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1. Limits on these submissions

1. These submissions address Lyons' conduct with regard to TCLI specific issues.

2. There was significant evidence heard at TCLI regarding Lyons' relationship with City Councillors and staff. Lyons will also be testifying in TECI about his lobbying activities on behalf of Dell. To be fair to all concerned parties, the City will make its submissions regarding Lyons' general conduct as a lobbyist with the benefit of Lyons' evidence from TECI.

2. Lyons requested that DFS make an improper payment to him

3. Lyons asked Simone and Marentette for \$150,000 for himself or for himself and Jakobek. The City has made extensive submissions on this point in Chapter 17. The City does not intend to repeat them. However, the City relies on that evidence in support of its submissions that Lyons should be criticized for asking Marentette and Simone for \$150,000 for Lyons to secure the contract with the City on favourable terms for DFS. For the reasons set out in Chapter 17, Lyons' position that he was asking for a simple success fee is not credible. Lyons was seeking to obtain money that would be used for improper purposes.

3. Lyons sought and obtained confidential information

4. As described in Chapter 17, Lyons sought and obtained confidential information from City employees and passed that information on to his clients. There is no evidence to suggest that Lyons used improper methods to obtain this information. The City does not suggest that Lyons stole the information. Lyons cultivated relationships with Councillors and staff. He was an influential person around City Hall. Unfortunately, senior City staff members appeared to be all too willing to provide Lyons with confidential information to which Lyons and his clients had no right.

5. Lyons obtained and memorialized confidential information in his:

- a. April 1, 1999 memo to file regarding Liczyk's views on leasing;¹ and
- b. June 10, 1999, memo to file regarding which City employees would be evaluating the bid, the weighting of the criteria contained in the RFQ, which City employees would write the report, residual values for different hardware, and information presented by MFP to the City regarding its bid.²

6. Lyons provided the information contained in both memos to his clients.³

7. In addition, according to Marentette and Simone, shortly after the successful bidder was announced, Lyons provided DFS with a one or two page written report and a comparative spreadsheet of the bidders' lease rate factors.⁴ Simone testified that Marentette obtained the document, provided it to him, and told him that it was confidential.⁵ Simone recalled thinking that it was odd that DFS was provided with the document.⁶ Upon being shown a copy of confidential Appendix C to the P&F Report at the Inquiry, Simone confirmed that it looked "basically like what I saw", although he

¹ COT075439, 17:1:27.

² COT075417, 17:1:29.

³ COT075439, 17:1:27; COT075417-COT075420, 17:1:29.

⁴ Simone 04/14/2003 at 93-94.

⁵ Simone 04/16/2003 at 35.

could not recall whether his document was marked “confidential”.⁷ Marentette corroborated Simone’s evidence on this point. He testified that Appendix C resembled the spreadsheet that Lyons provided, particularly with respect to the layout, but he could not recall whether the document was marked “confidential”.⁸ Marentette testified that the document he was given listed the names of all of the bidders for the RFQ, and the lease rate factors of all the respondents.⁹

8. Lyons stated that he never asked Andrew for a copy of any confidential information relating to the RFQ.¹⁰ Further, he testified that had never seen Appendix C.¹¹

9. Lyons’ DFS file contained no document that resembled confidential Appendix C. Lyons called no evidence that he created the document he provided to DFS. On balance, it is more likely than not that Lyons requested and obtained a confidential City document, which he then provided to his clients. For this, Lyons should be criticized.

10. Again, the City does not suggest that Lyons used inappropriate means to obtain this information. A member of City staff or Council likely gave Lyons this document and he or she should not have done so. Nevertheless, Lyons should be criticized for attempting to obtain confidential documents to assist his client’s private interests. Lobbyists should not ask for or receive confidential information.

⁶ Simone 04/14/2003 at 94.

⁷ COT029335, 6:3:22; Simone 04/14/2003 at 98.

⁸ Marentette 04/17/2003 at 109-110.

⁹ Marentette 04/17/2003 at 111, 159-160.

¹⁰ Lyons 05/13/2003 at 30.

¹¹ Lyons 05/12/2003 at 187.

4. Lyons obstructed the work of the Inquiry and misled the Commissioner

11. On October 15, 2003, the Commissioner released a decision on a motion brought by Commission Counsel regarding some boxes of documents located at Lyons' former law firm Morrison Brown. The following is a summary of the Commissioner's key findings with respect to the efforts of Commission Counsel to secure production of relevant documents from Lyons, and Lyons' lack of co-operation in response:

- a. Lyons was served with a summons for TCLI in August 2002, and with a second summons in December 2002. His obligation in responding to the summonses included an obligation to obtain all potentially helpful material from Morrison Brown and provide it to Commission Counsel.
- b. On February 14, 2003 Commission Counsel wrote to Lyons' counsel stating the expectation that Lyons would have sought relevant documents from Morrison Brown.
- c. By March 2003, Commission Counsel had received no assurance that either Lyons or his counsel had searched for material at Morrison Brown Sosnovitch and consequently, on March 7, 2003, Commission Counsel issued a summons to that law firm. Morrison Brown produced a large amount of potentially helpful material pursuant to the summons, much of it located at the firm's off-site storage facility.
- d. Under oath, in his evidence before the Commissioner, Lyons testified that his DFS file was probably destroyed on his instructions. However, among the documents produced by Morrison Brown was a file relating to DFS, and Morrison Brown had no record of any such instruction by Lyons. Further, Lyons's statement that the DFS file was probably destroyed on Lyons' instructions was contrary to the policy of Morrison Brown that documents be returned to the client or put in storage.

- e. Under oath, Lyons testified that he did not use long-term storage facilities because they were too expensive. However, when he left Morrison Brown, he in fact put 21 bankers' boxes of files, including the DFS file, into the firm's long-term storage facilities.
 - f. Despite his denial about using storage facilities because they are too expensive, Lyons knew that he had boxes in storage at Morrison Brown. In July 2002 Morrison Brown advised Commission Counsel that "we did send two boxes of Mr. Lyons' personal files to Mr. Lyons at his request some time in the calendar year 2002."
 - g. Under oath, Lyons repeatedly testified that he searched for the DFS file and asked his assistant to verify with Morrison Brown whether there was electronic data. However, Morrison Brown has written that to its knowledge Lyons never requested any materials relevant to the Inquiries.
 - h. Under oath, Lyons testified that his assistant had learned from Morrison Brown that electronic data had been "wiped clean" when he left the firm. This explanation would be unusual at a law firm, was contrary to Morrison Brown's record retention policy, and was contrary to the fact that Morrison Brown's search did indeed reveal the existence of relevant electronic data.¹²
12. Lyons' evidence under oath was also contradicted by his former employee Navjeet Mangat ("Mangat"), who filed an affidavit with the Inquiry which stated that:
- a. Lyons knew that some of his Dell files could be in storage;
 - b. Lyons asked Mangat to try and locate his DFS file from storage;

¹² Commissioner's Reasons dated October 15, 2003

- c. Morrison Brown told Mangat that they could not retrieve files from storage without a file number, which Mangat did not have;
- d. Mangat relayed to Lyons what Morrison Brown told him;
- e. Lyons never instructed Mangat to destroy a Dell or DFS file or any other file; and
- f. there was never a policy or practice to destroy client files.¹³

13. Lyons was neither candid with Commission Counsel, nor with the Commissioner. He failed to discharge his obligations to produce all relevant documents to the Commission. He misrepresented the steps he had taken to search for the documents. He misrepresented his practice with respect to document retention and destruction. This lack of candour is extremely troubling and should be criticized by the Commissioner.

¹³ 86:1:11.