

City of Brampton Integrity Commissioner File 2017-07

REPORT ON COMPLAINT

Circumstances of Report

Following an investigation I am making no finding of a contravention. The Complaint Protocol gives two inconsistent instructions about what happens when no contravention is found.

Subsection 6(3) states:

Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other periodic report.

On the other hand, section 7 of the Complaint Protocol provides, in part, as follows:

If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct ... the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

Under the circumstances, I feel it is important to report to Council pursuant to section 7 of the Complaint Protocol but not to identify the Council Members involved.

The Complaint

Six Council Members (the Complainants) alleged that a seventh Council Member (the Respondent) contravened the Code of Conduct for Members of Council by disclosing to a journalist a matter discussed during a closed meeting of Council.

The Complainants relied on a news story that quoted the Respondent as having identified a specific item¹ under consideration by the City. They alleged, based on the news article, that the Respondent had breached the confidentiality of a closed meeting.

The following, specific allegations became the basis of my investigation:

- A. Allegation that the Respondent contravened subsection (1) of Rule No. 3 of the Code, which states that, "No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so."
- B. Allegation that the Respondent contravened subsection (4) of Rule No. 3 of the Code, which provides as follows: "No Member shall disclose the

¹ To describe the "item" in any more detail would, in my view, be unnecessary and might serve to identify the Respondent and/or the news story.

content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.”

- C. Allegation that the Respondent contravened subsection (5) of Rule No. 3: “No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.”

Summary

I am unable to find that the Respondent contravened Rule No. 3 of the Code.

Process Followed

In operating under the Code, I follow a process that ensures fairness to both the individual(s) bringing a Complaint (the Complainant(s)) and the Council Member responding to the Complaint (the Respondent). The process is governed by the Council Code of Conduct Complaint Protocol.

This fair and balanced process includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent’s response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other’s communications with me.²
- The Respondent is made aware of the Complainant’s name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a response or reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

² Occasionally, in my discretion, I may decline to share a communication where the communication is irrelevant to the investigation or I will not consider the communication and (in either case) the other party is not prejudiced by the lack of sharing.

Analysis and Findings

The Complainants relied on the news story, which quoted the Respondent.

The Respondent agreed that he had spoken to the journalist, but stated that he had not shared with the journalist any specifics discussed at a closed meeting.

According to the Respondent, the specifics (that ended up in the news story) were first mentioned by the journalist, who asked the Respondent to confirm that these specifics were being considered by Council. The Respondent wrote to me that, "I again repeated I could not confirm any [specifics] ..."

The Respondent says that the journalist persisted and asked about one item³ in particular. The Respondent says he commented generally about that item but did not confirm that the item was being considered by Council.

The Respondent concluded by stating:⁴

In summary I never once directly or indirectly broke the codes outlined and am very aware of the rules around in camera. ... I am well aware that I have a responsibility to protect details of real estate, litigation and human resources issues which are discussed in camera.

The Complainants were given an opportunity to reply to what the Respondent stated in response to their Complaint. They were given additional time to reply and none of the Complainants chose to do so.

After consideration, I decided not to contact the journalist. First, out of respect for press freedom, I am reluctant to ask the news media to participate (even voluntarily) in a statutory investigation. Second, whether and to what extent the news media should have to provide information to investigators is a live, contentious issue that will be considered by the Supreme Court of Canada later this year.⁵ I did not think it necessary, or in the interests of the City, to open up the complexity of the relationship between an integrity commissioner's power to issue a summons⁶ and the constitutional right of freedom of the press.⁷ Third, taking into account the fact that interviewing a witness means disclosing the fact of an investigation as well as some information about its subject matter, I decided not to involve the news media in the confidential investigative process.

³ See note 1.

⁴ In quoting from documents, my practice in an investigation report is to correct obvious spelling errors without drawing attention to the correction unless the correction is material. This report also edits punctuation and capitalization for consistency.

⁵ *Vice Media Canada Inc. v. Her Majesty the Queen in Right of Canada*, Supreme Court of Canada Docket 37574, tentative hearing date May 23, 2018 (appeal from 2017 ONCA 231).

⁶ *Municipal Act*, subs. 223.4(2); *Public Inquiries Act*, subs. 33(3).

⁷ *Canadian Charter of Rights and Freedoms*, para. 2(b).

I was left, therefore, with the news story, the Complaint, and the Respondent's detailed response. As I have noted, none of the Complainants chose to reply to the Response. While I do not take this to mean that they accepted the Respondent's position, it does indicate that the Complainants have nothing further to say.

On the basis of the information before me, I cannot find that Rule No. 3 was contravened.

Recommendation

Having made no finding of a contravention, I make no recommendation.

Respectfully submitted,



Guy Giorno
Integrity Commissioner
City of Brampton

March 9, 2018

APPENDIX: RELEVANT PROVISIONS OF COUNCIL CODE OF CONDUCT

Rule No. 3

Confidential Information

1. No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

...

4. No Member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

5. No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.

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