



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

**Report on Violation of Code of Conduct by Councillor
Ford**

Date:	April 30, 2010
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

During a radio broadcast and at a City Council meeting, Councillor Rob Ford disclosed confidential information about the cost of a real estate transaction involving the City. These are breaches of Article V of the *Code of Conduct for Members of Council*. (“*The Code of Conduct*”) I recommend that Council impose a reprimand.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council adopts the finding that Councillor Rob Ford has violated Article V of the *Code of Conduct*.
2. City Council adopts the recommendation that Councillor Rob Ford be reprimanded.

Financial Impact

This report will have no financial impact.

DECISION HISTORY

City Council asked the Integrity Commissioner to investigate whether Councillor Rob Ford violated the *Code of Conduct* after an exchange at City Council on August 6, 2009. Under s. 160 of the *City of Toronto Act, 2006*, City Council may request the Integrity Commissioner to conduct an inquiry about whether a member of council has contravened the *Code of Conduct for Members of Council*.

An investigation was conducted and I concluded that Councillor Ford violated the *Code of Conduct*. As a result, a public report to Council is required by the *Code of Conduct Complaint Protocol* and section 162(3) of the *City of Toronto Act, 2006*.

ISSUE BACKGROUND

In 2009, Councillor Rob Ford had a regular “spot” on a Thursday morning AM radio program. On August 6, 2009, the morning of a council meeting, Councillor Ford discussed the issue of an agenda item for that meeting concerning a real estate transaction proposed by the City for Council’s approval. Councillor Ford broadcast the proposed purchase price, a figure which he had been provided in a confidential attachment to his Council documents.

Later on the same day, at the Council meeting, Councillor Ford spoke to the item in open session and said, “I think it’s absolutely ridiculous to be spending \$750,000.00 on buying a house. This is the last thing we have to do and this is what we’re being asked to approve right now.”

The Deputy Speaker pointed out that the cost of the transaction was not to be given out. Councillor Ford immediately apologized to Council and explained that the order paper had a break in it between the item (which fell on the bottom of one page) and the fact that it was confidential (which continued on the top of the next page). Councillor Thompson objected to the explanation. He told Council that he had heard Councillor Ford broadcast the same confidential information on his radio show that morning.

The Deputy Speaker reminded Council that “purple paper is confidential, not to be released on a radio program, or in this Council, or anywhere.”

Councillor/Deputy Mayor Pantalone pointed out that the same item had appeared on the order paper on August 5 (the day before) in a complete format that showed it was a confidential item.

Councillor Ford admitted to Council that he knew the information was confidential “yesterday” and that although he made notes for his radio show and he “did say the cost,” he didn’t say on air that he was giving out confidential information. A motion was moved to refer the matter to the Integrity Commissioner to investigate and report back to Council on whether there had been a violation of the *Code of Conduct* by Councillor Ford.

COMMENTS

Investigation

I reviewed the tape of the proceedings at City Council on August 6, 2009, met with staff about the distribution of the confidential material to Councillors, met with Councillor Thompson, with Councillor Ford, and interviewed staff on the outcome of the real estate transaction. I reviewed a press clipping from the Toronto Star dated August 8, 2009 which was headlined, “The not-so-secret \$750,000 deal” which contained a report of the release of the information in Council. This report was finalized after the transaction closed on March 29, 2010 in order to avoid any prejudice to the transaction.

Findings

A Council meeting was called for August 5 and 6, 2009. One of the agenda items was for Council to approve the purchase of a residential property in North York as part of the “Strategy for the Implementation of the North York Centre Plan Service Road-North York Centre.” A report and a confidential attachment concerning the real estate transaction were circulated to the Councillors because it was on the Council agenda. Councillor Ford did not read the report, but instead he focussed on the recommendation that Council approve the sale of a house, and the costs associated with the proposed deal. He objected to both because he said he didn’t think a recession was the right time for the City to “buy a house.”

Councillor Ford said that he knew he couldn’t defeat the motion, but that he wanted to bring the matter to the attention of his colleagues and he asked the matter be held for debate.

During this investigation, Councillor Ford said that he decided to reveal the confidential information on the radio show on the morning of August 6, because he thought that Council had already dealt with the item on the 5th of August which would mean the figures could be made public. Councillor Ford admitted that he did not actually check to see if the item had been debated in his absence. He also knew that he hadn’t spoken to it on the 5th of August, but he said that sometimes items are dealt with in his absence. Accordingly, he took the data from his purple sheet, made notes on his agenda for the radio program and made the confidential information public during the broadcast on the morning of August 6, 2009.

Councillor Ford acknowledged that he did not read the report to Council about the transaction. If he had, he would have seen that Council was being asked to “authorize the release of the confidential information and recommendations in Attachment 1, *once the transaction has closed.*”(Emphasis added) In other words, Councillor Ford’s justification for releasing the information did not apply, even if Council had debated the item.

After the radio broadcast and later in the day on August 6, 2009, Councillor Ford disclosed the confidential information again in Council. When it was pointed out to him that he was not supposed to reveal the figure, Councillor Ford said that it was because the order paper did not have “confidential” printed on it. During the investigation, he characterized his response as a “mistake.”

The Offer to purchase was approved by Council on August 6, 2009. Although the transaction was to close in the fall of 2009, it was delayed on three occasions, ultimately closing on March 29, 2010. One of the reasons given for the delay was that the vendors said that they weren’t certain if the deal would proceed because of the publicity around the transaction. However, City staff confirm that the release of the confidential information did not have any direct financial impact upon the transaction.

In discussing the matter, Councillor Ford confirmed that he understands and accepts the need for maintaining confidentiality of information.

Analysis and Findings

Councillor Ford acknowledged that he improperly released confidential information on a radio broadcast and a second time in Council. His reasons for broadcasting the information on the morning of August 6, 2009 were based on an assumption (that the matter had been debated and was no longer confidential) that he did not confirm. Even if his assumption had been accurate, it would not have justified disclosure of the purchase price, given that the recommendation to Council was to maintain confidentiality until after the transaction had closed, and not after the matter had been debated by City Council.

Second, Councillor Ford’s reasons for disclosing the information a second time on the floor of Council, was to claim that he had not realized the information was confidential and to blame the page break on the order paper which separated the title of the report from the information that there was a confidential attachment. However, his explanation for being able to take material from the confidential “purple pages” he had been given to broadcast the material earlier that same day, reveals his awareness of confidentiality. The two explanations conflict with each other.

I conclude that in all of the circumstances, Councillor Ford failed to read the report, failed to check his assumption that the matter had been debated and could be revealed in public, and recklessly revealed confidential information to the public on the radio broadcast. His reason for thinking he could do that, conflicts with Council’s practice which is not to permit release of real estate transaction costs until after such transactions settle and not after they are debated in Council. Councillor Ford revealed the same confidential information a second time in Council and when he was challenged by other Councillors for revealing this information, he gave a reason for his disclosure to Council which was not complete and accurate, given that he had turned his mind to the fact that it was confidential on that very morning.

As a result, I recommend that Council adopt the finding that Councillor Ford breached the provisions of Article V of the *Code of Conduct for Members of Council* by disclosing confidential information on two occasions on August 6, 2009.

Appropriate Sanction

In considering the appropriate sanction, I recommend that Council consider past conduct, the impact of the conduct and the responsibility shown by Councillor Ford for his actions.

This incident took place six months after a prior finding that Councillor Ford had violated the *Code of Conduct*. On February 23-25, 2009, Council adopted the report of the Interim Integrity Commissioner that Councillor Ford breached the *Code of Conduct* by making inaccurate and inappropriate comments on his radio broadcast. In that matter, Councillor Ford said that he was sharing confidential information by publicizing an appointment. That investigation found that Councillor Ford had made an unfair accusation and breached Article XIV of the *Code of Conduct* (Discreditable Conduct). Council required Councillor Ford to apologize to Council, to the complainant (in writing and on air), and to “pledge to re-commit himself to respect the Code of Conduct he has previously sworn to uphold.” Accordingly, the sanction should recognize that this was the second time a breach of the *Code of Conduct* had occurred within a twelve month period and that it was related to on-air comments made without due consideration of the obligations under the *Code of Conduct*. A copy of this Council’s decision in the matter and the report underlying Council’s decision is attached as Appendix 1. (Although there have been two prior findings of breaches of the Code of Conduct by Councillor Ford, these were of a different nature, that is, inappropriate use of City of Toronto letterhead for mailings unrelated to his role as Councillor. These findings were made in 2006 and 2007 and no sanction was imposed by Council. I recommend they receive less weight in considering the appropriate sanction.)

In Councillor Ford’s favour, there were no financial consequences to the transaction from his improper release of the confidential information and it ultimately closed successfully, (although delayed) thus carrying out Council’s decision. This militates against a sanction that would impose any financial penalty as it would not be responsive or proportional to the harm caused by the breach.

Councillor Ford took responsibility during the investigation for his mistake and he recognized the importance of confidentiality. In addition, in the eight month period since the August, 2009 Council meeting that brought about this investigation, there have been no other incidents in Council concerning Councillor Ford’s handling of confidential information. On at least one occasion of which I am aware, Councillor Ford has adverted during a Council meeting to the necessity for maintaining confidentiality and has demonstrated greater care in his handling of confidential matters during open session.

Finally, in considering whether any sanction is required, Council may wish to consider the desirability of demonstrating to the public that it is committed to maintaining high ethical standards. Multiple publications of confidential information can erode public confidence in the Council. On a practical level, such breaches could jeopardize future transactions in which the City has an interest.

In balancing all of the factors discussed above and the findings made, I recommend that Councillor Ford receive a reprimand for the breach of the *Code of Conduct* on August 6, 2009.

CONTACT

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SIGNATURE

A handwritten signature in black ink, appearing to read 'J. Leiper', is centered within a light gray rectangular box.

Janet Leiper
Integrity Commissioner

ATTACHMENTS

Appendix 1: Council Decision February 23, 24, and 25th, 2009

Appendix 2: Excerpts from the *Code of Conduct* Article V “Confidential Information” and Article XVIII “Compliance with the Code of Conduct.”



INTEGRITY COMMISSIONER REPORT ACTION REQUIRED

Appendix 1: Council Decision dated February 23, 24 and 25, 2009

City Council Decision

City Council on February 23, 24 and 25, 2009, adopted the following:

1. City Council adopt the finding that Councillor Rob Ford has violated the Code of Conduct.

Councillor Ford be required, on the floor of Council at the start of the next City Council meeting, to:

- withdraw his allegations of any wrong doing;
- apologize to Councillor Vaughan for his untruthful remarks and false accusations;
- apologize to all of his colleagues in general for his conduct in this affair; and
- pledge to re-commit himself to respect the Code of Conduct he has previously sworn to uphold; and

further, that Councillor Ford provide Councillor Vaughan with a written and signed apology no later than March 1, 2009, that includes the following:

- a complete and unequivocal retraction of the allegations of any wrong doing;
- an acknowledgement that his conduct and comments violated Council's Code of Conduct, and the behaviour expected of City Councillors; and
- a pledge to re-commit himself to respect the Code of Conduct he has previously sworn to uphold.

**Appendix 2: Excerpts from the Code of Conduct: Article V
“Confidential Information” and Article XVIII “Compliance
with the Code of Conduct.”**

V. CONFIDENTIAL INFORMATION

Confidential information includes information in the possession of, or received in confidence by the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act* (often referred to as “MFIPPA”), or other legislation. Generally, the *Municipal Freedom of Information and Protection of Privacy Act* restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

The *City of Toronto Act, 2006* allows 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. For the purposes of the *Code of Conduct*, “confidential information” also includes this type of information.

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.

Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.

Under the Procedures By-law (passed under section 189 of the *City of Toronto Act, 2006*), a matter that has been discussed at an in-camera (closed) meeting remains confidential. 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.

The following are examples of the types of information that a member of Council must keep confidential:

- items under litigation, negotiation, or personnel matters;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- information deemed to be “personal information” under the *Municipal Conflict of Interest Act*; and
- statistical data required by law not to be released (e.g. certain census or assessment data).

Members of Council should not 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.

XVIII. COMPLIANCE WITH THE CODE OF CONDUCT

Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the *Criminal Code* of Canada or for failing to declare a conflict of personal interest under the *Municipal Conflict of Interest Act*.

In addition, subsection 160(5) of the *City of Toronto Act, 2006*, authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the *Code of Conduct*:

1. A reprimand; or
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

Other Actions

The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:

1. Removal from membership of a Committee or local board (restricted definition).
2. Removal as Chair of a Committee or local board (restricted definition).
3. Repayment or reimbursement of moneys received.
4. Return of property or reimbursement of its value.
5. A request for an apology to Council, the complainant, or both.