

Committee of the Whole (2) Report

DATE: Tuesday, February 11, 2025

WARD(S): ALL

**TITLE: FORMAL CODE OF CONDUCT COMPLAINT INVESTIGATION
REPORT #102924**

FROM:

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar, Office of The Integrity Commissioner and Lobbyist Registrar

ACTION: DECISION

Purpose

Under Part B of the Complaint Protocol for the Vaughan Council Code of Ethical Conduct (the “Code”), following the investigation of a formal Code complaint, the Integrity Commissioner shall report her findings to Council.

Report Highlights

- This report presents the findings of the investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor Mario G. Racco (the “Respondent”) in connection with the disclosure of confidential information in contravention of Rule 3 of the Code of Ethical Conduct for Members of Council (the “Code”).
- This Complaint alleges that the Respondent violated Rule 3 of the Code when he disclosed confidential Integrity Commissioner documents related to an earlier complaint investigation involving the same Respondent.
- The public interest in confidentiality is paramount to maintaining the general principle at stake in the Integrity regime of public trust.
- Individuals who file code complaints, in particular staff, have a reasonable expectation of the Complaint Form Affidavit and supporting documentation to the Complaint being kept confidential. Confidentiality is integral to the integrity regime.
- It is not in the public interest to undermine the trust and integrity of the regime, and make it less likely that this Office will be provided information in the future from Complainants and those involved in Code of Conduct complaint investigations.

Recommendations

1. That Council issue a formal Reprimand to Regional Councillor Racco in relation to his actions in contravention of the Code set out in the findings above with respect to his breach of the rules respecting confidentiality; and
2. That Council Suspend the remuneration paid to Regional Councillor Racco for a period of 60 days.

Background

The Respondent was named in a Code complaint received by my Office on July 16, 2024 (the "Previous Complaint"). During that investigation, my Office provided the Respondent with a copy of the Complaint Forms, which contained the name of the Complainant, their signature and some of the supporting documents filed by the Complainant. At the conclusion of the Previous Complaint, I reported to Council my investigation findings that the Respondent's conduct contravened the Code, and I recommended that Council impose a sanction.

After the release of my previous report but before the Council meeting, the Respondent took issue with my process because he had not received the Complaint Form/Affidavit when the Notices of Complaint were provided to him in July.

On Saturday October 26, 2024 at 7:11 pm, the Respondent's legal representative sent emails to all Members of Council through the Council general distribution email address, to a Regional Councillor, Integrity Commissioner (general mailbox), the Integrity Commissioner, the Legislative specialist City Clerk's Office, the Clerk's Office general distribution email, the Mayor's Office general distribution email address, the Respondent's professional email address, the City Clerk and 3 other individuals at Miller Thomson LLP.

On November 14, 2024, the Respondent's legal representative forwarded his response to the Complaint. The Respondent submitted that the confidential documents from the Previous Complaint "[were] only sent to City Staff and Councillors, all of whom have confidentiality obligations in respect of City confidential information." He asserted that nothing was disclosed to the public. The Respondent stated that the confidential documents were disclosed to afford the Respondent procedural fairness and to allow Council to have the Complaint Forms before them when making their decision on the Complaint.

The Respondent submitted that there were no privacy concerns as the Complainant's identity was already publicly disclosed. The Respondent submits that The Draft Report makes no reference to the fact that before the alleged confidentiality breach, the Complainant's identity had already been disclosed to the general public in the IC's prior report to Council for the October 22, 2024, Committee of the Whole meeting. The Respondent submits that any potential harm regarding the disclosure of the identity of the Complainant was already caused before the October 26 Email was sent.

The Respondent's submission is incorrect. At no time did the Report disclose the name of the Complainant. In the Integrity Commissioner's October 22, 2024 Communication to Council, only two names are identified, that of the Respondent and another Member of Council.

The Respondent submits that:

The IC has invoked Rule 3.5 only after concluding that there was no breach of Rule 3.1, based on the Respondent's Response that there was no disclosure of any confidential information to the *public*; a requirement for a Rule 3.1 violation, since the alleged confidential information in question, consisting of the Complaint Forms/Affidavits from the Prior Complaints, was sent by the October 26 Email only to City officials and staff.

The Respondent was advised that contrary to the assertion in his December 5th response to the Complaint, the Integrity Commissioner did not increase the scope of review beyond the Complaint. The Complaint referred to Rule 3. In my consideration of the issues during the investigation, it became apparent that the Respondent's conduct as alleged in the Complaint engaged subsection 3.5. The interpretation and application of a rule must consider its full scope and context. While this Office highlighted the relevance of a specific subsection in the Notice, this Office is obligated to consider whether the conduct violates the provisions of the Code of Conduct, including all of Rule 3.

In the Respondent's additional reply to the Complaint, he submitted that there has been no breach of Rule 3.5.

Previous Reports/Authority

N/A

Analysis and Options

It is clear from the Respondent's replies to the Complaint that he does not believe that his disclosure of confidential information from the July 16, 2024 Complaint was contrary to obligations contained in Rule 3 of the Code. In fact, the Respondent submits that his actions of disclosing confidential information in the October 26th email were to argue that he was not afforded procedural fairness. The Respondent could have advanced this argument without inclusion of the document which the Integrity Commissioner had provided confidentially and which the Clerk had refused to post publicly.

The Respondent did, in fact, raise this argument without reference to the confidential document. But only after he had provided the confidential document to dozens of individuals who ought not to have had it. The Respondent's disclosure of confidential information that was confidential because it was part of Code Complaint documents within the investigation process, is not just a technicality. The individuals to whom the Respondent provided confidential Code of Conduct confidential documents through the October 26th email, were not entitled to receive the information.

The Code rests on the foundational principle that Members of Council and local boards are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny. In turn, adherence to the standards set out in this Code will protect and enhance the City of Vaughan's reputation and integrity. The Respondent's failure to comply with the confidentiality provisions of Rule 3 of the Code undermines the Code which is a bylaw of the City, the Code regime and the confidentiality included in statute to protect individuals who participate in the Code of Conduct complaint investigation process.

Financial Impact

N/A

Operational Impact

N/A

Broader Regional Impacts/Considerations

N/A

Conclusion

In deciding on a recommendation, this Office considered that the Respondent's conduct undermined the integrity of this Office and the integrity regime and the trust that a Complainant will have in the Code complaint investigation process in upholding the confidentiality rules. As is the practice of this Office, when making a determination on penalties, my considerations included:

- a) the likelihood of a repetition of the offence (specific deterrence);
- b) the nature of the action committed;
- c) any extenuating circumstances surrounding the commission of the contravention;
- d) the detriment to the municipality occasioned by the contravention; and,
- e) the need to deter others from committing a similar actions (general deterrence).

For more information, please contact: Suzanne Craig, Integrity Commissioner and Lobbyist Registrar 905-832-2281 x8301

Attachments

1. Formal Code of Conduct Complaint Investigation Report #102924

Prepared by

Suzanne Craig, Integrity Commissioner and Lobbyist Registrar 905-832-2281 x8301