

SPECIAL COMMITTEE OF THE WHOLE – JUNE 19, 2018

COMMUNICATIONS

Distributed June 18, 2018

Item No.

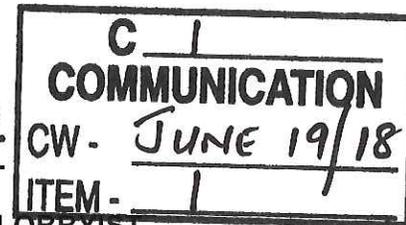
C1. Memorandum from the Integrity Commissioner and Lobbyist Registrar, dated June 18, 2018.

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TO: HONOURABLE MAYOR AND MEMBERS OF COUNCIL

FROM: SUZANNE CRAIG, INTEGRITY COMMISSIONER AND LOBBYIST REGISTRAR

DATE: MONDAY, JUNE 18, 2018

SUBJECT: REPORT NO. 25, ITEM # 1, SPECIAL COMMITTEE OF THE WHOLE, JUNE 19, 2018

INTEGRITY COMMISSIONER CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #052818(F) IN RESPECT OF COUNCILLOR TONY CARELLA

Purpose

Under the Code of Ethical Conduct Complaint Protocol (the "Complaint Protocol"), the Integrity Commissioner shall report to Council the result of a formal investigation.

The purpose of this report is to provide Mayor and Members of Council with the findings of the Code of Conduct Complaint Investigation Report #052818(f) and to recommend adoption of the sanction contained in the Final Report.

Recommendation

1. That Special Committee of the Whole give consideration to the recommendations contained within the Complaint Investigation Report #052818(F) [Attachment 1 to this Memorandum] which contain the investigation findings of the Code of Conduct complaint #052818(F), which was filed against Councillor Tony Carella.

Background

The Respondent is the Ward 2 Councillor for the City of Vaughan.

Following the discussion of an item at the May 8, 2018 Committee of the Whole meeting, on May 17, 2018, the Respondent met with a group of concerned residents to discuss the matter and listen to their concerns. At this May 17, 2018 meeting, the Respondent made the comments subject of this Complaint.

The Complaint Protocol contains specific provisions that address the procedure to be followed when the City Clerk receives a complaint in a year in which a regular municipal election will be held. Section 11 of the Complaint Protocol prohibits the City Clerk or others from referring a complaint received after June 30 in an election year to the Integrity Commissioner until after the inaugural meeting of the new Council. Section 16 of the Complaint Protocol bars the Integrity Commissioner from reporting on a Formal Complaint "to Council or to any other person after the **last Committee of the Whole meeting of June**" in an election year.

Investigations in an Election Year

The current Complaint was received on May 28, 2018, and therefore, within the review and investigation timeframe permitted for Code investigations under section 11 of the Complaint Protocol.

Section 10 of the Complaint Protocol requires the Integrity Commissioner to allow the Respondent 10 days to respond to the Complaint, and then allow the Complainant 10 days to reply to the Respondent's comments. The Respondent was provided with 10 days to respond to the complaint.

To ensure that the process was fair and compliant with the Complaint Protocol, the preliminary determination was made that there would not be sufficient information to complete an investigation of the Complaint and report to Council before June 30, 2018. The parties were advised that if there was no opportunity to pursue a fair process to conclude the matter, reporting to Council or to the parties would take place after the inaugural meeting of the newly elected Council.

However, the Respondent provided a response to the Complaint on June 6, 2018. It became apparent that there was sufficient information to conclude the investigation of the Formal Complaint and report to the parties and to Council prior at the end of June 2018.

Conclusion

In light of the sincere apology and the Respondent's commitment to abide by the Code and the City of Vaughan's obligations under employment rules, the Integrity Commissioner recommends that the Respondent receive a Reprimand from Council.

Attachment

1. Integrity Commissioner Code of Conduct Complaint Investigation Report #052818(F) in Respect of Councillor Tony Carella.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner and Lobbyist Registrar

INTEGRITY COMMISSIONER CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #052818(F) IN RESPECT OF COUNCILLOR TONY CARELLA

Preliminary Issues

In September 2009, the Council of the City of Vaughan, through Resolution, adopted the Council Code of Ethical Conduct (the “Code”) and the Complaint Protocol for Council Code of Conduct (the “Complaint Protocol”) for the purpose of setting out the rules of the Code and the procedure for investigating complaints about a City of Vaughan municipal Councillor who is alleged to have breached the Code.

On May 28, 2018, I received a Formal Code Complaint in which Ward 2 Councillor, Tony Carella, was named as the Respondent (the “Respondent”).

I conducted an initial classification to determine if the matter set out in the complaint was, on its face, a complaint with respect to non-compliance with the Code. I concluded that the matters subject of the complaint did raise Code compliance issues.

Investigations in an Election Year

The Complaint Protocol contains specific provisions that address the procedure to be followed when the City Clerk receives a complaint in a year in which a regular municipal election will be held. Section 11 of the Complaint Protocol prohibits the City Clerk or others from referring a complaint received after June 30 in an election year to the Integrity Commissioner until after the inaugural meeting of the new Council. Section 16 of the Complaint Protocol bars the Integrity Commissioner from reporting on a Formal Complaint “to Council or to any other person after the **last Committee of the Whole meeting of June**” in an election year.

The current Complaint was received on May 28, 2018 and therefore, within the review and investigation timeframe permitted for Code investigations under section 11 of the Complaint Protocol. Accordingly, I undertook an investigation of the complaint.

Section 10 of the Complaint Protocol requires the Integrity Commissioner to allow the Respondent 10 days to respond to the Complaint, and then allow the Complainant 10 days to reply to the Respondent’s comments. On June 4, 2018, I provided the Respondent with the complaint and requested a written response on or before Wednesday, June 13, 2018.

To ensure that the process was fair and compliant with the Complaint Protocol, I made the preliminary determination that I would not have sufficient information to complete my investigation of the Complaint and report to Council before June 30. I advised the parties that if there was no opportunity to pursue a fair process to conclude the matter, I would not make a report to Council or to the parties until after the inaugural meeting of the newly elected Council.

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However, the Respondent provided a response to the Complaint on June 6, 2018. It became apparent that I had sufficient information to conclude my investigation of the Formal Complaint and would be in a position to report to the parties and to Council prior to the end of June.

The Complaint

At issue in this complaint is the non-compliance of the Respondent in respect of Rules 1(a), 1(b) and 3 of the Code.

In particular, the Complaint states that:

On Thursday, May 17, 2018, I met with Tony Carella (and an identified staff person) along with 9 other residents regarding the Toronto Board of Trade Golf Course Development. Somehow the discussion turned to 230 Grand Trunk Ave. and [a named identifiable individual former staffer's ("former staff A")] name came out. Tony Carella proceeded to tell all of why [former staff A] was fired from the City. I found this disturbing in that [former staff A's] firing would have been the subject of a closed session meeting about an identifiable individual. In addition, Tony Carella told us the reason [former staff A] was fired. The reason Tony gave us, in front of everyone present, was because "[former staff A] lied to the OMB about the availability of a meeting room".

The Relevant Provisions of the Code of Conduct

Rule No. 1– Key Principles

- a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner.

The Commentary to this rule underscores that Members carry out their official City activities in a way that will foster and enhance respect for government and above all, demonstrate respect for members of the public.

- b) Members of Council should be committed to performing their functions with integrity and transparency.

The Commentary to this rule sets out that a Member of Council must balance the public's right to know how decisions are made at the City and upon what information Council has relied in making its decisions, with the requirement to protect the legitimate interest of the City and the respect for approved policies of the City.

These rules underscore the requirement that each Member of Council avoid any denigration of decisions of the City. Healthy and respectful debate and disagreement is part of the democratic foundation of a municipal Council. However, it is a violation of the Code of Conduct to make comments that do not enhance respect for City decisions or

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to disclose information that is required to be kept confidential to protect the legitimate interest of the City.

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.
6. No Member shall access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

The Commentary to this rule emphasizes how important it is for a Member to understand the intricacies of their confidentiality obligations and solemnity of their office as an elected official. The Commentary states that “Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, such as under Access and Privacy legislation. Such legislation imposes mandatory or discretionary restrictions on disclosure of information received in confidence from third parties, including personal information about an individual, disclosure of which would constitute an unjustified invasion of privacy and information that is subject to solicitor-client privilege.” It further states that “For the purposes of the [Code], “confidential information” may also include “information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential”.

Particular care should be exercised in ensuring confidentiality of the information set out in the Commentary, including:

- Labour relations or employee negotiations and personnel matters.

Integrity Commissioner’s Jurisdiction

Section 223.3 of the *Municipal Act, 2001* states:

- (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who

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is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

- (a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;
 - (b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or
 - (c) both of clauses (a) and (b). 2006, c. 32, Sched. A; and
- (2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

Background to the Complaint and my Initial Investigation

The Respondent is the Ward 2 Councillor for the City of Vaughan.

Following the discussion of an item at the May 8, 2018 Committee of the Whole meeting, on May 17, 2018, the Respondent met with a group of concerned residents to discuss the matter and listen to their concerns. It was at this May 17 meeting that the Respondent made the comments subject of this Complaint.

Bearing in mind the caution which I must take when investigating a Code complaint that intersects with matters subject to confidentiality, I solicited general information from the City's senior staff who have carriage of employment-related matters. I was advised that Council plays no role in accepting an employee's resignation or considering a termination. Those issues are addressed by the Office of the Chief Human Resources Officer and legal counsel (with or without the assistance of external counsel) and, in the case of a without cause termination, negotiated with the employee.

On its face, the Complaint did not appear to be frivolous or vexatious, made in good faith, or based on insufficient grounds to cause me to investigate. As a result, I continued my investigation and spoke to a number of witnesses.

Respondent's Reply

The Respondent promptly responded to the Complaint and was forthcoming in his written submission to my Office. He acknowledged making statements that the former staff member was fired and that he provided a reason for termination. He also admitted that those statements were false.

I received written correspondence on June 6, 2018 in which the Respondent retracted and apologized for the "false statement made", advised that he would cease and desist from making further disparaging statements and agreed to comply with the City of Vaughan's obligations under employment rules. I attach a redacted version of a portion of the Respondent's reply as Appendix 1.

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After discussing the matter with the Respondent and confirming that the 4-page correspondence received by my Office on June 6, 2018 contained confidential information, the Respondent provided a second written response to the Complaint which I could provide to the Complainant in accordance with section 10(1)(b) of the Complaint Protocol.

If any of the information released by the Respondent was true, it is important to understand how the Respondent came to know such information. As a Councillor and not a member of the HR Office or legal team, the Respondent should not have had any access to information about the end of the employment relationship between the former employee and the City. Though the Respondent did not explain how he came to believe what he stated or how he came to receive the information subject of his utterances, he confirmed to me that no confidential information was provided to him by City of Vaughan staff. I was satisfied with the information that the Respondent provided in response to the Complaint allegations and therefore advised him that I had sufficient information to conclude my investigation.

Recommendations

In determining the appropriate sanctions and corrective actions at the conclusion of the investigation, I considered the gravity of the conduct, the responsibility of the Respondent for that conduct, the submissions of the parties and comments of the witnesses with whom I spoke. I gave careful and thoughtful consideration to the Respondent's reply received by my Office of June 6, 2018. While I am unable to disclose the Respondent's correspondence in its entirety, as it makes reference to a confidential employment matter, I gave consideration to the fact that the Respondent's reply was prompt, forthcoming and contained all of the corrective actions that I would recommend as an appropriate conclusion to the Complaint, including an apology to the former employee.

The Respondent has admitted to having made the comments alleged in the Complaint. Further the Respondent apologized for the false statements he made. I find that the Respondent breached the Code in respect of rules 1 and 3.

I recommend that Council impose the following sanction:

- (a) a Reprimand of the Respondent

At the municipal level of government, it is well-established that respecting confidentiality rules is imperative to ensure a respectful and accountable government. The rules of the *Municipal Act* and the Complaint Protocol underscore the importance that all confidential information must be protected to comply with the City's legal obligations including employment and privacy legislation.

This imperative means that Members of Council shall not share confidential information with any persons other than those who are entitled to have access to information. For

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the purposes of a Member's obligation under the Code, the City deems confidential any information that concerns personnel, which includes anything related to an employee's resignation or termination.

The Member was required to be diligent in ensuring that confidential employment information was not disclosed to the public, inadvertently or intentionally. The disclosure of any employment-related information is a breach of section 3 of the Code.

In admitting that he disclosed that the former employee was terminated and made false remarks about that termination, the Respondent acknowledged that he misled members of the public about the reason that a former employee ceased to be employed by the City. Such a statement may cause serious harm to the employee's future employment prospects, and such conduct cannot be condoned.

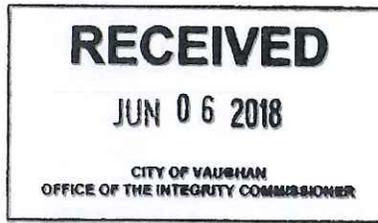
However, at the first opportunity, the Respondent acknowledged that his statements were untrue and apologized to the former employee for discussing the confidential personnel information. In light of that sincere apology and the Respondent's commitment to abide by the Code and the City of Vaughan's obligations under employment rules, I recommend that the Respondent receive a Reprimand from Council.

Respectfully submitted by:

June 18, 2018



Suzanne Craig
Integrity Commissioner



Tony Carella, FRSA
Ward 2 / Woodbridge West
Councillor

June 5, 2018

Stuart E. Rudner
Rudner Law
100 Allstate Parkway, Suite 600
Markham, ON
L3R 6H3

Dear Mr. Rudner,

RE: [REDACTED] re Councillor Tony Carella
Your file [REDACTED]

I am in receipt of your letter on the above-captioned matter, and, in response, state the following:

1. I retract and apologize for the false statements made by me regarding [REDACTED] employment with the Corporation of the City of Vaughan and the reasons for the termination thereof;
2. I will cease and desist from making any further disparaging statements about [REDACTED] or discussing [REDACTED] employment with the City of Vaughan or the termination thereof in any way; and
3. I confirm that I will comply with the City of Vaughan's obligations under the Settlement Agreement.

Yours truly,



Tony Carella