombudsman.
32. At the end of each investigation project, authorized users shall destroy or securely erase any source files that contain the personal information transferred by TPS to the Ombudsman within 30 days of the receipt of the Ombudsman's final public report at the relevant City Council¹ meeting. The Ombudsman will advise the TPS and the Board of the destruction or secure erasure upon it being completed and provide the TPS and/or Board of proof of such destruction or secure erasure if so requested.

Section E: Interviews

33. Ombudsman Toronto will select TPS personnel for interviews and will request the TPS Designate to coordinate the interviews unless the Ombudsman feels that to engage the TPS or Board Designate would be seen as impinging upon its independence. The TPS Designate will facilitate the requested interviews to the best of their ability.
34. Attendance at interviews by TPS or Board staff is voluntary. The TPS and the Board will encourage its members to participate and fully cooperate with the Ombudsman's investigation. TPS and the Board will ensure no reprisals are taken against personnel for speaking with Ombudsman Toronto. Reprisal shall mean any measure taken or threatened as a direct result of speaking with Ombudsman Toronto or co-operating in an Investigation and includes but is not limited to: disciplinary measures, demotion of the employee, suspension of the employee, delaying or refusing the promotion of an employee, termination of the employee, intimidation or harassment of the employee, any measure that adversely affects the employment or working conditions of the employee, and directing or counselling someone to commit a reprisal.
35. Only people invited by Ombudsman Toronto will attend Investigation interviews, subject to their right to have legal counsel or an association representative present. To protect the integrity and confidentiality of the process, the fact of interviews, identity of interviewees and the content of interviews will be kept strictly confidential (as much as is possible and deemed by the Ombudsman to be necessary), including by and among TPS personnel and Board staff.
36. During this phase, Ombudsman Toronto may consult with representatives of Toronto's communities, at the Ombudsman's discretion; however, no TPS

¹ In the event the report is confidential and is not intended for the information to eventually be released, authorized users shall destroy or securely erase any source files that contain the personal information transferred by TPS to the Ombudsman 30 days after the delivery and acceptance of the Ombudsman's final report to the TPSB.

information that is not already in the public domain will be shared during such consultations.

Section F: Accuracy

37. TPS will make every reasonable effort to ensure the personal information it transfers to the Ombudsman is accurate and complete.

Section G: Amendments

38. All parties may agree to modify any of the terms and conditions of this Agreement in writing at any time.

Schedule B1: List of Authorized Users as at [DATE]