

Report City Council

The Corporation of the City of Brampton

Summary of issue

On December 9, 2020, the Brampton City Council (the “City Council”) adopted a resolution to refer to me, in my capacity as Integrity Commissioner of the City of Brampton, the following question:

That the questions of dates in relation to the agreement be referred to the Integrity Commissioner for investigation and/or advice.

The referral was sent to me by letter on January 14, 2021 (the “January Letter”).

The referral stemmed from a series of incidents from approximately September 2019 until March 2020. A written contract for services between one of the councillors and a consultant was produced in March 2020 (the “Contract”). The Contract was dated September 10, 2019 but had not been produced or disclosed during any of the City Council proceedings between September 2019 and March 2020.

Certain members of City Council shared the concern that the councillor in question (the “Respondent”) may have misrepresented the existence of, and/or subsequently manipulated, the Contract. These are serious allegations.

Review of jurisdiction

The January Letter did not specify which rules of the Council Code of Conduct (the “Code”) may have been violated by the Respondent. The January Letter requested an “investigation and/or advice” but did not elaborate on the precise nature of the advice requested.

Under the *Municipal Act, 2001* (the “Act”), I have the authority to provide advice to the City Council and members of the City Council regarding the application and interpretation of the Code. Section 223.3(1) of the Act includes the following:

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.

...

4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.

5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.

Under the terms of the Services Agreement between myself as Integrity Commissioner and the City of Brampton, my jurisdiction includes the following:

- Provide advice to the Mayor and Councillors, in respect of the Council Code of Conduct and the application of any procedures, rules and policies of the municipality governing the ethical behaviour of all Members of Council, either collectively or individually, as required.
- The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of Members of Council and members of local boards.
- Providing information to Council as to their obligations under the Code of Conduct, policies and procedures, rules and legislation governing members on ethical behaviour.
- Providing advice to Council on other policies and procedures that relate to the ethical behaviour of Members.

I have the jurisdiction to provide an opinion or advice when requested by the City Council regarding how the Code as well as any procedures, rules, and policies of the Municipality governs or applies to the ethical behavior of councillors. However, I have discretion regarding how I respond and the extent to which, if at all, I investigate and draw factual or legal conclusions.

Process followed

After receiving the January Letter, I took steps to conduct a preliminary review to determine whether, on its face, this was a complaint with respect to noncompliance with the Code or an appropriate basis for giving formal advice or opinion.

For the reasons that follow, I have decided that it would not be appropriate for me to formally investigate or issue a formal report or advice in response to the January Letter. As that is my decision, I will not name any of the parties involved in the matter and will instead refer to them by their position or a pseudonym. Since this is not an investigation, this report does not constitute my findings of fact but rather an account of the allegations of fact as described to me and my reasons for not commencing an investigation or giving a formal decision.

In conducting my assessment, I reviewed the supporting documents and materials that accompanied the January Letter. This included a report prepared by City staff and minutes and recordings from different sessions of City Council. I also reviewed the minutes and recordings from relevant City Council *in camera* sessions.

I subsequently had informal conversations with all the councillors who wished to speak with me on this issue (in total 6, including the Respondent), and accepted emails and documents that were provided.

Review of allegations

The incidents in question arose in the context of the City Council's discussions about the use and payment of consultants by councillors. The full details and history of this issue are not necessary to recount.

There was a consensus among the documents provided and the individuals interviewed that the following events occurred:

- Certain members of City Council were concerned about the use of and payments of consultants by councillors.
- On or around September 23, 2019, City staff emailed all councillors to request that, before the end of the following day, councillors provide the details of whether they had engaged the services of any consultants, the details of the agreement, and a contract if available. Responses were received from all the councillors except for the Respondent.
- At the November 4, 2019 session of City Council, the use and payment of consultants was discussed. The same day, the City Council moved to discontinue the use of consultants on a go-forward basis.
- At the November 20, 2019 session of the City Council the discontinuation of the use of consultants was ratified. For clarity, until that point the use and payment of consultants was permitted.
- On March 23, 2020, the finance staff of the City received an invoice for a cancellation of a contract with a consultant from the Respondent.
- On March 30, 2020, the finance staff of the City received a copy of a contract for services (i.e., the Contract) between the Respondent and a consultant, dated September 10, 2019.
- The consultant was ultimately paid by the City for the services rendered as well as a contract cancellation fee.

Based on my conversations with the Respondent, their version of the facts follows:

- In or around April 2019, the consultant began working for the Respondent. From then until August 2019, there was no written contract in place.
- In September 2019, the Respondent and the consultant agreed to draft a written contract. The consultant drafted the contract and presented it to the Respondent in person, dated

September 10, 2019. It was signed September 11, 2019. This was the contract later produced (i.e., the Contract).

- The Respondent received the September 2019 request from City staff for details regarding the use of consultants but did not respond.
- At the November 4, 2019, council session, the use of and payment of consultants by councillors was discussed. However, as councillors were permitted to use consultants, the Respondent did not feel they were obligated to volunteer any information about the existence or non-existence of a written contract at that point. The Respondent disagreed that there was a specific point at which they were specifically asked or should have disclosed the existence of a written contract.

Another councillor that I spoke with gave the following characterization of what occurred:

- This councillor did not observe a misrepresentation by the Respondent regarding the existence of a written contract at the November 4, 2019 session.
- This councillor did not believe that this was something that needed to be or should be investigated.

Three of the councillors I spoke with all provided, with slight variation, essentially the following version of events:

- In September 2019, City staff requested that councillors submit any written contracts that they had out with consultants. The Respondent did not give an answer.
- At the November 4, 2019 session, the Respondent was directly asked whether there was any further information about their consulting expenses and whether there was a written contract between the Respondent and a consultant. The Respondent replied that there was no written contract, only a verbal one.
- The Respondent did not provide any indication that they had a written contract with a consultant, until the Contract was produced in March 2020.
- When asked, the Respondent declined to give any justification for why the Contract was not produced until March 2020. The Respondent also declined to provide any documentation to support their proposed timeline.
- The councillors expressed a concern that the Contract might not be valid, and that the Respondent may have backdated or forged it, misled or lied to City staff, and misled or lied to City Council.

Another councillor I spoke with largely agreed with the above 3 councillors, but otherwise gave the following, slightly different version of what occurred:

- During the November 4, 2019 City Council meeting, the Respondent did not directly state that they did not have a written contract with a consultant at that time. However, the Respondent did not give a direct response to questions when they ought to have done so and did not provide information to the City Council when they ought to have.

- This councillor expressed the concern that the non-disclosure could be a violation of Rule 9 of the Code, which requires “Transparency & Openness in Decision Making and Member’s Duties”.

I was not presented with any direct evidence that Contract had been backdated, falsified, forged, or otherwise manipulated such that it was not in fact created on or around September 10, 2019, and signed on September 11, 2019.

I was also not provided with any corroborating documentation that would have supported the conclusion that the Contract was created on or around September 10, 2019 and signed on September 11, 2019.

In my review of the minutes and recording provided to me (including those from the *in camera* sessions), I did not discover a point at which the Respondent directly stated or represented that they did not have a written contract with a consultant in place at that time.

I also took the time to speak to the consultant in question, who confirmed the following for me:

- Their relationship with the Respondent was terminated in August of 2019 (I have seen the email).
- They and the Respondent embarked on a new consulting arrangement in September of 2019.
- The consultant in question presented that contract to the Respondent, and the parties signed it on September 11, 2019 at a social event.

Conclusion

My decision is made following careful reflection of the referral and the documents and information provided to me, as well as the context of the request and my powers and purpose as the Integrity Commissioner.

The January Letter does not itself directly state what the alleged misconduct is or what Code rules are may have been broken. However, the allegations insinuated by the January Letter and directly expressed by certain of the councillors are extremely serious: a councillor accused of lying to City Council and/or forging a contract.

The only clear piece of evidence presented to me was circumstantial, in the form of a timeline that could be consistent with the suggested allegations (but equally, the timeline is capable of other interpretations as well). Notably, the allegations are themselves unclear – it is suggested that the Respondent may have either lied in November 2019 or forged a document at some point before March 2020 (or perhaps both).

The documentary and recorded evidence, as well as my conversations with the various councillors and the consultant in question, were contradictory and ultimately inconclusive. They certainly do not compel or even incline me to accept that the allegations made are true or bear an air of reality.

As the Integrity Commissioner, I have the discretion to decide whether or not I conduct a full investigation or provide a formal opinion to the City Council. In making this decision, I must weigh my duties as Integrity Commissioner and the nature and purpose of my role. It is important that the position remain credible, neutral, and objective in how it responds to complaints and referrals. This means that not every complaint will be investigated, and not situation will receive advice.

The referral in the January Letter mentions an investigation but the circumstances certainly do not constitute the reasonable and probable grounds necessary to conduct a full investigation.

The context of the January Letter leads me to conclude that the City Council is primarily seeking advice on this matter. However, to provide advice, I would have to treat the allegations as if they were true to draw any helpful conclusions. In some circumstances, assuming key facts may well be necessary and acceptable. This is not one of those cases.

To release a public opinion premised on the guilt of the Respondent would result in obvious prejudice to the Respondent no matter how theoretical my conclusions are. The utility that my advice could provide to City Council, when weighed against this unavoidable prejudice and the lack of convincing evidence, means that it would not be appropriate for me to proceed.

Further, I perceive that the immediate question for City Council is factual – whether or not what has been alleged occurred. I do not observe any urgent or critical need for a formal opinion on what the consequences of those allegations could be if true.

Given the uncertainty of the allegations, the absence or ambiguity of evidence, and the pernicious nature of the allegations, it is my decision that it would not be appropriate for me to conduct an investigation or provide an opinion at this point.

Sincerely,



Muneeza Sheikh
Integrity Commissioner
City of Brampton

I would like to acknowledge my colleague, Michael VanderMeer, for assisting me in investigating this Complaint.