22.

STAFF REPORT
ACTION REQUIRED
with Confidential Attachment

Appeal of Exclusion by a Customer

Date:	June 19, 2017
To:	Toronto Public Library Board
From:	City Librarian
Reason for Confidential Information:	This report involves personal matters about an identifiable individual – *Public Libraries Act*, R.S.O 1990, Chapter P. 44, s. 16.1 (4) (b).

SUMMARY

The purpose of this report is to consider an appeal of an exclusion by a customer from the branches and to provide confidential information (Attachment 1) of the appeal currently under consideration.

RECOMMENDATIONS

The City Librarian recommends that the Toronto Public Library Board:

1. receives the Appeal of Exclusion by a Customer for consideration;

2. informs the individual, in writing, of the Board's decision; and

3. directs that the confidential information contained in the Confidential Report (Attachment 2) and its appendixes remain confidential in its entirety, as it contains personal matters about an identifiable individual.

   The Confidential Report (Attachment) and its appendixes remains confidential in its entirety in accordance with the provisions of the Public Libraries Act, 1990, as it contains personal matters about an identifiable individual.

FINANCIAL IMPACT

This report has no financial impact beyond what has already been approved in the current year's budget.

The Director, Finance and Treasurer has reviewed this financial impact statement and is in agreement with it.

DECISION HISTORY

A member of the public was excluded from all properties, buildings and services of the Toronto Public Library Board for a period of twelve months. The individual appealed to the City Librarian. The appeal was denied and the individual was advised of the appeals process. Under the Rules of Conduct – Exclusion, Reinstatement and Appeals Policy, the individual may further appeal to the Toronto Public Library Board. The individual requested to appeal to the Library Board. The individual was advised that an appeal would be heard by the Board on June 19, 2017.

COMMENTS

The appeal is considered under the Rules of Conduct – Exclusions, Reinstatement and Appeals Policy. The appeal will be heard according to the procedures in Attachment 4.

CONTACT

Moe Hosseini-Ara; Director, Branch Operations & Customer Experience;
Tel: 416-397-5944; E-mail: mhoss@torontopubliclibrary.ca

SIGNATURE

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Vickery Bowles
City Librarian

ATTACHMENTS

Attachment 1: Confidential Report
Attachment 2: Rules of Conduct Policy
Attachment 3: Rules of Conduct– Exclusion, Reinstatement and Appeals Policy
Attachment 4: Procedure for Hearing an Appeal to the Toronto Public Library Board

POLICY: RULES OF CONDUCT

SECTION: III - Public Service Policies - Other

MOTION#/DATE: 98 - 025 – January 29, 1998
REVISED: 07 - 158 – September 17, 2007
13 - 016 – January 21, 2013

The Toronto Public Library strives to provide free and equitable access to services that meet the changing needs of Torontonians. The Library preserves and promotes universal access to a broad range of human knowledge, experience, information and ideas in a welcoming and supportive environment that is free from discrimination and harassment. Everyone has the right to equal treatment with respect to the access and use of the Library's services and facilities without discrimination or harassment on the basis of sex, sexual orientation, race, colour, ethnic origin, creed and all other grounds set out in the Ontario *Human Rights Code.*

Discrimination and/or harassment will not be tolerated under any circumstances. These rules are intended to prevent such conduct and to ensure the dignity and safety of the public and the staff and to maintain the security of Library property without disruption to library services.

Any behaviour that does not support a welcoming environment and/or violates the Rules of Conduct may result in cost-recovery charges, suspension of Library privileges, exclusion from the Library on the basis of the Ontario *Trespass to Property Act* and prosecution. These Rules have been approved by the Toronto Public Library Board. An individual has the right to appeal his or her exclusion as described in the Rules of Conduct – Exclusion, Reinstatement and Appeals Policy.

The Library asks for your cooperation in maintaining a welcoming environment conducive to study and enjoyable use of the Library. Staff make every effort to apply these rules in a fair, dignified and positive manner for the benefit of all.

1. Violent, threatening, abusive, discriminatory or harassing language or conduct of any kind is not allowed.

2. Disruptive or intrusive behaviour is not allowed.

3. Damage, misuse, or theft of Library materials, equipment and property is not allowed. Interfering with the designated use of computers and networks is also

not allowed.

4. Members of the public may not make requests for service based on prohibited grounds of discrimination under the *Human Rights Code*.

5. Children requiring supervision must not be left unattended on Library premises.

6. Members of the public may only use authorized entrances and exits and are not allowed in “Staff Only” areas without permission.

7. Members of the public must open all bags, books and papers for inspection if requested by staff.

8. Library materials may not be taken into washrooms.

9. Posting notices, distributing circulars or petitions, soliciting or engaging in any commercial activity on Library property must not be conducted without prior written approval of the Library.

10. Photographing, filming or video recording of Library staff and users on Library property must not be conducted without prior written approval of the Library.

11. Members of the public must wear shirts and shoes and other appropriate attire. Use of sports equipment is not allowed on Library property.

12. Eating and drinking are allowed except in designated areas.

13. Service animals are welcome in the Library. Other animals are only allowed during authorized programs.

POLICY: **RULES OF CONDUCT – EXCLUSION, REINSTATEMENT AND APPEALS**

SECTION: **III - Public Service Policies**

MOTION#/DATE: **13 - 016 – January 21, 2013**
14 - 080 – April 28, 2014

Policy Objective

The policy outlines how Toronto Public Library applies the Rules of Conduct to maintain a safe and welcoming environment for the public and staff. The policy identifies the types of misconduct that lead to exclusions under the Ontario *Trespass to Property Act* and the appeals process for people who are excluded as a result of misconduct.

Underlying Principles

Toronto Public Library's mission is to provide free and equitable access to services that meet the changing needs of Torontonians. The Library preserves and promotes universal access to a broad range of human knowledge, experience, information and ideas in a welcoming and supportive environment. The Library establishes Rules of Conduct to foster this environment for all users. The Library is committed to applying the Rules of Conduct in a fair and equitable manner, both substantively and procedurally.

Policy Statement

To maintain a safe, supportive and welcoming environment for Library users and staff, Toronto Public Library has the right and obligation to enforce the Rules of Conduct in a fair and consistent manner.

When a breach of the Rules of Conduct occurs, Toronto Public Library has discretion in determining whether a person will be excluded, the time period of the exclusion, and will take into consideration the severity of the misconduct, the circumstances surrounding the incident and any mitigating factors.

Any person who has been excluded from the Toronto Public Library for two, six or 12 months has the right to appeal the exclusion, and for exclusions of 12 months, the person has the right to appeal if his or her request to have Library privileges reinstated is denied.

Toronto Public Library is committed to reviewing the Rules of Conduct and their application on a regular basis to support fair and equitable access for all.

Suspensions and Exclusions

1. A suspension of one day from one branch may be applied when disregard for the Rules of Conduct occurs, including disruptive, intrusive, threatening, abusive or discriminatory language or behaviour, attempted theft and minor vandalism. Some or all of the following actions may be taken by Library staff:

    a. Staff will inform the person of how he or she violated the Library's rules.
    b. An immediate verbal warning will be given to the person by the staff member in charge of the branch at the time of the occurrence.
    c. The person will be expelled from the branch.
    d. A written warning will be issued to the person.
    e. Staff will keep a record of the name of the person responsible for the breach of the Rules of Conduct.

2. An exclusion of two months from one branch may be applied when disregard for the Rules of Conduct occurs, including disruptive, intrusive, threatening, abusive or discriminatory language or behaviour, attempted theft and minor vandalism. Some or all of the following actions may be taken by Library staff:

    a. Staff will inform the person of how he or she violated the Library's rules.
    b. An immediate verbal warning will be given to the person by the staff member in charge of the branch at the time of the occurrence.
    c. The person will be expelled from the branch.
    d. A written warning will be issued to the person.
    e. Staff will keep a record of the name of the person responsible for the breach of the Rules of Conduct.
    f. A letter will be issued to the person informing him or her that he or she is excluded from one branch of the Toronto Public Library for a period of two months. The letter will include:

        i. The period of exclusion;
        ii. The reason(s) for the exclusion;

iii. A notification to the person that he or she has the right to appeal and information on the appeals process; and,
iv. Notice that there will be a further review of the incident and additional action may be taken, including a possible extension of the two-month branch suspension.

3. A system-wide exclusion of six months from all Library properties and services may be applied when violence, threat of violence, vandalism, theft or persistent disregard for the Rules of Conduct occurs. Some or all of the following actions may be taken by Library staff:

a. Staff will inform the person of how he or she violated the Library's rules.
b. The person will be expelled from the branch.
c. A letter will be issued by the Director to the person informing him or her that he or she is excluded from all properties and services of the Toronto Public Library for a period of six months and that his or her Library privileges are revoked for that time period. The letter will include:

i. The period of exclusion;
ii. The reason(s) for the exclusion;
iii. A notification to the person that he or she has the right to appeal and information on the appeals process; and,
iv. The date of reinstatement of Library privileges.

4. A system-wide exclusion of 12 months from all Library properties and services, after which the excluded person must reapply to have his or her Library privileges reinstated, may be applied when violence, threat of violence, vandalism, theft or persistent disregard for the Rules of Conduct occurs, and the seriousness of the misconduct requires a further review prior to the person's Library privileges being reinstated. The following actions may be taken by Library staff:

a. Staff will inform the person of how he or she violated the Library's rules.
b. The person will be expelled from the branch.
c. A letter will be issued by the Director to the person informing him or her that he or she is excluded from all properties of the Toronto Public Library for a period of 12 months and that his or her Library privileges are revoked. The letter will include:

i. The period of exclusion;
ii. The reason(s) for the exclusion;
iii. A notification to the person that he or she has the right to appeal and information on the appeals process; and,

iv. Information about how to request to have his or her Library privileges reinstated after the 12-month exclusion period is over.

Right to Appeal

A person has a right to appeal a letter of exclusion or extension of an exclusion, in writing, to the Toronto Public Library during the period of exclusion.

The person is entitled to appeal once during the period of exclusion using the appeal process described below.

Criteria for Considering Appeals and Reinstatement

Toronto Public Library will use the following criteria when determining whether to grant an appeal or the reinstatement of Library privileges:

a. The safety of the public and Library staff and the circumstances surrounding the exclusion;
b. The past behaviour of the person making the application with regard to the Rules of Conduct;
c. The person's reasons for appealing his or her exclusion or seeking reinstatement, as well as other mitigating factors;
d. Where applicable, whether the person has reimbursed the Library for all expenses incurred as a result of the person's actions;
e. Whether the exclusion procedures were applied in accordance with the provisions of this Policy.

How to Appeal

The contact information for submitting an appeal will be included in the exclusion letter.

The person may appeal by using a form available on the Toronto Public Library website or by writing a letter with the following information:

- Name;
- Address where he or she can be contacted/phone number/Library card number (if available);
- Location and date of exclusion;
- Reason for appeal.

Local exclusion of two months from one branch:

The excluded person may appeal to the Library Service Manager whose contact information will be provided in the letter.

The decision of the Library Service Manager is final and there are no further steps in the appeals process.

Reinstatement is automatic at the end of the two-month exclusion period if the appeal is not granted.

System-wide exclusion of six months from all properties and services of Toronto Public Library:

The excluded person may appeal to the City Librarian.

Upon receipt of the decision of the City Librarian, the person may further appeal to the Toronto Public Library Board.

The decision of the Library Board is final and there are no further steps to be taken in the appeals process.

Reinstatement is automatic at the end of the six-month exclusion period if the appeal is not granted.

System-wide exclusion of 12 months from all properties and services of Toronto Public Library:

The person may first appeal to the City Librarian.

Upon receipt of the decision of the City Librarian, the person may further appeal to the Toronto Public Library Board.

The decision of the Library Board is final and there are no further steps to be taken in the appeals process.

Note: Individuals must apply to be reinstated once the 12-month exclusion period has expired.

Reinstatement Process after 12-month exclusion

Reinstatement is automatic at the end of the exclusion period with the exception of 12-month exclusions. Individuals that are excluded for 12 months must apply for reinstatement of Library privileges.

A person has a right to apply for reinstatement, in writing, to the Director.

The person may apply by using a form available on the Toronto Public Library website or by writing a letter with the following information:

- Name;
- Address where he or she can be contacted/phone number/Library card number (if available);
- Location and date of exclusion;
- Reasons for requesting reinstatement.

To Appeal a Denial of Reinstatement

For persons whose request for reinstatement of Library privileges after 12-month exclusion is denied by the Director and the exclusion is extended:

The person may first appeal to City Librarian.

Upon receipt of the decision of the City Librarian, the person may appeal to the Toronto Public Library Board.

The decision of the Library Board is final and there are no further steps in the appeals process.

The person must apply to be reinstated once the exclusion period has expired.

Specific Directives

Toronto Public Library will provide the Rules of Conduct – Exclusion, Reinstatement and Appeals Policy with related forms and procedures on the Toronto Public Library website in accessible format.

Information regarding the appeals process will be included in exclusion letters.

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Appeals to the Toronto Public Library Board will be scheduled in a timely manner.

The person who is appealing will be given the opportunity to make reasonable oral or written submissions to the Toronto Public Library Board and a reasonable opportunity to reply to the information provided by staff.

Toronto Public Library will make every effort to communicate decisions regarding appeals in a timely manner after investigation.

Staff Roles and Responsibilities

The City Librarian or designate is accountable for the overall administration of the Rules of Conduct and related policies.

The Directors and public service managers or designates are accountable for the application of the Rules of Conduct and related policies and appeals processes within their respective areas.

Appendices

Appendix 1: Definitions

Appeal: The process of requesting a review of an exclusion from Library properties or the request to review the decision of the Director regarding reinstatement.

Exclusion: A member of the public is banned and is not allowed to enter the specified Library buildings or be on Library property at any time for any reason for the time period that the exclusion is in place.

Library property: All Library branches, buildings and property of the Toronto Public Library whether leased or owned.

Library privileges: Includes all use of Library services, as well as contacting the Library in person, by phone, email or using web services for which a Library card is required.

Mitigating factors: Factors that impact the severity of the exclusion or the culpability of the act and may influence the length of exclusion, including, but not limited to, the individual's age, mental or physical ability, or the circumstances of the incident.

Reinstatement: When an exclusion from Toronto Public Library ends and Library privileges are restored. For exclusions of two or six months, a reinstatement occurs automatically when the exclusion period ends. For exclusions of 12 months, the person must apply for reinstatement to the Director after the 12-month exclusion period has ended.

Suspension: A member of the public who is not allowed to enter a specific branch of the Toronto Public Library for a specified amount of time, but still retains use of his or her Library privileges.

Violence: for the purpose of this policy, includes, but is not limited to physical acts (e.g. hitting, shoving, pushing, kicking, sexual assault) and any verbal threat, behaviour or action which is interpreted to carry the potential to harm or endanger the safety of others, result in an act of aggression, or destroy or damage property, even in the absence of fear of immediate bodily harm.

Procedure for hearing an Appeal by the Toronto Public Library Board

An excluded customer denied his/her appeal or appeal to a request for reinstatement by the City Librarian may further appeal to the Toronto Public Library Board.

Procedure:

1. On receipt of application or letter the Library Board Officer will schedule the appeal in a timely manner.
2. The Board will meet in a closed session with all staff asked to leave with the exception of the City Librarian, Director responsible for the exclusion and the Library Board Officer.
3. All documentation prepared for the Board Members will be made available in email and hardcopy to the appellant three clear days ahead of the meeting as set out in the Toronto Public Library Board Procedural By-law.
4. All documentation submitted by the appellant will be made available to the Toronto Public Library Board.
5. The person who is appealing or his/her representative will be given reasonable opportunity to make oral and/or written submissions to the Toronto Public Library Board.
6. The Board will have the opportunity to ask questions of the appellant.
7. Staff will present their findings to the Board.
8. The Board may ask questions of Staff.
9. The appellant will be afforded a reasonable opportunity to reply to the information provided by Staff.
10. The appellant will be informed that he/she will be advised of the Board's decision in writing.
11. The appellant and Staff will be excused from the meeting.
12. The Board will make a decision and the Library Board Officer will record the decision and any conditions that may apply.

13. The appellant will be informed in writing, signed by the Board Chair, of the Board's decision.

14 If there are conditions associated with the reinstatement as outlined by the Board, the City Librarian will develop an implementation plan in consultation with the Public Service Director.

The decision of the Library Board is final and there are no further steps in the appeals process.