

16 October 2023

To: Advocate Siduduzo Gumede
City of Johannesburg: Ombudsman
Per: Email (justins@joburg.org.za)

Dear Sirs,

OUTA COMMENTS: CITY OF JOHANNESBURG OMBUDSMAN BY- LAW

INTRODUCTION

1. We refer to the above.
2. The Organisation Undoing Tax Abuse (OUTA) is a non-profit civil action organisation, comprising of and supported by people who are passionate about improving the prosperity of our nation. We envision a prosperous country, with an organised, engaged and empowered civil society that ensures responsible use of tax revenues.
3. Part and parcel to OUTA's mission is the challenging of legislation and the regulatory environment, this includes participating and engaging with government on legislation such as the City of Johannesburg Ombudsman By-Law ("By-Law").
4. The idea of having a quasi-judicial body geared towards creating a responsive, accountable and efficient City of Johannesburg ("COJ") is not an unnecessary one. However, in order for that to be a palatable one, that body has to have the power and the mechanisms to enforce its decisions and not have to rely on other bodies and/ or organs of state, let alone COJ, to enforce its decisions.
5. That body has to have the power to ensure stronger and more significant consequences and penalties in cases of non-compliance. OUTA is of the view that the current By-Law does not have adequate penalty clauses nor does it speak adequately to consequence management and the lack thereof will render the Office of the City Of Johannesburg Ombudsman ("the Office") toothless.

OUTA COMMENTS

Section 4 of the By-Law: Lodging of Complaints

6. This section should specify a turnaround time within which the Office should acknowledge receipt of the complaint and that turnaround time should not be in excess of 7 (“seven”) days. This will assist complainants in knowing that the complaint has been received.
7. This section also states that the Office can either accept the complaint, refer it to another relevant authority or reject the complaint. There should also be a specific turnaround time for the office to make that decision.
8. The reason we emphasize the inclusion of turnaround times is to encourage communication with the complainants. One of the biggest issue the residents of COJ have is the lack of communication, and in order for the office to be effective and efficient, its communication has to be impeccable.

Section 7 of the By-Law: Investigations

9. This section should specify that the Office has the power to summons persons to appear before it for purposes of investigations and that failure to adhere to a summons issued will have the necessary legal implications that come with. It is not enough that the Office can request persons to appear before it.

Section 8 of the By-Law: Findings and Corrective Remedial Actions

10. Section 8(1) read together with section 8(5) state that after completion of the investigation and after receipt of comments, the Office must compile a report setting out its findings and corrective remedial action. Section 8(3) details factors to be taken into consideration by the Office when making corrective remedial action. However, none of these sections set out what those corrective remedial actions are.
11. This creates a lacuna between the investigation and the outcome of the investigation as there is no clear indication of what the office is capable of doing.

Sections 9: Resolution of Complaints

12. As in the previous section, section 9(1)(d) also makes reference to “corrective remedial action” to be taken by the employee concerned to “remedy the complaint”. However, there is still no explanation as to what these remedial actions are.
13. Section 9(2) states that: “If the Office issues corrective remedial actions, the City Manager, managing director or chief executive officer must inform the Office in writing within 14 days of receipt of the corrective remedial action whether the City Manager, managing director or chief executive officer agrees to implement the corrective remedial actions or does not agree to implement it”.
14. COJ ought not to have a choice whether or not to implement the “remedial actions”. The ineffectiveness and inefficiency of public service is a result of the lack of implementation of either legislation or recommendations from oversight bodies.

Section 11 of the By- Law: Powers and Duties of the Office

15. Section 11(1)(b)(ii) states that the duties of the Office are to endeavour to resolve any dispute or rectify any act or omission by advising, if necessary, any complainant regarding appropriate remedies. However, there is no explanation of what those appropriate remedies are or what they include.
16. It is our submission that corrective remedial action and appropriate remedies should be clearly specified.

Section 21 of the By – Law: Offences and Penalties

17. Section 21(1)(a) states that any person who contravenes or fails to comply with any provision of this By-Law is guilty of an offence and liable on conviction to a fine not exceeding R20 000 or, in default of payment, to imprisonment for a period not exceeding 6 (six) months.
18. We welcome this section and are of the view that it is a step in the right direction, however, in order to serve as a deterrence, it is our submission that the fine be increased and the number of months for the term of imprisonment be also increased.

Conclusion

19. It is our submission that, although the By-Law purports to confer powers upon the Office, those powers are not enough to create a responsive, accountable and efficient COJ and unless this By-Law is relooked at, the Office is going to be another body without any impact.

Yours Sincerely,

Stefanie Fick
Executive Director of the Accountability and
Public Governance Division
OUTA – Organisation Undoing Tax Abuse
Email: stefanie.fick@outa.co.za