



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

**Report on Code of Conduct Complaint: Toronto Star
Newspapers Ltd. against Mayor Rob Ford**

Date:	March 22, 2013
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

On December 12, 2011, The Toronto Star Newspapers Ltd. (the "Toronto Star Ltd.") filed a formal complaint with the Office of the Integrity Commissioner alleging that Mayor Rob Ford had violated Articles VIII (Improper Use of Influence) and XVI (Discreditable Conduct) of the *Code of Conduct for Members of Council* (the "*Code of Conduct*") by directing his staff not to provide the Toronto Star Ltd. with official mayoral communications from his office because of an article published by the Toronto Star about Mayor Ford during the municipal election in 2010.

The complaint was investigated and dismissed. This report provides Council with the reasons for the dismissal, and also raises the issue of whether corporate complainants are included in the *Code of Conduct* and in the *Code of Conduct Complaint Protocol for Members of Council* ("*Complaint Protocol*"). The public nature of the complaint and the novel issues raised by this complaint are exceptional circumstances that justify a report to Council under the *Complaint Protocol*.

RECOMMENDATIONS

The Integrity Commissioner recommends that City Council adopt the following:

1. That the Integrity Commissioner in consultation with the City Solicitor report to Council on any amendments to the *Code of Conduct for Members of Council* and the *Code of Conduct Complaint Protocol for Members of Council* to clarify whether corporations may make a formal complaint.

Financial Impact

This report will have no financial impact on the City of Toronto. This report will have no financial impact on Mayor Ford.

DECISION HISTORY

On December 12, 2011, the Toronto Star Ltd. filed a complaint pursuant to the *Complaint Protocol* and section 160 of the *City of Toronto Act, 2006* (the "COTA") that Mayor Rob Ford violated the *Code of Conduct*.

An investigation was conducted into the complaint. This is a report on the dismissal of the complaint.

Section 6(1) of the *Complaint Protocol* permits the Integrity Commissioner to report on the dismissal of a complaint to Council where exceptional circumstances exist. The exceptional circumstances in this case include the significant amount of publicity about the complaint at the time of filing, the novel issues about the relationship between elected officials and the media and the issue of whether the *Code of Conduct* applies to corporations as well as individuals.

ISSUE BACKGROUND

The Complaint

A formal complaint was filed on December 12, 2011 by the Toronto Star Ltd.¹ alleging that Mayor Ford excluded reporters and columnists who write for the Toronto Star from receiving certain media communications, notices and bulk e mails from his office because of an article published in the Toronto Star on July 13, 2010 during the mayoral election. The essence of the complaint is that the Mayor misused the power of his office and his staff in treating Toronto Star Ltd. differently from other media representatives covering City Hall affairs thus breaching Articles VIII (Improper Use of Influence) and XIV (Discreditable Conduct) of the *Code of Conduct*.

¹ Throughout this report, "Toronto Star Ltd." will be used to refer to the Toronto Star Newspapers Ltd. This is the legal entity that publishes the newspaper entitled the "Toronto Star." When reference is being made to the newspaper, it will be referred to as the "Toronto Star."

An affidavit by the Urban Affairs Bureau Chief for the Toronto Star newspaper at City Hall was provided in support of the complaint. It included the following exhibits:

- A listing of the print, radio and television media members of the Press Gallery;
- The original article to which Mayor Ford took exception;
- Press clippings concerning the Mayor and the issue;
- Press releases which were provided to other members of the Press Gallery, but not to writers for the Toronto Star;
- Material relating to a press conference given by Mayoral staff on arts cuts in September 2011;
- Correspondence from the President of the Press Gallery to the Mayor and to the Executive Committee requesting that the Mayor treat all members of the Press Gallery equally and fairly;
- A referral to Executive Committee with a motion to require that the City of Toronto ensure that individual journalists or news organizations are not excluded from media events, conferences or news releases;
- The indefinite deferral of the media item presented at Executive Committee.

A copy of the complaint was provided to Mayor Ford who responded by letter dated February 14, 2012. In his reply, Mayor Ford agreed that:

- his dispute with the newspaper dated back to his election campaign and the story written about him at that time;
- he did not pursue litigation in relation to the story;
- he has "taken steps to convey his concern about the story by withdrawing certain courtesies that I and my office would have otherwise provided to "the Star" in the normal course of business;"
- he does not provide interviews to "the Star;"
- he has instructed his staff to not include "the Star" in bulk communications from his office;
- "The Star" does not receive press releases and media advisories electronically from his office although his former press secretary provided hard copies to Toronto Star reporters.

Mayor Ford wrote that the newspaper has not been "kept in the dark" about City Hall matters because its reporters receive City of Toronto Strategic Communications media advisories and they are present at City events and press conferences where their questions are routinely answered by the Mayor.

The Mayor also wrote that often information from his office was provided to the President of the Press Gallery who he expected would pass that information along to other members of the gallery, including Toronto Star members. The

Mayor attached copies of email communications between reporters for the Toronto Star and the Mayor's press secretary to show that informal communications often took place between his staff and some Toronto Star reporters. The Mayor pointed out that on one occasion in February 2011, an official statement about his medical condition was provided to the Star.

Mayor Ford disagreed that his dispute with the Toronto Star was only a "personal" matter." He asserted that the article had everything to do with his public life, his role as Councillor and his campaign to be Mayor.

A copy of the Mayor's response was provided to the Toronto Star Ltd. A further response and a supplemental affidavit were received on March 5, 2012. The response claimed that the Mayor's response revealed a lack of understanding of his role in office. The supplemental affidavit provided a copy of a further announcement from the Office of the Mayor that was allegedly circulated to all other members of the Press Gallery on January 23, 2012, but not to reporters writing for the Toronto Star, who discovered it via an alternative on-line source.

The supplemental affidavit took issue with the Mayor's characterization that the Toronto Star was present at every City event attended by the Mayor. The affiant wrote, "This is simply not true. The Star has missed speeches and events, including those taking place at City Hall, because we simply did not know about them." The e mails attached to Mayor Ford's response were described as an example of how little information was provided to Toronto Star reporters via this channel of communications. The Toronto Star said that these informal communications were the exception and that there were occasions when the press secretary did not respond to Toronto Star queries at all.

The Investigation

I interviewed members of the Press Gallery, including Toronto Star reporters and columnists, reporters from other news organizations and the President of the Press Gallery. I met with editors from the Toronto Star and conducted two interviews with the publisher of the Toronto Star.

Information was received from the Office of the Mayor and City staff concerning media advisories, statements and bulk e mails showing distribution to media outlets and e mails from communications staff. I interviewed the current and the former Press Secretary to the Mayor, the Director, Policy and Strategic Planning, and the Special Assistant-Communications.

I reviewed filings and public statements describing the corporate organization of Torstar Corporation ("TORSTAR"), the Toronto Star Newspapers Ltd., the Star Media Group and other divisions of TORSTAR. I reviewed the 2012 Council policy on Press Gallery accreditation and the tenant list for the Press Gallery, as well as the contact list for the Press Gallery. Corporate Secretary for TORSTAR

provided information about the ownership and structure of the entities owned by TORSTAR.

Telephone interviews were conducted with the Director of Strategic Communications, the City Manager, the City Solicitor and the City Clerk. Follow-up searches for e mail information were also done to analyze patterns of distribution.

I met with a Councillor who had been involved in attempting to find a resolution to the dispute between the Mayor and the Toronto Star, and with a Councillor who had excluded Toronto Star reporters from receiving any official communications from his office. I also met with the Councillor who moved the motion to Executive Committee about including all members of the press gallery at City press conferences and events. I consulted with the Director of the School of Journalism and Communications at Carleton University.

The parties were provided with an advance briefing on this report and their comments were taken into consideration in the final version.

The Issues

Did the Mayor's office communications policy toward journalists writing for the Toronto Star between December 1, 2010 and January 23, 2012 constitute a breach of the *Code of Conduct*, in particular Article VIII (Improper Use of Influence) and Article XIV (Discreditable Conduct)?

A second issue arose during the investigation when it became clear that the complainant is a corporation. Does the *Code of Conduct* apply to corporations?

The Results of the Investigation

The Background to the Complaint

An article appeared in the Toronto Star on July 14, 2010 during Councillor Rob Ford's election campaign to which he took strong exception. By Notice of Intended Action dated July 21, 2010, Rob Ford (the "intended plaintiff") identified the Toronto Star Ltd., its publisher, the reporters and the editor responsible for the article as intended defendants in a libel action to be brought in the Superior Court of Justice.

The article reported on Rob Ford's football coaching at the high school level in 2010 and in particular, the circumstances of his ending a coaching position at a school within the Toronto District School Board. It was acknowledged by the reporter that the story was newsworthy because of the candidate's prominence in the election campaign. Mayor Ford disputed certain allegations made in the

article. He provided interviews for the article and articulated his side of the dispute.

In early August of 2010, a member of the Ford campaign staff sent an e mail to a Toronto Star reporter who was covering the election. The staff member wrote that as a result of the Toronto Star's publication of the article in question, the "Ford Campaign" would not be responding to any inquiries from the Toronto Star. The e mail requested a "proper retraction and apology." By way of follow-up, a Toronto Star editor asked separately whether or not the Toronto Star would still be on the media list for media advisories. The staff member replied to say that the Toronto Star had been removed from the media list.

The Toronto Star Ltd. did not apologize or publish a retraction. Mayor Ford took no further legal action against the Toronto Star Ltd. or the other intended defendants in the Notice of Intended Action. In the correspondence exchanged during this complaint, the publisher on behalf of the complainant wrote that the Toronto Star Ltd. stood by the accuracy of the original story.

On December 1, 2010, Mayor Ford took office. The complaint alleges that after he took office, the Mayor instructed his staff to exclude writers for the Toronto Star from official mayoral communications, including press releases, notices of press conferences, and other mayoral appearances or statements. The Toronto Star members of the City Hall Press Gallery were not involved in writing the original story.

The Attempts at Informal Resolution

In February 2011, members of the press gallery attempted an informal resolution to the situation concerning the Toronto Star journalists and the Mayor. The President of the City Hall Press Gallery wrote to Mayor Ford, *inter alia*:

The Gallery expects that all of its members will be treated equally and fairly. As such, all media releases, circulars, agendas, notice of scrums and other events, and other official communications from the City of Toronto, including the mayor's office, must be communicated equally to all members of the Gallery, without favour or prejudice.

The Mayor did not respond to this letter.

The President of the Press Gallery deputed in public to a council committee meeting about the issue of equal treatment of all members of the Press Gallery at the City of Toronto. The Mayor's position was also a matter of press commentary.

The Formal Complaint

On December 1, 2011, the Toronto Star announced it would bring a formal complaint to the Integrity Commissioner. This sparked additional coverage in other news outlets, including a debate in the National Post between two journalists who agreed that the Mayor "should disseminate information without discrimination, even to the Toronto Star." Another commentator wrote, "Freezing out one news organization while accommodating others just creates an impression of pettiness that diminishes both the office and its holder."

The formal complaint was filed on December 12, 2011.

The E mail Distribution from the Office of the Mayor

The complainant provided examples of bulk distribution of news releases and statements made by the Mayor to the media that were not given to journalists writing for the Toronto Star. The Mayor acknowledges that these were not delivered to writers for the Toronto Star. A search conducted of press releases from the Office of the Mayor during the relevant time period identified the recipients.

Preliminary review revealed that the distribution of bulk e mails to members of the media from the Office of the Mayor included distribution to competitors of the Toronto Star, and to news agencies held by Toronto Star Ltd. as well as affiliates of the Toronto Star Ltd. held by TORSTAR, in whole or in part. The corporate relationships needed to be understood to assess the nature and scope of the activities that are the subject of complaint.

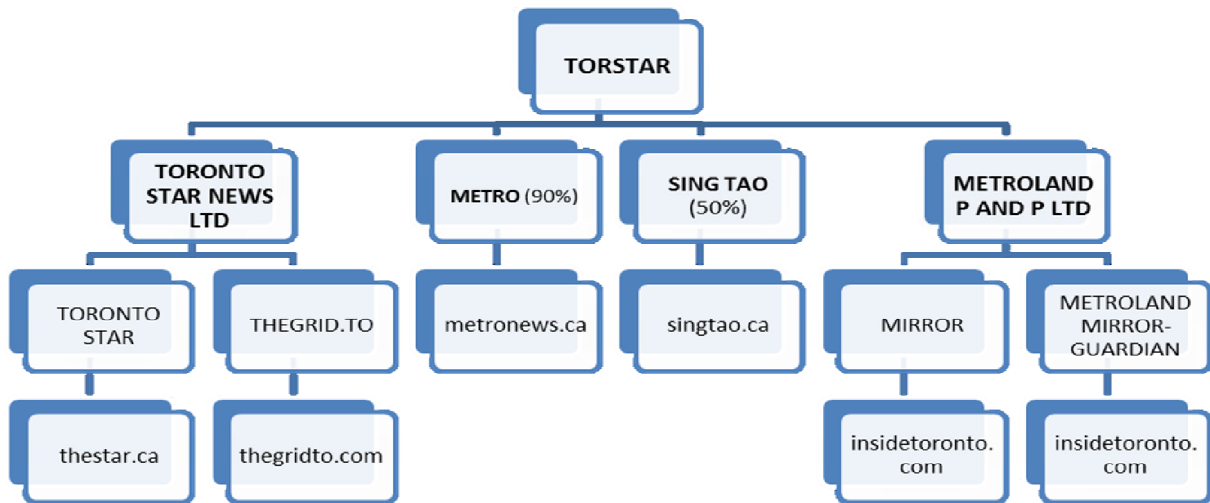
The Toronto Star and Related Media Outlets in the City Hall Press Gallery

The City of Toronto Press Gallery includes a number of news organizations. Two of its tenants, Toronto Star Newspapers Limited and Metroland Media Group Ltd. ("Metroland"), are owned by one parent company, TORSTAR. These two TORSTAR tenants include a number of media outlets, which share certain corporate relationships. The presence of companies affiliated with TORSTAR within the Press Gallery is described further below.

The media outlets within the Press Gallery which are owned and operated by Toronto Star Newspapers Limited are the Toronto Star and The Grid. Metroland owns and operates more than 100 newspapers including the Mirror Newspapers and Metroland Mirror-Guardian newspapers. Metro Toronto and Sing Tao Daily are also owned by entities affiliated with TORSTAR. They are each published by separate legal entities in which TORSTAR indirectly holds part ownership. These legal entities have separate management structures.

The TORSTAR entities within the Press Gallery are depicted in Figure 1, below. The e mail domains for each news outlet are included in the diagram. The separate legal entities responsible for Metro and Sing Tao and in which TORSTAR has ownership are not shown in Figure 1.

FIGURE 1: TORSTAR PRESENCE: CITY OF TORONTO PRESS GALLERY



The "Star Media Group"

TORSTAR has created a notional grouping of businesses and publishing entities for operational and management reporting purposes called the "Star Media Group." The publisher of the Toronto Star acts as the President of the Star Media Group. The businesses that form part of the Star Media Group include the Toronto Star, The Grid, Sing Tao Daily and Metro. The President of Star Media Group oversees and manages TORSTAR's investments in Metro and Sing Tao Daily. Each of the Toronto Star, The Grid, Sing Tao Daily and Metro Toronto has its own publisher and editorial team. In addition, the entities that publish each of Metro and Sing Tao have their own President.

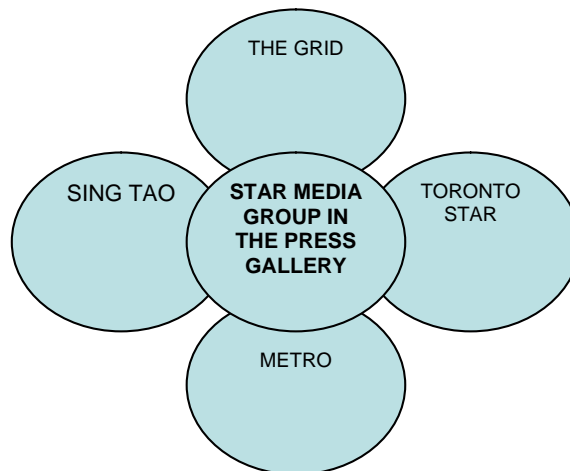
The Star Media Group is described by TORSTAR as a "growing portfolio of media businesses centred around the Toronto Star."² It includes a number of

² www.torstar.com/html/our-business/Star_Media_Group/index.cfm Date accessed, Feb. 15, 2013

businesses and publications across Canada. As President of the Star Media Group, the Publisher of the Toronto Star is responsible for overseeing all of the operations that fall under this grouping. The President of Star Media Group reports to the CEO of TORSTAR and to the Board of Directors of TORSTAR.

Figure 2, below, shows the Star Media Group members that are found in the Press Gallery at the City of Toronto.

FIGURE 2: STAR MEDIA GROUP MEMBERS IN PRESS GALLERY



As a result of these corporate relationships the e mails from the Office of the Mayor were reviewed for patterns of distribution to the Toronto Star e mail domain, and also to e mail domains for other members of the Star Media Group in the Press Gallery. These results are summarized in Table 1, attached to this report, which details the e mail distribution to the members of the Star Media Group, including the Toronto Star.

A number of observations can be made about the information in Table 1. Group or "bulk" e mail communications from the Office of the Mayor to the media were sparse during this period of time. Sixteen e mails were sent over the course of ten months. The number of recipients and domain recipients vary. The recipients are not identical, but are drawn from members of the public service, members of the Mayor's staff, councillors and their staff, and media contacts. There was not one complete set of recipients who received every bulk

communication, with the Toronto Star members of the Press Gallery being omitted from every communication.

Of the sixteen items sent, five were delivered to thestar.ca domain, representing 31% of bulk communications. Twelve of these communications were circulated to other news outlets in the Star Media Group in the Press Gallery. This represents a 75% distribution rate to at least one, and often more than one, member of the Star Media Group.

In addition, 100% of the bulk e mail communications during the relevant period from the Office of the Mayor were sent to the Press Gallery businesses which are part of the TORSTAR subsidiary, Metroland.³

A reporter for a rival newspaper described these notices as largely "protocol things" but not "big announcements." This reporter developed a practice of forwarding these announcements to Toronto Star reporters.

Opportunities to Attend Community Events

Toronto Star Ltd. also alleged that Toronto Star reporters were not notified about two events. The first was a corporate event on May 11, 2011 at which the Mayor answered questions from the media about paid duty police officers. The second was the opening of a medical supply store where the Mayor spoke to reporters about the 2011 Gay Pride Parade.

The Mayor wrote in his reply that his office does not issue media advisories about his attendance at third party events. The search of City e mail distribution supported the Mayor's response. There were no bulk advance notifications of either of these events to other media outlets. There was no explanation as to how other members of the media who were present were aware of the Mayor's presence at these two events.

The Arts Funding Briefing

A third aspect of the complaint concerned a briefing held on September 9, 2011 by the Mayor's Chief Policy Advisor. The Toronto Star had published an exclusive article about arts funding on that day. Two reporters from the Toronto Star said that they had been excluded from the subsequent briefing. They believed that other members of the Press Gallery were asked not to tell Toronto Star reporters about the briefing. The two Toronto Star reporters were not at City Hall at the time of the briefing, but on their return to the Press Gallery they noted

³ Metroland News includes the digital news site insidetoronto.com as well as community newspapers such as the Mirror newspapers which are distributed around the GTA. Their media contact inside the Press Gallery is David Nickle who is also the President of the Press Gallery.

some of their colleagues were out of the offices. They found out about the briefing from their fellow reporters on their return to the Press Gallery.

A reporter for the Toronto Star complained to the Press Secretary about the lack of notification and said that in the aftermath of this event “they did try to be better.” Further improvements have been noted since the filing of this complaint, with the Press Secretary now walking through the Press Gallery to announce scrums, in earshot of all members.

In the Mayor's response to this allegation, he wrote that this particular briefing happened because other media outlets had asked for background information on the issue. One briefing was held for three outlets rather than three separate briefings. A columnist noted that it is a common strategy for political staffers to invite specific members of the press for a briefing that is more informal than a press conference. This allows for questions and permits politicians to repeat their key messages about the subject matter.

The Communication between the Office of the Mayor and the Toronto Star

Immediately after the Mayor took office, all media communications were channelled through the City of Toronto Strategic Communications division, which is overseen by the Office of the City Manager. After a period of time, the Mayor's office began to issue its own press releases, in addition to those released by Strategic Communications. The complainant does not allege that these corporate communications were withheld from Toronto Star Ltd.

The former Press Secretary for the Mayor confirmed that after taking office the Mayor's flatly stated position was, “I do not talk to the Star.” However, the former Press Secretary's implementation of the policy reveals that it was not treated in absolute terms. The former Press Secretary said that she did not withhold information about the Mayor's availability to answer questions, although her manner of conveying this was often to tell the President of the Press Gallery about the Mayor's availability and then suggest that he gather “folks” together who wanted to ask questions. The Press Secretary said that she was authorized to “communicate with the Star when necessary.” The Press Secretary made judgment calls on the form and content of information for Toronto Star journalists.

On the issue of e mail press releases, the former Press Secretary recalled that for one bulk email that was not sent to Toronto Star reporters, she made a point of contacting one of them to provide the information contained in the e mail. There were also a number of “work-around” measures which gave reporters for the Toronto Star information from the Office of the Mayor, while maintaining the Mayor's distance from reporters for the Toronto Star. Off-site meetings were held. Comments were provided, but “not for attribution.” Requests for information from Toronto Star journalists were sometimes referred to other Councillors with knowledge of the issue for comment. The former Press Secretary recalled that

she would sometimes respond to Toronto Star questions during “scrums.” Toronto Star journalists agreed that there were opportunities at scrums for members of the media to pose questions directly to the Mayor. More than one journalist described the frequency as being uneven and that it was difficult to know why the Mayor sometimes broke his own rule.

The former Press Secretary noted that because of the close quarters that members of the media often share with political staff, that relationships developed and there was friendly banter, including about the so-called “Ford Freeze.” A member of the Mayor’s staff apologized for “the situation.” That staff member provided information to a Toronto Star reporter. Other staffers reportedly “rolled their eyes” about the situation. One journalist for the Toronto Star described the situation as an “underground economy” in information. Material was often provided on an “off the record” basis. Another journalist from the Toronto Star described the relationship-building with the Mayor’s Press Secretary as a “long hard slog” which improved over time.

The Context for the Analysis

The Role of the Mayor of Toronto

The Mayor of the City of Toronto has statutory responsibilities that flow from the *City of Toronto Act, 2006*. The Mayor is the head of council and the chief executive officer of the City. He is responsible for providing leadership to council, for upholding and promoting the purposes of the City, representing the City at official functions and promoting public involvement in the City’s activities. The Mayor acts as a representative for the City to promote the City’s interests locally, nationally and internationally and is expected to foster activities that enhance the economic, social and environmental well-being of the City and its residents.

The approved budget for the Office of the Mayor in 2012 was 1.9 million dollars. The Mayor’s budget submission for 2012 said that his office budget “supports the Mayor as the Head of Council and the Chief Executive Officer of the City of Toronto. The Mayor has a duty to ensure that City Council remains accountable and accessible to the public. In addition, the Mayor’s Office has a duty to conduct the business of the City in an efficient manner.”

The Role of the Media in Municipal Government

Members of the Press Gallery receive information from a variety of sources within City Hall that operate independently from the Office of the Mayor. In 2005, City Council adopted a centralized communications model known as “Strategic Communications.” Strategic Communications provides a range of communications services to the City. It serves the public by ensuring coordination and clarity of communications to the public. The Media Relations and Issues

Management section of Strategic Communications responds to media inquiries on behalf of the City, refers media to the appropriate spokespeople and reviews, approves and distributes all City of Toronto media advisories and news releases. When Media Relations quotes the Mayor in its releases, these releases are reviewed by the Mayor's office prior to publication. Strategic Communications includes Toronto Star Ltd. and its media holdings in its distribution of information, news releases and announcements.

City Council is televised, as are Committee meetings. Staff reports and materials are published with the agendas for public meetings and can be reviewed in advance of these debates. The Press Gallery has access to the Chamber during meetings and its members are able to request comment from members of Council and from staff during these public meetings. All of these venues provide access to the Mayor when he is speaking or participating in an official capacity.

The City Clerk's Office releases notices of meetings, agendas and reports of City Council and Committees. All of this information is available and accessible to all members of the media. In addition, policies passed by Council provide information about elected officials. The website for the Office of the City Clerk posts quarterly information about how Councillors spend their office budgets.

In addition, the City of Toronto Office of the Lobbyist Registrar maintains a public and on-line registry that includes details of lobbyist meetings with elected officials. The registry requires time, date, client details, public official being lobbied and the subject matter of the lobbying, including lobbying of the Mayor. This is a source of information that is available to determine important information about trends in lobbying activity at the City and the public.

The City Hall Press Gallery Accreditation Policy and Procedure passed in 2012 formally acknowledges the commitment of the City of Toronto to being an open and accountable organization which values the role of the media. The policy notes that, "The City of Toronto is committed to developing and maintaining professional working relationships with members of the City Hall Press Gallery to promote public awareness and understanding of Council decisions, City policies, issues facing the City, services and programs, and new and emerging initiatives."

The Relationship of the Mayor to the Media

The subject of the Mayor's relationship to the media was discussed with many of those interviewed in this investigation. Staff members from the Toronto Star spoke about the difficulty of doing their work without up to date information about the Mayor and his activities. This complaint was not limited to the Toronto Star. Other journalists described the flow of information out of the Mayor's office in these terms:

- "few and far between"

- “we aren’t kept up to date regarding what he is doing”
- “occasional” statements
- “less than once per week and sometimes once per month”
- “It is not as if we have a direct line to the Mayor”
- The Press Secretary is "inconsistent" in responding to journalists

Members of the Press Gallery reported that many Mayors, including former Toronto Mayors, published daily itineraries of their activities but Mayor Ford does not publicize his schedule in advance. Stories published in the Toronto Star on March 24, and March 31, 2011 revealed that freedom of information requests were used to obtain the mayor’s itineraries for his first 10 weeks in office. During the writing of this report, another competing media outlet published an editorial, “Ford’s business is our business” in which the editor criticized the Mayor’s lack of publication of his daily schedule to allow the public to know “when, where and if he’s doing the public’s business.”⁴ A member of the Mayor’s staff commented that this is not the first administration to be criticized for accessibility to the media.

On the continuum of “sparse or sparser” access, members of the Press Gallery said that the Toronto Star has less access than others. The media members interviewed, and those who commented publicly on the issue have said a number of times that a Mayor should be even-handed with the press and treat all outlets “fairly.” Others felt strongly that there is a democratic obligation on the part of elected officials to be open with the press and to be fair in access to information about their activities.

Others expressed ambivalence. One reporter noted that while it seemed wrong to completely “shut out” one news organization, there is no “absolute right” for any member of the media to have access to information about the Mayor’s activities and events. Although there is no obligation in law or policy for a politician to give access to the media, in the interest of transparency, e mails from the Office of the Mayor to other media outlets should be distributed to all members of the media as a matter of greater public interest.

Discussion: Politician Control of Information to the Media

This complaint raises the question of the relationship between Toronto’s *Code of Conduct* for elected members of municipal government and the media. Does the *Code of Conduct* exist to enforce the ability of media to have access to elected officials? Is it a matter of improper use of influence to grant differential access to different media outlets?

There was unanimous agreement that it is the prerogative of political leaders to decide to whom they will grant interviews. This group included journalists, a

⁴ “Ford’s business is our business” February 14, 2013, Toronto Sun Editorial

former journalist who is now a Councillor, policy and media staff in the Office of the Mayor and the publisher of the Toronto Star. Implicit in this view is that politicians may control their political communications with the media. This was the view of the Director of the School of Journalism and Communication at Carleton University who said that politicians can always decide with which member of the media they will communicate, but that they will be accountable for those choices.

The Toronto Star journalists, editor and publisher urged a conclusion that a politician should not use taxpayer-funded office staff to exclude some media outlets in favour of others. It is alleged that to do so is a breach of the *Code of Conduct*. However, the precise nature of this distinction was not the subject of consensus. Some contemplated the use of political staff for asymmetrical distribution of information. One journalist agreed that it is legitimate for a politician to give an “exclusive” release on matters that are political. He remarked that “leaking strategically is part of the game.” Another described the issue as being “fine-grained” and nuanced. Reporters were aware of the situation of “favourites” by political administration.

A number of journalists and a Councillor distinguished between “political” communications and “informational” communications with different standards being appropriate in different kinds of cases. One editor noted that it is not uncommon for other elected officials to “freeze out” less favoured media outlets from contact; the difference here is that usually the elected official does not acknowledge openly that this is what is happening. However, the reality of these relationships is that in any political administration’s relationship with the media, “not everybody gets the same thing.”

The tension between the media and politicians is a logical outcome of an independent and free press. An independent media challenges political decision-making between elections. It is the source of information to the public about how their elected officials are performing their roles in office. In one e mail exchange, a political staff member who left to work for a media organization was greeted with a welcome that jokingly noted that it was time to stop “being kicked” and start being the one who does the “kicking.” This rough and ready metaphor conveys the tension inherent in the relationship between members of the political group and the media group. Different interests are involved. The underlying benefit to the public is that both groups are held responsible by the tension of the relationship and their often different interests. The nature of the communications between these groups ebbs and flows, in part as a result of personal relationships, lack of trust and estimates of advantage.

Analysis

The Relevant Sections of the Code of Conduct

Article VIII (Improper Use of Influence) states:

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- (a) that is of general application;
- (b) that affects a member of Council, his or her parents, children or spouse, staff members, friends or associates, business or otherwise as one of a broad class of persons;
or
- (c) that concerns the remuneration or benefits of a member of Council.

Article XIV (Discreditable Conduct) provides:

All members of Council have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and if applicable, the City's *Human Rights and Anti-harassment Policy*, and *Hate Activity Policy*.

I. Did Mayor Ford Breach the Code of Conduct?

This complaint raised novel questions about the application of the *Code of Conduct* principles to the relationship between elected officials and the media. The conclusions drawn in this report turn on both the nature of that unique relationship and the facts of this particular case.

I conclude that on the particular facts in this case, there was no breach of the *Code of Conduct* by Mayor Ford. The reasons for this finding can be summarized as follows:

- There is an accepted practice of elected officials, including the Mayor, determining how and when they will grant access to the media, by way of interviews, answering questions during scrums or providing information about their views, outside of the formal and publicly accessible mechanisms that exist for ensuring transparent municipal democracy;
- The Mayor did not interfere with the access of Toronto Star reporters to significant avenues of information about the workings and agendas of City Council, the public service, or other councillors;
- The City of Toronto has an open access policy for disseminating information to the media and to the public;
- The Mayor's personal policy of "not talking to the Star" was incomplete, with his knowledge and approval, as shown by the following:
 - distribution of some bulk e mails to thestar.ca;
 - distribution of most bulk e mails to other members of the Star Media Group, all falling under the direct supervision of the Publisher of the Toronto Star;
 - distribution of all bulk e mails to the affiliated sister company of Metroland;
 - the unofficial and multiple "work arounds" by staff and Toronto Star journalists, known, tolerated and cited by the Mayor in his defence.
- The originating story which led to the Mayor's reason for not speaking to the Toronto Star was written during a political campaign and was newsworthy because of his status as a public and political figure;
- The ability of the press to publish, comment and otherwise hold politicians to account for their media communications practices.

First, on the ability of politicians to control personal media access, there was virtually unanimous agreement among the media and politicians who participated that politicians can control their own dealings with the media. They may choose to whom they grant interviews, make comments or express opinions about City matters. Asymmetrical delivery of information is common. The complainant seeks to distinguish between a politician's personal comments and the delivery of those views through staff, press secretary or bulk e mail distribution. As a matter of practicality, many politicians rely on staff to communicate on their behalf. If a politician can choose to which media outlets he or she will provide comment, then how comment is provided is similarly a matter of choice. However, this zone of control does not mean that a politician is immune from political criticism for how he or she exercises that discretion. Uneven or overly controlled access to

information may be the subject of public comment. A practice of hiding from effective critics may eventually become the story rather than the message intended by the member of Council. This can be seen in the example of the Mayor's agenda which has been the subject of media comment by a number of news outlets.

Second, the notion of control in the political sphere must be contrasted to the openness of democratic decision-making at the City of Toronto. The public and the media have access to City decision-making processes, such as City Council, committees and the public service communications apparatus. An open meeting investigator enforces the requirement by law that these meetings be conducted in public and with notice. The members of the Press Gallery have on-site access and a front row seat at a City Hall table. They are able to forge relationships with political staff to try and obtain access to elected officials on behalf of the public. There are multiple official channels of information at the City of Toronto and equal access to all of this information by members of the Press Gallery. None of these sources of information, described above, was the subject of any interference from the Mayor. This is in keeping with one of the Mayor's objectives which is "to ensure that City Council remains accountable and accessible to the public." The Mayor is not the gatekeeper of public service or City Council information to the public and he did not attempt to assume that role.

Third, the application of the Mayor's policy for his political office staff members on their dealings with the Toronto Star was uneven and highly variable in its application. Although the Mayor said that he had withdrawn certain courtesies from the Toronto Star such as excluding those journalists from bulk e mail announcements delivered to hundreds of others simultaneously, these e mails sometimes found their way into e mail mailboxes for the Toronto Star. They were delivered with greater regularity to e mail mailboxes belonging to Star Media Group members who, although they write independently, are not competitors and in many respects are part of a larger corporate interest by virtue of their ownership (whole or partial) by TORSTAR, their parent company. These e mails landed in the mailbox for the President of the Press Gallery, whose corporate oversight also falls under the umbrella of TORSTAR. The Mayor did not interfere with the related corporate entities. He did not cut off any and all affiliates of the Toronto Star. The Mayor treated a subgroup of the complainant's news businesses differently from the others.

In addition, there were ways that Mayor Ford's former Press Secretary and members of the Toronto Star staff communicated with journalists for the Toronto Star. The Mayor's response to the complaint reveals he knew and tolerated these alternative methods of communication with the Toronto Star. Although the "Ford Freeze" as it was dubbed by the Toronto Star, arose from the Mayor's statement "We do not talk to the Star," the reality could be more accurately described as "We do not talk to the Star, but we talk to its affiliates, sister divisions and sometimes the Star but not always by the usual methods." The

overall impression left from those interviewed was that less formal methods were used by the Toronto Star staff and the Mayor's staff to carry out their respective roles. A significant part of this complaint was capable of mitigation by the complainant by virtue of an e mail rule forwarding bulk "Office of the Mayor" press releases from Toronto Star Ltd. affiliates to Toronto Star reporters. This is not a determining factor, but merely an observation of one way in which technology could have provided the ultimate "work around."⁵

The point was made that just because Toronto Star journalists managed to work around the Mayor's practices, this does not make the situation fair. The publisher of the Toronto Star points out that it is the principle of access to civic information that is at stake. There is no question that there was evidence of differential treatment towards reporters for the Toronto Star. However, a leadership, relationship or political failure, does not automatically fall under the ambit of the *Code of Conduct*. There are other ways in which politicians are held accountable. Long before the City of Toronto adopted a *Code of Conduct*, a free press has been a vital institution in this country for holding publicly elected officials to account. The media has a job to do and with politicians it will depend to some extent on the relationships they have developed with individual politicians and by extension, their political staff. Are they entitled, as a matter of *Code of Conduct* principles, to enforce an even-handed communications policy from elected officials? I cannot conclude that this is an appropriate application of the *Code of Conduct*.

I find that the Mayor did not improperly use the influence of his office in his communications with the Toronto Star Ltd. and did not breach Article VIII of the *Code of Conduct*. Further, I find that the Mayor did not breach Article XIV of the *Code of Conduct*. There was no bullying, harassing or intimidation in his actions relating to the delivery of information to the Toronto Star Ltd. While the outcome of the Mayor's approach to this news outlet may have been impractical, inefficient and uneven, it did not amount to discreditable conduct. However, this is not to say that the complaint is without merit. In the larger scheme of the principles of openness and transparency observed by the City of Toronto, and the value to the public of having information distributed widely about the actions and views of their elected officials, the circumstances that led to this complaint are worthy of scrutiny.

In his role as Chief Executive of the City of Toronto, the Mayor would be well served by synchronizing his attitude toward the media with the official City of Toronto policy which values the role of media in civic engagement. This would be an opportunity to show leadership and rise above the personalized engagement with certain members of the media that led to this complaint. This is

⁵ The complainant fairly acknowledged that this "work around" was available to Toronto Star writers, while pointing out that as a matter of principle and fairness that such measures should not be necessary.

particularly true given the passage of time and the fact that the Toronto Star reporters in the Press Gallery did not write the original story during the election. Finally, it would be a more efficient use of resources placed at the disposal of the Mayor in the form of his office budget.

II. May a Corporation Make a Complaint under the *Code of Conduct*?

One additional issue arose during consideration of this complaint. After the complainant clarified that Toronto Star Newspapers Ltd. was the complainant, I reviewed the *Code of Conduct* and the *Complaint Protocol* and noted that the ability of a corporation to make a complaint is not specifically addressed by either the *Code of Conduct* or the *Complaint Protocol*. There are a variety of terms used to describe those affected by breaches and who may seek a remedy, including “individual,” “member of the public,” “individual or an organization,” and in other places, “a person, partnership or a corporation.”

The Office of the City Solicitor was consulted on this point and the City Solicitor agrees this is a matter which should be brought to Council separately for clarification and policy direction.

Conclusion

It is recommended to Council that it adopt the following:

2. That the Integrity Commissioner in consultation with the City Solicitor report to Council on any amendments to the *Code of Conduct for Members of Council* and the *Code of Conduct Complaint Protocol for Members of Council* to clarify whether corporations may make a formal complaint.

CONTACT

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SIGNATURE

(Original signed)

Janet Leiper
Integrity Commissioner

JL/ww

**Appendix:: Table 1: Distribution of Media Releases from the Office of the Mayor:
March 2011 - January 2012**

APPENDIX 1

Table 1: Distribution of Media Releases from the Office of the Mayor: March 2011 - January 2012

Date	Subject	Distribution	Star Media Group Recipients
March 10, 2011	Mayor Rob Ford's 100 Days in Office	44 Domains	None
March 17, 2011	Statement from Mayor Ford re: TCHC	44 Domains	None
March 22, 2011	Statement from Mayor Ford re: Federal Budget	189 Recipients at 45 Domains	None
May 12, 2011	Statement from Mayor Ford re: Special Advisor to the Mayor on Arts and Culture	51 Domains	Sent to ddale@thestar.ca May 12, 2011 at 3:27 pm.
June 24, 2011	Statement re: Out of Office – Press Secretary	212 Recipients at 60 Domains	Sent to: metronews.ca and to jim.reyno@metronews.ca and newsdesk@metronews.ca and sent to: singtao.ca and albertchan@singtao.ca June 24, 2011 at 8:16 pm
August 22, 2011	Advisory re Mayor Ford Availability	143 Recipients at 59 Domains	Sent to metronews.ca and jim.reyno@metronews.ca and newsdesk@metronews.ca and sent to sintao.ca and albertchan@singtao.ca August 22, 2011 at 1:28 pm
August 31, 2011	Media Advisory: Photo Op with Mayor Ford and NDP Leader Andrea Horwath	144 Recipients at 60 Domains	Sent to: metronews.ca and jim.reyno@metronews.ca and newsdesk@metronews.ca and singtao.ca and albertchan@singtao.ca on August 31, 2011 at 9:29 am.
September 1, 2011	Media Advisory: Mayor Rob Ford attending Awards Ceremony	61 Domains	Sent to newsdesk@metronews.ca and to singtao.ca Sept. 1, 2011 at 6:27 pm.

Date	Subject	Distribution	Star Media Group Recipients
September 30, 2011	News Release-Toronto Mayor Rob Ford and Hamilton Mayor Ballard Cup tradition	61 Domains	Sent to newsdesk@metronews.ca and to singtao.ca Sept. 30, 2011 at 5:58 pm.
October 19, 2011	Ombudsman Report	156 Recipients at 51 Domains	Sent to city@thestar.ca to singtao.ca to the gridto.com and to newsdesk@metronews.ca Oct 19, 2011 at 3:41 pm.
October 27, 2011	Statement from Mayor Rob Ford re: his 9-1-1 call	173 Recipients at 45 Domains	Sent to city@thestar.ca to singtao.ca to gridto.com and to newsdesk@metronews.ca Oct. 27, 2011 at 1:18 pm.
November 15, 2011	Announcement out of the Mayor's Office re: Occupy Toronto.	242 Recipients	Sent to city@thestar.ca And to singtao.ca to thegridto.com and sent to: newsdesk@metronews.ca Nov. 15, 2011 at 11:57 am.
November 28, 2011	Media Advisory: Mayor to Speak on 2012 Staff Recommended Budget	209 Recipients	Sent to and singtao.ca and to newsdesk@metronews.ca November 28, 2011 at 8:48 am.
November 29, 2011	Announcement re resignation of the Press Secretary	383 Recipients	Sent to: newsdesk@metronews.ca November 29, 2011 at 12:24 pm
December 6, 2011	Statement from Mayor re: robford.ca domain name	77 Recipients at 44 Domains	Sent to: singtao.ca and the gridto.com and sent to tor@singtao.ca and ed@thegridto.com December 6, 2011 at 4:55 pm
January 23, 2012	Media Advisory: Community Housing Statement	227 Recipients; at 76 Domains	Sent to thestar.ca and to singtao.ca and thegridto.com and to newsdesk@metronews.ca January 23, 2012 at 7:03 pm