

Formal Code of Conduct Complaint Investigation Report #102924

Summary

This report presents the findings of my 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. This report relates only to the alleged breach of the confidentiality obligations and not to the conduct leading to the previous complaints. Specifically, the Complainant alleges that:

“On Saturday evening, October 26th, an email containing confidential documents pertaining to two previous complaints, were shared by a legal representative of RC Racco to numerous City of Vaughan officials and staff without authorization.

Since these documents were previously redacted in Council communications, any reasonable person would understand that they are not to be shared without permissions.

I believe that privacy and confidentiality Code of Conduct rules were breached when unauthorized council members and city staff were forwarded confidential documents relating to my two previous claims where the respondent was found to have breached three codes of conduct in each of the claims.”

The Accountability and Transparency Regime

The public interest in confidentiality is paramount to maintaining the general principle at stake in the Integrity regime of public trust. Failure to adhere to the confidentiality requirements may bring harm to individuals in the form of invasion of privacy of individuals who file code complaints. While all complainants must be able to rely on the knowledge that the confidentiality provisions of the Code will be followed and respected, in particular staff, have a reasonable expectation of the Complaint Form Affidavit and supporting documentation to the Complaint will be kept confidential. Confidentiality is integral to the integrity regime. It is my role as Integrity Commissioner to have oversight over the application of the rules of ethics with respect to the conduct of Members of Council. My Office obtains confidential personal and private information respecting Council Members, staff and members of the public. It is imperative that the Members of Council, staff and public that participate in the Code complaint reviews of this Office **trust** that I will protect the confidentiality of any sensitive information, including the Complaint forms disclosed to my Office. Under section 223.5(1) the Municipal Act,

the Integrity Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Finally, as an important part of the Integrity Commissioner's role is to investigate complaints and report to Council her findings and recommendations. Section 223.6(2) is entitled *Report about Conduct* and allows the Integrity Commissioner (not the Respondent) to determine what information is necessary to allow Council to be informed and make a decision.

223.6(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report

It is not in the public interest to undermine the trust and integrity of the regime and make it less likely that the Office of the Integrity Commissioner will be provided information from Complainants and those involved in Code of Conduct complaint investigations.

Background to the Complaint

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. I addressed that issue in a communication to Council; however, it is important to briefing cover this context in considering this investigation.

October 22, 2024 Committee of the Whole (2) Meetings

To ensure that Council had all the information necessary to make an informed decision before them, this Office provided a Communication to be included at the October 22, 2024 Committee of the Whole Meeting (the "October 22nd meeting").

On October 21, 2024, this Office provided the Respondent with a copy of the Communication, and the following day, provided it to the City Clerk's Office.

The Previous Complaint investigation report was considered at the October 22, 2024 Committee Whole meeting.¹

¹ Minutes of the October 22nd Committee of the Whole Meeting:

The Committee of the Whole recommends:

1. That the recommendations contained in the following report of the Integrity Commissioner and Lobbyist Registrar, dated October 22, 2024, be approved; and

2. That the following communication be received:

C3. Memorandum from the Integrity Commissioner and Lobbyist Registrar, dated October 22, 2024.

Recommendations

1. That Council issue a formal Reprimand to Local and Regional Councillor Mario G. Racco in relation to his actions in contravention of the Code set out in the findings in the Complaint Investigation Report; and

2. That Council suspend the remuneration paid to Local and Regional Councillor Mario G. Racco for a period of 10 days.

On October 22, 2024, the Respondent's legal representative sent an email to all Members of Council:

Dear Council,

We are the lawyers for Mario Racco in the above noted matter. Please find enclosed a letter from Mr. Racco requesting that the Integrity Commissioner's decision be removed from the October 22, 2024, meeting agenda.

The email had 5 attachments including a document entitled "Letter by Mario G. Racco to Vaughan Council – October 21, 2024".

In the document, the Respondent wrote:

Clearly the IC should vacate her Decision and if [Complainant] wants to continue to pursue these Complaints, someone other than the present IC needs to be found to do that.

Lastly, I attach

- (i) Emails between my lawyers and the IC;
- (ii) some informal notes on the major fact errors made by the IC – these errors are pretty obvious to a fair minded person

After the Committee meeting, and before the scheduled Council meeting, on Friday October 25, 2024, the Respondent's legal representative sent an email to all Members of Council, attaching the 5 previous attachments and said:

Good afternoon,

This is a reminder that the attached letter from Regional Councillor Racco, dated October 21, 2024, along with the supporting materials, should be included on the agenda for next week's City Council meeting taking place on Tuesday, October 29, 2024, and considered by Council, given their high importance and as agreed at the previous Council meeting, which took place on Tuesday, October 22, 2024.

Please kindly confirm of same.

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. The email stated:

Good evening,

I am writing on behalf of Regional Councillor Racco to request that the attached evidence provided to Councillor Racco by the Integrity Commissioner be included on the agenda for the City Council meeting on Tuesday, October 29, 2024, as part of, and in addition to, the C5 communications.

Please confirm that this material will be included accordingly.

On Monday October 28, 2024, the City Clerk wrote to the Respondent's legal representative, copying all email addresses that were included on the October 26th email. The City Clerk wrote:

Ms. Fini,

Thank you for your submission. I have had a chance to review the materials. I note that two of the documents, being the IC complaint forms, have already been included in [Communication C5](#), in their redacted form. The third document, being an email chain, will be added as a communication for tomorrow's Council meeting, subject to redaction of personal information.

On the same day, the Respondent's legal representative replied by email and said:

Hi Mr. Coles,

Thank you for your email. However, it appears that the complaint forms included in the C5 communications are fully redacted, rendering them as black pages. I am uncertain of their utility in this format, as it seems Council will not be able to review their contents. Could you kindly confirm whether Council will have access to the unredacted versions at tomorrow's meeting? If not, it is imperative that the unredacted versions be put to Council at tomorrow's meeting, as the contents of the complaint forms are essential for Council to have the full context.

Thank you for your attention to this matter.

Regards,

Erica Fini

The City Clerk responded and said:

Ms. Fini,

The Integrity Commissioner Complaint Forms are confidential documents. We will not be sharing confidential information with anyone.

At 3:59 pm, the Respondent's legal representative wrote in an email to the Clerk, with copy to all the individuals in the original email, and said:

Hi Mr. Coles,

Further to our call today please get back to me as soon as possible regarding whether it is possible to have the complaint forms and affidavits submitted with the names redacted instead of the entire document redacted.

Thank you,

Erica Fini

My Office confirmed to the Clerk and City Solicitor that while the substance of the Complaint Forms was included in the Previous Complaint report, my Office has no obligation to disclose publicly a Code Complaint Form/Affidavit. Under the Complaint Protocol, the Integrity Commissioner has no obligation to disclose the Complaint Form/Affidavit. From time to time, I elect to provide a redacted or unredacted form to the Respondent, but I consistently exercise

my discretion not to disclose the forms publicly. Similarly, I do not typically disclose the name of a Complainant publicly even if their identity is widely known or if they self-identify as the Complainant.

I am bound by confidentiality under section 223.5 of the *Municipal Act*.

When provided to the Respondent, the Complaint Form/Affidavit falls within the confidentiality obligations set out in the Code and *Municipal Act*. The Respondent may not disclose it to anyone other than their legal counsel.

This was communicated to the Respondent's legal representative on Tuesday October 29th at 8:29 am.

At 10:02 am the same day, the Respondent's legal representative wrote to the City Clerk reiterating the Respondent's position that the content of the complaint forms and affidavits should be provided to Council with the only redactions being made for information that could identify a person. The email went on to say that:

“As recognized in section 223.6 (2) of the *Municipal Act*, when reporting to Council, the Commissioner may disclose such matters as are necessary for the purposes of the report.”

In any event, the duty of procedural fairness owed to Regional Councillor Racco in the circumstances requires that the unredacted content of the complaint forms and affidavits be provided to Council when deciding whether or not to accept the recommendations of the Integrity Commissioner (IC) in this matter. The details contained in these documents, even in their redacted form, are directly relevant to Council's deliberations and are necessary to ensure an informed and fair decision-making process.

On October 29, 2024, Council adopted the Committee of the Whole item imposing the sanction recommended by the Integrity Commissioner.²

Relevant Code Rules

The relevant Codes rule and commentary are set out below.

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.

²Minutes of October 29, 2024 Council Meeting; FORMAL CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #071624(1), 071624(2)

MOVED by Councillor Martow

seconded by Councillor Ainsworth

THAT Item 15, Committee of the Whole Report No. 35, be adopted and amended, as follows:

By receiving the comments from the Integrity Commissioner; and

By receiving the following Communications:

C5. Regional Councillor Mario Racco; and

C7. Erica Fini, Miller Thomson LLP, New Park Place, Vaughan, on behalf of Regional Councillor Mario Racco, dated October 26, 2024.

CARRIED UPON A RECORDED VOTE

2. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.
3. No Member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.
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.

Commentary:

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 of a corporate, commercial, scientific or technical nature, personal information about an individual disclosure of which would constitute an unjustified invasion of privacy, and information that is subject to solicitor-client privilege. Where it is clear that a communication was not made in a confidential manner (i.e. copied to others or made in the presence of others) or the manner of communication undermines the validity of labeling it 'confidential', such communication will not be given any higher level of confidentiality than any other communication. The words 'privileged', 'confidential', or 'private' will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.

The Code Protocol includes a section on public disclosure in relation to a Code investigation:

15. i) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
- ii) At the time of the integrity Commissioner's report to Council, and as between the parties, the identity of the Respondent shall not be treated as confidential information.
- iii) All reports from the Integrity Commissioner to Council will be made available to the public.

The Respondent's Reply

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. Finally, the Respondent's legal representative replied that Decision MC09-56 of the Information and Privacy Commissioner of Ontario (the "IPC") supports the Respondent's position that the October 26 Email and its attachments were sent in the context of the Respondent seeking to defend himself against the Prior Complaints and to ensure a fair and transparent process for their disposition. The reply goes on to state that "[a]s the Respondent intends to seek judicial review of the Prior Decision and Prior Investigation, issues concerning the confidentiality of the complaint forms and affidavits and/or whether the complaint forms and affidavits ought to have been before Council when rendering the Prior Decision will likely be issues that the Court opines on".

I provide the entirety of the Response as Appendix A to this Report.

The Complainant's Supplementary Comments

The Complainant's legal counsel provided supplementary comments with respect to the Respondent's response to the Complaint. The comments replied to the Respondent's assertion that it was his counsel who disclosed the confidential information, asserting that the disclosure was necessary to ensure procedural fairness, and disagreed with the Respondent's interpretation of the Privacy Commissioner's order with respect to obligations of an Integrity Commissioner.

I set out excerpts from the Complainant's Supplementary Comments below.

1. A client is bound by the acts of the client's law firm. Regional Councillor Racco is responsible under the Code for the actions of his lawyers on his behalf.
 - (a) Significant is what Regional Councillor Racco's response does not claim. The response does not claim that his lawyers made a mistake for which he, as client, should not be liable. Indeed, the response defends the sending of confidential information. The only conclusion you can draw is that Regional Councillor Racco endorses and agrees with what his law firm, Miller Thomson, did.
 - (b) You will note that the response does not plead incompetence of counsel. "The party alleging incompetent assistance bears the onus of establishing both the incompetent performance of counsel and prejudice flowing from that incompetence. The threshold is high ..." The Respondent has not advanced such a claim, let alone met the high burden of proof.
 - (c) To be clear, Regional Councillor Racco is liable in any event for what Miller Thomson did on his behalf. The fact that the response defends what occurred is an aggravating factor.
2. The confidential information in question did not just include information about [the Complainant]. The confidential material also included 16 pages of emails from/to members of the public.

- (a) Two pages of emails were marked “12 of 13” and “13 of 13.” These were located in the PDF file Woodbridge Application Complaint #1.
 - (b) Inside the PDF file Toronto Application Complaint #2 were an additional 14 pages of emails, marked starting at “2 of 15” and ending at “15 of 15.”
 - (c) Page “2 of 15” included the email addresses of nine members of the public.
 - (d) Page “4 of 15” included an individual’s phone number and personal email address.
 - (e) Many of the pages included the comments of private individuals.
 - (f) All of this was confidential information as defined in Rule No. 3.
3. The issue here is not just disclosure to Council and staff but also disclosure to the public. Regional Councillor Racco, through Miller Thomson, attempted to make the confidential complaint material public: “I am writing on behalf of Regional Councillor Racco to request that the attached evidence provided to Councillor Racco by the Integrity Commissioner be included on the agenda for the City Council meeting on Tuesday, October 29, 2024, as part of, and in addition to, the C5 communications.” Luckily, the Clerk’s office did not agree to do this.
- (a) Regional Councillor Racco knew, or should have known, that asking to include material “on the agenda ... as part of, and in addition to, the C5 communications” meant asking to make the material public. The experienced Regional Councillor and his experienced law firm know full well that municipal council agenda packages are posted online for the public to see. (b) Further, Miller Thomson’s request to place the confidential documents on the agenda took the form of a reply to an October 25 email from [a named staff person], Legislative Specialist. In her email, [...] had provided a link to the online posting of the communications on the October 29 agenda. The link made clear to Regional Councillor Racco and to Miller Thomson that the communications, including C5, were posted online to be accessed by anyone.

Integrity Commissioner’s Draft Findings Report

On November 29, 2024, I provided Draft Findings to the Respondent, with a cover letter stating:

I am providing you the attached draft findings with respect to the above-noted Formal Code of Conduct Complaint in which you are named as the Respondent. Please submit your comments with respect to any **errors or omissions of fact**. This is not an opportunity to raise new issues or submit a sur-reply. I will take into consideration any comments that you may choose to provide in my final report. Please be advised that you are not required to provide comments.

If you have any comments, please submit on or before December 5, 2024.

Please be reminded that in accordance with section 223.5 of the *Municipal Act*, the Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties.

Respondent’s Comments to the Integrity Commissioner’s Draft Findings Report

On December 5, 2024, the Respondent submitted his comments on the Draft Findings Report. In his comments, the Respondent submit that "... the Draft Report contains significant errors and omissions of fact, and is based on a chain of reasoning that is not intelligible or justified. As a result, the IC's conclusion that the Respondent breached Rule 3.5 of the Code is unreasonable."

The Respondent stated:

The November 4 Notice of Formal Code of Conduct Complaint Investigation (the "**Notice**") explicitly identified Rule 3.1 as the relevant sub-rule under Rule 3. This focus is further confirmed on page nine of the Draft Report, where the IC states, "this matter required me to consider Rule 3.1." Consequently, the Respondent reasonably understood that the investigation concerned only an alleged breach of Rule 3.1, as reflected in the Respondent's Response. Accordingly, it is improper for the IC to now determine a violation other than of Rule 3.1 of the Code. By expanding the scope of the investigation to include a consideration of Rule 3.5 without providing proper notice, the IC deprived the Respondent of a fair opportunity to address this new allegation, which does not arise from the Complaint.

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 determination of a new violation in reaction to and in acceptance of the argument advanced in the Respondent's Response, evidences an overriding objective of the IC to find the Respondent guilty of *something*. This overriding objective is also apparent in the improper interpretation and application of Rule 3.5, without regard to the Commentary for Rule 3.1. The Commentary provides:

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 of a corporate, commercial, scientific or technical nature, personal information about an individual disclosure of which would constitute an unjustified invasion of privacy, and information that is subject to solicitor-client privilege. Where it is clear that a communication was not made in a confidential manner (i.e. copied to others or made in the presence of others) or the manner of communication undermines the validity of labeling it 'confidential', such communication will not be given any higher level of confidentiality than any other communication. The words 'privileged', 'confidential', or 'private' will not be understood to preclude the **appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication**. [Emphasis added]

The Respondent further stated that:

The Commentary defines confidential information as City information. No disclosure was made of the Complaint Forms/Affidavits to anyone other than elected City officials or employees. Accordingly, there was no disclosure of City information outside of the City.

The Commentary also notes that it is appropriate to share communications for the limited purpose of responding to the communications. The Complaint Forms/Affidavits were shared for the sole purpose of responding to the Prior Complaints.

The Respondent submitted that there are “[n]o Privacy Concerns where Complainant’s Identity Already Publicly Disclosed”. To support this position, the Respondent sets out that:

In the Draft Report, the IC states:

From time to time, I elect to provide a redacted or unredacted form to the Respondent, but **I consistently exercise my discretion not to disclose the forms publicly**. Similarly, **I do not typically disclose the name of a Complainant publicly** even if their identity is widely known or if they self identify as the Complainant. I am bound by confidentiality under section 223.5 of the *Municipal Act*. [Emphasis added]

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. At the same time, the IC also claims in the Draft Report that individuals’ belief that their complaints may become widely known could deter them from coming forward. Any potential harm in this regard was already caused before the October 26 Email was sent.

The New Complaint alleges that “Since [the Complaints Forms/Affidavits] were previously redacted in Council communications, any reasonable person would understand that they are not to be shared without permissions.” However, the Complainant’s name, which is the primary confidentiality concern according to the IC, was not in fact redacted in prior Council communications.

The Respondent’s December 5th Reply concludes by stating that his “[r]esponse cannot constitute [an] aggravating factor”.

The Draft Report references a comment by the Complainant’s counsel suggesting that the Respondent’s defence of the disclosure is an aggravating factor. This assertion is flawed and should not be considered. The Respondent is entitled to respond and explain the conduct in issue. Moreover, the Respondent’s Response has been mischaracterized. The Respondent’s primary position was that there was no breach of Rule 3.1. Alternatively, he asked the IC to consider that the October 26 Email was sent in good faith and with the intent of properly responding to the allegations and ensuring a fair process. In all of the circumstances, the facts and a reasonable interpretation of the Code do not justify a finding that the Respondent breached Rule 3.5. At minimum, the totality of the circumstances do not warrant recommendation of any sanction.

Additional Comments from the Respondent

On December 11th, I provided the Respondent with an opportunity to provide additional comments. In my December 11th communication, I stated that:

In the Notice of Complaint dated November 4, 2024, I advised that the allegations contained in the complaint were with respect to non-compliance with Rule 3 of the Code of Ethical Conduct for Members of Council and Local Boards (the “Code”), and I excerpted subsection 3.1, in particular.

I further included in the Notice that the Complaint alleged:

“On Saturday evening, October 26th, an email containing confidential documents pertaining to two previous complaints, were shared by a legal representative of RC Racco to numerous City of Vaughan officials and staff without authorization.

Since these documents were previously redacted in Council communications, any reasonable person would understand that they are not to be shared without permissions.

I believe that privacy and confidentiality Code of Conduct rules were breached when unauthorized council members and city staff were forwarded confidential documents relating to my two previous claims where the respondent was found to have breached three codes of conduct in each of the claims.”

In section 2 of the Complaint Form, the complainant made an allegation of a contravention of Rule 3 generally. At the time of my preparation of the Notice, I had performed a limited review of the complaint in order to determine whether to commence an investigation and I had not conducted a review of the October 26th email distribution. In my Notice of Complaint, I emphasized subsection 3.1; however, I did not intend to exclude the application of subsections 3.2 through 3.6. Each subsection under Rule 3 sets out prohibited conduct with respect to confidential information.

I went on to advise the Respondent 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 I highlighted the relevance of a specific subsection in my Notice, I am obligated to consider whether the conduct violates the provisions of the Code of Conduct, including all of Rule 3. Second, the Integrity Commissioner receives complaints about alleged misconduct. The Divisional Court has found that a complaint may be reformulated to ensure that each of the Rules captured by the alleged misconduct are considered. For example, if a Complainant is not overly familiar with the rules, he or she might not list all the applicable rules in the Complaint Form. The Integrity Commissioner is not broadening the scope of the investigation by reviewing the alleged misconduct against all the Code rules.

I went on to advise the Respondent that contrary to the assertion in his December 5 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 I highlighted the relevance of a specific subsection in my Notice, I am obligated to consider whether the conduct violates the provisions of the Code of Conduct, including all of Rule 3.

The Respondent submitted an additional reply to the Complaint on December 20th.

In his December 20th reply, the Respondent states he relies on all submissions previously made and the “Sub-Rules 3.1 to 3.4 and 3.6 are not applicable”. I set out the Respondent’s additional reply in its entirety:

Upon review, sub-rules 3.1 to 3.4 and 3.6 of the Code are not applicable to the present case:

- Rule 3.1: The IC acknowledged in her Draft Report dated November 29, 2024, that this rule requires the disclosure of confidential information to the *public*, which the Respondent did not do.
- Rule 3.2: This rule is also inapplicable, as the Respondent did not use confidential information for personal or private gain. The October 26 Email led to the within complaint being made against the Respondent and cannot reasonably be considered a "gain" in any sense.
- Rule 3.3: This rule does not apply, as the issues in this case do not involve benefitting from knowledge related to bidding on the sale of City or property assets.
- Rule 3.4: This rule is inapplicable. The Respondent did not disclose the content, substance, or deliberations of any in-camera meeting.
- Rule 3.6: The Respondent neither accessed nor attempted to access confidential information in the custody of the City. The complaint forms attached to the October 26 Email were already in the Respondent’s possession and were shared with City staff and other Council Members in good faith to ensure a fair process. If the complaint forms are considered “confidential information in the custody of the City,” no breach of Rule 3 would exist, as the Respondent simply sent the City and its staff what was already in their possession, resulting in no harm.

The Respondent submitted that there has been no breach of Rule 3.5:

The commentary accompanying Rule 3 emphasizes the need for particular care with certain types of information, including personal information about an identifiable individual, which is a key concern in the present case. However, the Complainant’s name had already been disclosed publicly by the IC in her report for the October 22, 2024, Committee of the Whole meeting, which contained numerous references to the Complainant by name. Therefore, the Respondent’s actions did not increase any potential harm. Moreover, given the limited jurisprudence interpreting Rule 3.5, fairness dictates that it should not be applied or construed in an unduly harsh manner, particularly in light of the context of this case.

In the Letter, the IC cites paragraph 42 of *Michael Di Biase v City of Vaughan*, 2016 ONSC 5620 (“*Di Biase*”), to support her position that she is permitted to reformulate complaints to ensure all relevant Rules are considered in relation to the alleged misconduct. However, paragraph 42 does not support this proposition, or at least application of it to the present case.

At paragraph 42, the court states:¹ In exercising the powers conferred upon her, the Integrity Commissioner must be able to interpret and reformulate complaints **submitted by members of the public who may lack specific knowledge of the Code of**

Conduct and the Complaints Protocol and who may, therefore, not be familiar with how to identify and formulate alleged breaches.

This passage clearly limits the IC's discretion to reformulate complaints to situations where the complainant is a member of the public with limited knowledge of the Code or the Complaints Protocol.

This is not applicable in the present case, as the Complainant is another Councillor who is bound by the Code and is, therefore, presumed to be familiar with its Rules and protocols. Moreover, the Complainant has submitted multiple complaints, further demonstrating that she is not someone unfamiliar with how to identify and formulate alleged breaches. Accordingly, the IC's reliance on *Di Biase* to justify reformulating this complaint is misplaced.

The Respondent reiterates that, given all the circumstances, the evidence and a fair interpretation of the Code fail to establish any contravention of Rule 3. Moreover, the overall context does not support the recommendation of any sanction in this matter.

Analysis

Under the Code, the relevant provision is Rule 3.

Rule 3.1

This matter required me to consider Rule 3.1 prohibiting disclosure of confidential information to the public and if this included an attempt to do so. Rule 3.1 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."

In interpreting Rule 3.1, it is helpful to consider Rule 3.6 which states: "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."

There is a difference between Rules 3.1 and 3.6. The language of Rule 3.6 expressly captures "attempts" when considering an attempt to gain access to information (i.e., if a councillor tries to pressure a staff member to release information to which he is not entitled and the staff member refuses). Rule 3.1 does not include similar language.

In the circumstances of this Complaint, it was fortunate for the Respondent that the City Clerk's Office properly did its job to ensure that confidential information was not provided to the broader public. While the Respondent attempted to release confidential information, Rule 3.1, as presently worded, does not capture attempts. If the information had been inadvertently released by the Clerk's Office, such release would have violated Rule 3.1 as a release of confidential information that "released by any means", which is broad enough to capture the indirect nature of disclosure through the Clerk's Office. That did not happen here, thanks to the work of the Clerk's Office.

The Complainant's supplementary comments provided through their legal counsel submitted that "[t]he interpretation of the Code should be guided by Rule No. 1, including paragraph h): "Members shall seek to serve the public interest by upholding both the letter and the spirit of the

laws and policies established by the Federal Parliament, Ontario Legislature, and the City Council.” I agree with the Complainant’s submission. It has been my position as Integrity Commissioner and Lobbyist Registrar for the City of Vaughan, that a Member of Council must uphold both the letter and spirit of the Code. In fact, this guiding principle supports my interpretation of paragraph 1 of Rule No. 3 in my review of the Complaint, that the Respondent attempting to release confidential information to the public received by the Integrity Commissioner’s Office, is as much a contravention of Rule No. 3 as actually releasing confidential information. The Rule would have no effect, if a Member’s conduct that is intended to have the outcome of the release of confidential information is thwarted by the due diligence of staff. However, as paragraph 1 of Rule 3 is currently written, does not capture *attempting* to disclose confidential information to the public. It is something that should be addressed in the next revisions and updates to the Code.

The Integrity Commissioner is not barred from reviewing wrongdoing captured by the Code Complaint. On its face and at the time that the Integrity Commissioner decided to investigate the Complaint, subsection 1 of Rule 3 was provided to the Respondent with particular emphasis. It was not supplied to mean that the Integrity Commissioner would not review the Respondent’s conduct against all of Rule 3. The Respondent has had an opportunity to respond to each part of Rule 3. He objected to any expansion of the complaint on the basis that the Complainant would have unique knowledge of the Code, and they were obligated to put before the Integrity Commissioner specific allegations for her review. The Respondent submitted that the case law which supports an Integrity Commissioner’s ability to reformulate a complaint and consider the alleged misconduct in the context of the entire Code did not apply given the identity of the Complainant. I do not accept that suggestion. The identity of the Complainant does not factor into the Integrity Commissioner’s jurisdiction to consider the misconduct against the entire Code. In any event, the Complaint set out an alleged contravention of Rule 3, which includes Rule 3.5.

The Respondent submits that the principle which motivates the protection of confidential information here is the protection of the identity of the complainant. The Respondent submits that the Integrity Commissioner disclosed the name of the Complainant. That 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 included, that of the Respondent and that of another Member of Council. It was alleged that derogatory comments were made in an email copying Councillor Martow and that she would be unable to respond. This statement does not identify the Complainant. Similarly, reference was made in the Final Report to Councillor Martow as a person uniquely impacted by the Councillor’s behaviour, not as the Complainant. I decided to include the name of the Councillor in the Final Complaint Investigation Report because in my opinion, it was necessary to enable Council to properly understand the gravity of the Respondent’s conduct. Councillor Martow’s ward was uniquely affected by the issue. To be clear, the Complainant’s identity has not been disclosed in the October 22nd Complaint Investigation Report.

Section 15(ii) of the Complaint Protocol states that:

- ii) At the time of the integrity Commissioner’s report to Council, and as between the parties, the identity of the Respondent shall not be treated as confidential information.

Thus, the Reports before Council with respect to this Complaint have set out that the Respondent is Regional Councillor Mario G. Racco.

There is nothing in the Communication or Final Report which identifies anyone as the Complainant.

Section 223.6(ii) of the Municipal Act sets out that in the Report to Council about Member of Council's conduct,

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

The Respondent's Disclosure in Contravention of Rule 3.5

Rule 3.5 of the Codes that:

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

The Respondent's conduct did violate Rule 3.5 of the Code as the complaint form and affidavits were disclosed to individuals who were not entitled to review them.

On July 19, 2024, in the Notice of Complaint to the Respondent, he was advised that:

Please be advised that the Integrity Commissioner and every person acting under her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation. Therefore, I respectfully require that you refrain from sharing with others any information about this complaint, including any correspondence to and from this Office, for the duration of the process.

On October 26, 2024, Respondent, through his legal representatives, sent confidential information received from the Integrity Commissioner to over 40 individuals:

- linda.jackson@vaughan.ca,
- mayor@vaughan.ca which is a shared mailbox. I have determined that 4 full time staff have access to this mailbox.
- Two senior members of staff
- Clerks@vaughan.ca, which goes to the Clerk's office, includes 15 individuals.
- Council@vaughan.ca (Distribution Group) which includes Council EAs (23 individuals), and the Mayor, and Members of Council.

The Respondent's position set out in his reply to the Complaint that his disclosure of confidential information was not a breach of the Code, because Council members and staff are bound by confidentiality obligations. This does not impact my analysis of Rule 3.5. The Respondent had an obligation to maintain confidentiality with respect to the confidential documents received from the Integrity Commissioner. Rule 3.5 does not contain an exception for those otherwise bound by confidentiality obligations. Many complaints to the Integrity Commissioner are made by those internal to the City. If those individuals believed that their complaints could become widely known throughout the City, it may impact their decision to come forward with alleged breaches of conduct by Members. Even distribution within the City would greatly impact the ability of this Office to fulfill its statutory mandate. This requirement also serves respondents, particularly in

circumstances where the complaint is dismissed. Circulation of allegations and documents which do not result in a public report could cause harm to the respondent member. Accordingly, the confidentiality provisions serve an important function to protect the integrity of the investigation process, to protect the identity of complainants from public scrutiny, and to protect respondents' reputation, particularly where allegations are dismissed.

Further, the Respondent submitted that it was his legal counsel, not him, that disclosed the information. The Respondent retained counsel to represent him. They remain his counsel. He has not suggested that he instructed his lawyers not to disclose the confidential documents and that they did so without his knowledge. He is bound by their actions and is responsible for them permitting 40 individuals to have access to information to which they were not entitled. The Respondent also submitted that Council needed to have access to the content of the Complaint Forms to ensure procedural fairness to the Respondent.

The Legislature included in the duties of the Integrity Commissioner, the obligation to recommend a penalty if there is a finding of breach. In considering the Integrity Commissioner's investigation report, Council may not relitigate the Integrity Commissioner's findings of breach. Council does not conduct an investigation *de novo* and unless included in the Integrity Commissioner's public report, should not be looking at information disclosed in the course of the investigation (including personal contact information of private citizens or names of the Complainant whether that is a member of the public, staff person, or another Member of Council). Council has the report of the Integrity Commissioner and her findings upon which to rely in making a decision on penalties.

The Respondent's argument about procedural fairness is inaccurate. The only issue before Council was whether to impose a penalty for the breach that the Integrity Commissioner had reported to Council. Even if the Respondent believed that the Integrity Commissioner had not afforded him procedural fairness, he could have advanced those arguments without disclosure of the Complaint Forms. Procedural fairness arguments cannot supersede the confidentiality obligations. Rather, the Respondent could have advanced his argument before Council. For example, he could have advanced an argument that Council ought not to impose a penalty because the forms were provided only after the report was finalized or that he did not have proper notice of the complaints by showing what was provided to him on July 19 and what was set out in the report or that the Integrity Commissioner's report addressed issues not in the initial complaint (even though he was on notice of them). These arguments should have been advanced without breaching the confidentiality obligations owed by the Respondent in violation of Rule 3.5.

As stated above, the Respondent's position that the October 26th email was not disclosed to the public through posting on the public City of Vaughan website as part of the October 29, 2024 Council meeting agenda, does not make the Respondent's actions appropriate even though these actions did not violate the letter of Rule 3.1. Often times there is a significant amount of information included by a complainant in the Complaint Form Affidavit. The public, staff and other Members of Council must be assured that my Office will not disclose confidential information supplied by the Complainant. I made it abundantly clear to the Complainant and the Respondent in this case, as is the practice of this Office, to remind them that they are not to disclose the correspondence to and from my Office regarding the Complaint investigation to anyone.

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 was 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.

Conclusion and Recommendation

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).

The Commentary to the Preamble of the Code sets out that:

A written Code of Ethical Conduct protects the public interest and helps to ensure that the Members of Council and Members of local boards share a common basis for acceptable conduct. The standards are designed to provide a reference guide and supplement to the legislative parameters within which the Members must operate.

Members of Council and local boards are therefore 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.

I recommend that the City of Vaughan Council:

- i) 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
- ii) Suspend the remuneration paid to Regional Councillor Racco for a period of 60 days.

Respectfully submitted,

January 28, 2025



Suzanne Craig
Integrity Commissioner and Lobbyist Registrar

APPENDIX A

Respondent's Reply

The Complaint alleges that the Respondent breached Rule 3 of the Code of Ethical Conduct for Members of Council and Local Boards (the "**Code**") because the Respondent's legal representative sent an email dated October 26, 2024 to City Staff and Councillors (the "**October 26 Email**") attaching copies of unredacted complaint forms and affidavits submitted to the Integrity Commissioner ("**IC**") in respect of prior complaints by the same complainant (the "**Prior Complaints**") against the Respondent (the "**Allegations**"). The Respondent requested that the complaint forms and affidavits for the Prior Complaints be put before Council when deciding at their meeting on October 29, 2024, whether to accept the IC's recommendations resulting from investigation of the Prior Complaints (the "**Prior Investigation**").

The Allegations do not amount to a breach of Rule 3 of the Code. The October 26 Email was sent only to City Staff and Councillors, all of whom have confidentiality obligations in respect of City confidential information. The complaint forms and affidavits attached to the October 26 Email were not disclosed or released to a member of the public within the meaning of Rule 3.

Additionally, or alternatively, the purpose for which the October 26 Email was sent must be considered in assessing whether there has been a breach of Rule 3 of the Code and/or whether Section 11 ii) of the Complaint Protocol for the Code of Ethical Conduct for Members of Council and Local Boards (the "**Protocol**") is applicable. The Respondent's legal representative sent the October 26 Email to request, in accordance with the duty of procedural fairness owed and the applicable principles of fundamental justice, that Council have the complaint forms and affidavits in respect of the Prior Complaints before them when deciding whether to accept the IC's recommendations from the Prior Investigation. The decision of the Office of the Information and Privacy Commissioner (the "**IPC**") in complaint MC09-561 supports the position that, for Council to have made a fair and fully informed decision on the Prior Complaints, it should have considered the unredacted complaint forms and affidavits when assessing the IC's recommendations from the Prior Investigation. In that case, the IPC determined that the IC's disclosure of personal information to the Committee of the Whole was necessary to ensure municipal accountability and transparency and to enable a complete and accurate report on the complaint. In the present case, Council ultimately voted to accept the IC's recommendations in respect of the Prior Complainants without reviewing the complaint forms and affidavits (the "**Prior Decision**"). As part of the Prior Investigation, the Respondent was not provided with a copy of the complaint form and affidavit pertaining to one of the Prior Complaints when his written response was provided to the IC, which response was before Council when making the Prior Decision.

Based on the foregoing, the October 26 Email and its attachments were sent in the context of the Respondent seeking to defend himself against the Prior Complaints and to ensure a fair and transparent process for their disposition. As the Respondent intends to seek judicial review of the Prior Decision and Prior Investigation, issues concerning the confidentiality of the complaint forms and affidavits and/or whether the complaint forms and affidavits ought to have been before Council when rendering the Prior Decision will likely be issues that the Court opines on.

In terms of any impact of the alleged breach of confidentiality, we also note that by the time the October 26 Email was sent, the IC had already disclosed the complainant's identity to Council, City Staff and members of the public. Specifically, in the IC's report to Council for the Committee of the Whole Meeting on October 22, 2024, the IC twice referenced the complainant's name without redaction. To the extent that disclosure of the complainant's name is the basis for the alleged breach of Rule 3 for the New Complaint, that information was previously publicly disclosed by the IC. Unlike the October 26 Email, that prior disclosure was indeed made to members of the public and remains on the City website to this day.

The New Complaint and the denial of procedural fairness and breach of the principles of fundamental justice in respect of the Prior Complaints, Prior Investigation and Prior Decision, all appear to form part of a course of conduct unfairly targeting the Respondent and constituting an abuse of process. Further penalizing the Respondent for actions taken only in seeking to defend himself against the Prior Complaints and for requesting a fair and transparent process in circumstances where he sent the information in question only to City Staff and Councillors and where the complainant's name had already been publicly disclosed, would only serve to compound the abusive nature of the proceedings to date.

We understand from the Notice that the IC refuses to produce the underlying complaint form and affidavit in respect of the New Complaint. The Respondent's position is that the complaint form and affidavit should be disclosed to him for the purpose of this response and he reserves the right to amend or supplement this response as necessary if and when such disclosure is made.

Based on the foregoing, the Respondent respectfully requests that the New Complaint should not be sustained within the meaning of Section 10 ii) of the Protocol and/or a conclusion reached that there was no contravention of the Code or, strictly in the alternative, that the exceptions within Section 11 ii) of the Protocol apply. At all times, the Respondent has acted in good faith and taken reasonable measures to ensure that he does not contravene the Code, including in respect of actions taken to respond to and defend the multiple complaints made against him by the same complainant, a fellow Councillor.