



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

Report To Council On Violation of Code of Conduct: Mayor Rob Ford

Date:	November 5, 2013
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

A citizen complained that Mayor Ford contravened Article VI (Use of City Property, Services and Other Resources) in mailing requests for donations to his personal charitable foundation to two registered lobbyists and the President of the Canadian National Exhibition Association (the “CNE”).

An investigation was conducted and confirmed that City property was used to create a mailing requesting private donations. However, it also became clear that the Mayor has ceased to use City property for personal fundraising. As a result, although this report recommends that Council find that Mayor Ford contravened Article VI (Use of City Property, Services and Other Resources) of the *Code of Conduct for Members of Council* (“*Code of Conduct*”) it recommends that no sanction be imposed because the Mayor has followed all advice provided and acted accordingly.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. Council adopt a finding that Mayor Ford breached Article VI of the *Code of Conduct*.
2. Council impose no sanction or take any other action under the *Code of Conduct*.

Financial Impact

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

DECISION HISTORY

On March 5, 2013, a citizen ("the complainant") filed a complaint with the Office of the Integrity Commissioner pursuant to the *Code of Conduct Complaint Protocol for Members of Council* (the "*Complaint Protocol*") and section 160 of the *City of Toronto Act, 2006*.

An investigation was conducted into the complaint. This is a report on that complaint in accordance with the *Complaint Protocol* and section 162(3) of the *City of Toronto Act, 2006*.

ISSUE BACKGROUND

The Initiating Complaint

On March 5, 2013, a formal complaint was made that Mayor Ford had solicited donations to the Rob Ford Football Foundation (the "Foundation") from two registered lobbyists and from the President of the CNE. The complaint alleged a breach of Article VI (Use of City Property, Services and Other Resources) of the *Code of Conduct*.

Identification of a Preliminary Issue

A copy of the complaint was provided to Mayor Ford who responded by letter dated April 25, 2013. In his reply, Mayor Ford asserted that the complaint was based entirely on published media reports which rely, in part, on anonymous sources and contained no first-hand documentary evidence. The Mayor's letter went on to confirm that:

- The Foundation attempts to remove registered lobbyists from its mailing lists and has undertaken to improve its process for doing so.
- The Foundation makes every reasonable attempt to return donations from registered lobbyists if they are received in error.

The Mayor also said that there was no evidence of any personal benefit, or any personal financial gain for use or sale of City developed intellectual property that is the property of the City of Toronto. The Mayor wrote that the complaint was "unfounded, unsubstantiated and without merit."

A copy of the response was provided to the complainant, who responded that the media article had quoted from two named recipients of the Foundation's solicitation letter, the registered lobbyist had confirmed active lobbying, and expressed concerns about the sending of letters to people who have dealings with the City. The other person quoted in the media said it was "awkward because if you're doing business with the city in any fashion, do you feel a sense of obligation?" In addition, in relation to the unnamed lobbyist who had reportedly received a letter, the complainant noted that that person did not want to be identified for "fear of alienating the Ford administration."

The Preliminary Issue

The preliminary issue is whether or not information obtained via the media can provide reasonable and probable grounds for an investigation under the *Code of Conduct*. In order to consider this question, I reviewed the news report, dated February 28, 2013.¹ The complainant had accurately quoted from the report and the two individuals quoted were named. In addition, a photograph accompanying the article showed a partial piece of letterhead from the Rob Ford Football Foundation, with a photograph of the Mayor on the upper right hand corner. A copy of the envelope behind the letter reveals a sticker with the name "Mr. Rob Ford" over a return address that is not a City Hall address.

The *City of Toronto Act, 2006* allows any member of the public to request the Integrity Commissioner conduct an inquiry into whether a member of Council has contravened the *Code of Conduct*. The procedure for making a formal complaint is found within the *Complaint Protocol*. A copy of the *Complaint Protocol* is attached to this report.

Under Part B, 1(3) of the *Complaint Protocol*, the complaint must include "reasonable and probable grounds for the allegation that the member has contravened the *Code of Conduct* and include a supporting affidavit which sets out the evidence in support of the complaint." The provisions state that the material should include the provisions said to have been violated, the facts that constitute the alleged contravention, and contact information for the complainant and witnesses.

Reasonable and probable grounds generally have been interpreted in the criminal law context to mean that there are both subjective and objective grounds to support the laying of a charge.² Reasonable and probable grounds may be based on information that has been learned from other credible sources. A complainant need not have personally witnessed the conduct, nor "prove" that there has been a breach of the *Code of Conduct* in order to meet the threshold under the *Complaint Protocol*.

In this case, I found that there were reasonable and probable grounds as required by the *Complaint Protocol*. The media report referenced in the affidavit was accurately described. The report named identifiable individuals and included a photograph of the letter in question. Fundraising outreach to people with connections to the City of Toronto raised a live issue about whether City resources were employed in the fundraising letters. There is no reason to refuse to investigate a complaint that is based on information available via the media or other electronic means, for example on social media. Instead, all the circumstances will be evaluated in each case to determine whether the threshold has been reached. In this case, I found the threshold had been met.

A request for an investigation should not be held to such a high standard that a barrier is created to investigating *Code of Conduct* matters. In considering the threshold for an

¹ "Mayor Rob Ford still asking lobbyists to donate to his football foundation"

http://www.thestar.com/news/city_hall/2013/02/28/mayor_rob_ford_still_asking_lobbyists

² *Regina v. Storrey*, 1990 CanLII 125 (SCC); 53 CCC (3d) 316; 75 CR (3d) 1; 47 CRR 210; 370 AC 161 (Supreme Court of Canada)

investigation, a number of observations are appropriate. If the threshold is set too high, the public interest could be stymied in enforcing City Council's standards. There are safeguards in place to protect the reputations of members of Council: the Complaint Protocol permits the Integrity Commissioner to discontinue an investigation where it becomes apparent that there are insufficient grounds.³ Where an investigation is completed, the Integrity Commissioner may dismiss the complaint and need not make the matter public, unless exceptional circumstances require a report to Council.⁴ Finally, there is the ability of the member to make representations on whether there has been a breach of the *Code of Conduct*.⁵

This does not mean that every media report will give rise to the objective component that can support the initiation of an investigation. The requirement of reasonable and probable grounds must be interpreted in relation to the specific material and information that accompanies each complaint. This will ensure ongoing confidence by the public, City Council and members of Council that potential breaches will be examined in accordance with the process put in place by Toronto City Council, and with adequate safeguards in place to ensure that unfounded allegations are dealt with appropriately.

Investigation

As a result of the determination that the complaint was within jurisdiction and provided sufficient grounds to investigate, the following investigative steps were taken:

- Review of affidavit and media article referred to in support of the complaint;
- Review of response from Office of the Mayor;
- Meeting with recipients of requests for donations;
- Interviews with selected donors;
- Review of copies of letters of request for donations;
- Meetings with former and current members of staff, Office of the Mayor;
- Requests from City regarding City resources, software for constituency management and training for staff on the software;
- Meetings with the Mayor;
- Collection of information concerning donations to the Foundation during the relevant time period;
- Search of the Lobbyist Registry.

The two persons named in the media report of February 28, 2013 confirmed receipt of the fundraising letters, confirmed the accuracy of their comments reported in the media, and provided copies of the letters they had received.. The letters appeared to match the photograph that formed part of the media report and the letters asked for donations to the Foundation. The letters were on Foundation letterhead and a private return address on a

³ *Complaint Protocol*, s. 3(1).

⁴ *Complaint Protocol*, s. 6(3).

⁵ *Complaint Protocol*, s. 4(3).

sticker was attached to the envelope. One letter was received on January 28, 2013. The other was received in and around early 2013. Neither of the recipients interviewed made donations or corresponded with the Foundation on receipt of the letter of request.

How Was the Mailing Prepared?

A number of members of the Mayor's staff were interviewed.⁶ Staff members confirmed that a mailing was sent out in late December 2012 or in January 2013, prior to the ruling of the Divisional Court in proceedings involving the Mayor under the *Municipal Conflict of Interest Act*.⁷ There was some feeling of urgency to the task: the Mayor asked a number of members of staff to "do as many as they could" before leaving the office that day. Although this was not the first such mailing sent by his staff for donations, it later became clear it was the last.

The mailing was prepared in the Mayor's boardroom at City Hall beginning in the late afternoon and into the evening hours. The stationery was available in the office: it was kept in a cabinet by a desk occupied by a staff member.

The names and addresses of the recipients for the mailing were obtained by way of access to a database which was developed for members of Council and is used by the Office of the Mayor for constituency management (the "Constituency Database"). The Constituency Database manages contacts between elected officials and their constituents by capturing contact information, ward issues identified by constituents and responses from staff. The Constituency Database also contains tools that facilitate mass communication by e mail to inform constituents about developments on issues of greater interest in the ward.

A number of staff members in the Office of the Mayor were trained on the use of the Constituency Database by the City Clerk's Office. The Constituency Database was used to prepare the mailing list for the January 2013 mailing on behalf of the Foundation. A staff member made up the mailing labels by importing information from the Constituency Database into an Excel spreadsheet and from there into a mail merge program in a Microsoft Word program. The number of recipients was estimated at between 500 -1000 persons.

Staff "visually" excluded any known lobbyists from the mailing list. One staff member recalled printing out a copy of registered lobbyists from the City database and removing some names after checking against the list. There was no cross-check with the Office of the Lobbyist Registrar in advance of the mailing. A staff member commented that we "did our best" but acknowledged that names might have been missed. There was no check for City appointees, contractors or staff. The Office of the Integrity Commissioner did not receive any request for advice prior to the mailing, although such a request was made by staff after the matter became public, and a discussion took place with senior staff from the Office of the Mayor at that time about how to ensure future compliance with the *Code of Conduct*.

⁶ This includes both former and present staff members in the Office of the Mayor.

⁷ The decision of the court was released on January 25, 2013.

Some members of the Mayor's staff reported discomfort about working on this mailing. After it was revealed that lobbyists received requests for donations, a senior staff member asked some of those who assisted with the mailing whether or not a "lesson" had been learned from a prior report to Council about refraining from asking lobbyists for donations.

As part of this investigation, the question of whether lobbyists had donated to the Foundation after the mailing was sent out was considered. Foundation records revealed that during the relevant time period there did not appear to have been any donations made directly by lobbyists or clients of lobbyists.

A number of donors who made donations to the Foundation did have relationships with the City of Toronto. A donation for \$1,000.00 came from a development corporation which had been the subject of multiple Ontario Municipal Board and Committee of Adjustment applications involving the City of Toronto on a project that is in its final stages. Another company with a number of ongoing contracts with the City of Toronto made a donation in mid-January 2013. A vendor of record with the City of Toronto made a \$400.00 donation in March of 2013. Two individual donors were connected by appointment or employment to City of Toronto agencies, boards and commissions. These donors confirmed their donations and said that they saw these donations as purely personal in nature.

At the meetings with Mayor Ford to review these findings, he acknowledged he had come a "long way" on this issue. This was apparent from his written reply to the complaint which confirmed that efforts are made to avoid requesting donations from lobbyists and that if donations are received "in error" that these will be returned. The work of the Foundation has been moved off-site to other premises.

The information provided by all witnesses is that this mailing was the last to emanate from the Mayor's office at City Hall. City resources and staff are no longer involved in sending out requests for donations. In addition, Mayor Ford confirmed his intention to avoid contacting lobbyists for donations.

FINDINGS AND APPLICATION OF THE CODE OF CONDUCT

The complaint in this matter is that Mayor Ford improperly used City property to conduct a mailing for his private charitable Foundation, contrary to Article VI of the *Code of Conduct*.

Article VI reads as follows:

VI. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES

No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, Council transportation delivery services and member of Council expense budgets) for activities other than the business of the Corporation. Nor should any member obtain personal financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and

drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.

The investigation into the complaint revealed that in late 2012 or early 2013, Mayor Ford asked members of his staff to prepare a mailing requesting donations to his Foundation. The materials for the mailing were stored in the Office of the Mayor, the mailing was prepared in the Mayor's boardroom and the addresses were obtained from City supplied software and with names of stakeholders and constituents gathered during the operations of the Office of the Mayor. This software was created by the City of Toronto for constituency management and staff members were trained on the use of the software for their duties for the Mayor.

I find that the use of City facilities, in the form of the office facility, software and trained staff support in January 2013 for a private fundraising mailing breached Article VI of the *Code of Conduct*.

There are two additional concerns with the nature of this fundraising mailing. The first is with the inevitable possibility of politician outreach for private donations to developers, City appointees, lobbyists, and City suppliers of services when using data obtained from work for the public. The constituent management system is provided to Members of Council for serving the public and is a City resource that is not to be accessed for private fundraising appeals. There is always the potential for the appearance that donations are being made because of the influence of the office of the elected member of Council, rather than solely for the good of the cause. This confusion was referred to in the media commentary around this issue in which one person interviewed described the request as "awkward." In some cases, it may have no impact. In others it may feel coercive or a necessary part of doing business with the administration. It is significant that the Mayor has moved his private fundraising "off-site" completely and will ensure that his private fundraising efforts will be handled external to City Hall. This will prevent future use of City resources and these additional concerns with private fundraising by public officials.

During our conversation, the Mayor raised the question of how to make sure that lobbyists are not inadvertently included in any further private fundraising efforts. We discussed the availability of the Office of the Lobbyist Registrar to assist his Foundation with searches and navigating the Lobbyist Registry. All steps should be taken to ensure that no donation requests are made to registered lobbyists. Advice was provided on avoiding sending mailings to City suppliers and contractors. This protects the Mayor, the lobbyists/suppliers and the clients of lobbyists. It also demonstrates to the public that there is no connection between donations and successful lobbying or contracting outcomes at City Hall.

In the result, I do not recommend any further sanction. According to all interviewees and the Mayor, this particular mailing was the last in which City resources were employed. The Mayor responded early in the matter through senior staff who requested and received advice on compliance with the *Code of Conduct*. The activities of the Foundation have been moved off-site. The Mayor has agreed to refrain from using City resources for personal fundraising activities. His willingness to accept this advice and to comply with the

Code of Conduct is a mitigating factor in assessing sanction which I commend to Council. I recommend that Council recognize efforts made by members to receive and accept advice and to modify their actions accordingly.

Conclusion

The *Code of Conduct* prohibits Members of Council from using City resources for any purposes other than City business. A clear boundary must be kept between the Mayor's public duties and his private fundraising. The public must be confident that the relationships between elected officials and suppliers, developers and lobbyists are clear and transparent.

City Council is therefore asked to adopt a finding that there has been a breach of the *Code of Conduct* but impose no sanction or take other action.

CONTACT:

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SIGNATURE

Original Signed

Janet Leiper
Integrity Commissioner

JL/ww

Attachment: *Code of Conduct Complaint Protocol for Members of Council*

Attachment 1

CODE OF CONDUCT COMPLAINT PROTOCOL FOR MEMBERS OF COUNCIL

AUTHORITY:

Historic

- (1) Clause No.4 of Report No.2 of the Policy and Finance Committee, March 1, 2 and 3, 2004 as amended by:
 - (a) Clause No.1 of Report No.3 of the Policy and Finance Committee, held on April 25, 26 and 27, 2006; Item CC2.5 as adopted and amended by Council at its meeting held on February 5, 6, 7 and 8, 2007; Item CC11.8 as adopted by Council at its meeting held on July 16, 17, 18 and 19, 2007; and
 - (b) Notice of Motion M148, as adopted by Council at its meeting held on October 22 and 23, 2007.
- (2) This Complaint Protocol for Members of Local Boards (Restricted Definition), Including Adjudicative Boards, was amended and adopted by City Council on July 15, 16 and 17, 2008 (2008 EX22.6, as amended by Council), as amended by.
 - (a) Item EX40.2, as adopted by Council at its meeting held on February 22 and 23, 2010.

Current

- (3) This Code of Conduct Complaint Protocol for Members of Council, was amended and adopted by City Council on October 2, 3 and 4, 2012:

Item CC26.4 as adopted by Council to reflect amendments to the *Public Inquiries Act, 2009*, S.O. 2009, c. 33, Sch. 6 and to reflect Council Amendments to the Constituency Services and Office Budget Policy (formerly the "Councillor Expense Policy") made on July 11, 12 and 13, 2012 (Item EX21.9).

PART A: INFORMAL COMPLAINT PROCEDURE

Individuals [for example, City employees, members of the public, members of Council or local boards (restricted definition)], or organizations [including local boards (restricted definition)] who have identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the *Code of Conduct for Members of Council* (the "Code of Conduct") may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other

- persons present, and any other relevant information;
- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member and the response of the member;
- (5) if applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining pursue the informal complaint procedure before pursuing the Formal Complaint Procedure in Part B.

Municipal pre-election period limitation

If an informal complaint is brought to the attention of the Integrity Commissioner during the pre-election period described in subsection 1(6) of Part B, the Integrity Commissioner may only participate in the informal process after the pre-election period has ended.

PART B: FORMAL COMPLAINT PROCEDURE: Integrity Commissioner

Statutory Authority:

Under section 160 of the *City of Toronto Act, 2006*, City Council (“Council”), a member of council or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a member of council or of a local board (restricted definition) has contravened the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (the “Code of Conduct”).

Requests for Inquiries s.1

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| Complaint | <ol style="list-style-type: none"> 1. (1) A request for an investigation of a complaint that a member has contravened the Code of Conduct (the “complaint”) shall be in writing. (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization). (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has |
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contravened the Code of Conduct and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, the complaint and supporting affidavit should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.

- (4) Staff of the City Clerk's division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.
- (5) Despite subsection (3), the Integrity Commissioner may waive the requirement for an affidavit when the request for an inquiry is from Council or a local board (restricted definition).

Municipal
Pre-election
Period Limitation

- (7) In a municipal election year, a code of conduct complaint respecting a member who is seeking re-election may not be filed with the City Clerk during the period starting on Civic Monday (August 1 in 2010) and ending when a new City Council is deemed organized under section 185 of the City of Toronto Act 2006.

[Note: Deemed organization

185. A new city council is deemed to be organized after a regular election or after a by-election under section 211 when the declarations of office under section 186 have been made by a sufficient number of members to form a quorum.]

Initial Classification by Integrity Commissioner s. 2

File with Clerk

- 2. (1) The request shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).

Deferral

- (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the

classification until an affidavit is received.

No Jurisdiction

- (3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:
- (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
 - (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred for review to the City's Director of the Corporate Access and Privacy office;
 - (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
 - (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Reports

- (4) The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.

- (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation ss. 3 – 9

Refusal to
Conduct
Investigation

3. (1) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.
- (2) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council on any complaint described in subsection (1) except as part of an annual or other periodic report.

Investigation &
Settlement

4. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under section 3, the Commissioner shall investigate and may attempt to settle the complaint.

*Public Inquiries
Act*

- (2) Under subsection 160(2) of the *City of Toronto Act, 2006*, the Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under sections 33 and 34 of the *Public Inquiries Act*.
- (3) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.
5. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*.

- (a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days; and
 - (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.
- Access
- (2) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information described in subsections 160(3) and (4) of the *City of Toronto Act, 2006*, and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.
- Opportunity to Comment
- (3) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.
- Interim Reports
- (4) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- Final Report
- 6. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.
 - (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.
 - (3) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council except as

part of an annual or other periodic report.

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| Lawful Recommendations | (4) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue. |
| Member not Blameworthy | 7. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed. |
| Copies | 8. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned. |
| Report to Council | 9. The City Clerk shall process the report for the next meeting of Council |

Council Review; Costs ss. 10 – 12

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| Duty of Council | 10.(1) Council shall consider and respond to the report within 90 days after the day the report is laid before it. |
| | (2) In responding to the report, Council may vary a recommendation that it impose a penalty, subject to subsection 160(5) of the <i>City of Toronto Act, 2006</i> , but shall not refer the recommendation other than back to the Integrity Commissioner. |
| Payment of Costs | 11. (1) Subject to this section and Council's policy on office expense budget use, claims for reimbursement by a member of Council for costs under this section shall be processed under the <i>Indemnification Policy for Members of Council</i> . |
| | (2) A complainant and a member who are parties to a complaint under this procedure shall each be reimbursed for actual and reasonable legal and related expenses up to a maximum of: |

- (a) \$5,000; or
 - (b) \$20,000, if the Integrity Commissioner has elected to investigate the complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.
- (3) In the case of an application under the *Judicial Review Procedure Act* for judicial review of actions taken on a complaint against a member of council by the Integrity Commissioner, Council :
- (a) where a member made the judicial review application, the member is eligible for reimbursement of legal costs, including additional legal costs in a successful application, that are not covered by the costs awarded by the court, up to a maximum of \$20,000.
 - (b) a member may apply for reimbursement of the legal costs of intervention in a judicial review application where the member's interests are at stake, up to a maximum of \$20,000.
- (4) Council may consider the reimbursement of costs above the limit in subsections (2) and (3) on a case by case basis.
- (5) Costs may be provided in advance in an investigation, if the Integrity Commissioner is of the opinion that the use of a lawyer by one or more of the parties would facilitate the carrying out of the investigation, and subsections (6) and (7) do not apply to the advance costs paid under this subsection.
- (6) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith and the Integrity Commissioner's conclusion is not overturned on judicial review.
- (7) Costs shall only be reimbursed under this section to

the member:

- (a) if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member or that the member is not blameworthy as described in section 7, and the Integrity Commissioner's conclusion is not overturned on judicial review; or
- (b) where Council receives the Integrity Commissioner's report on a violation and determines that it should not take any action.

(8) Any award of costs under subsection (7) shall be contingent on a report from the City Solicitor in consultation with the Integrity Commissioner.

Confidentiality

12.(1) A complaint will be processed in compliance with the confidentiality requirements in sections 161 and 162 of the *City of Toronto Act, 2006*, which are summarized in the following subsections.

(2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of Part V of the *City of Toronto Act, 2006*.

(3) All reports from the Integrity Commissioner to Council will be made available to the public.

(4) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.

(5) The Integrity Commissioner in a report to Council on whether a member has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.