



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

**Report on Rejection of Complaint of Violation of the
Code of Conduct**

Date:	September 8, 2008
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

A member of the public complained that Councillor Adrian Heaps had violated the *Code of Conduct for Members of Council* (“*Code of Conduct*”). I rejected that complaint. Section 7(3) of Part B of the *Code of Conduct Complaint Protocol* (“*Complaint Protocol*”) provides that only “in exceptional circumstances” will the Integrity Commissioner report to Council when he has dismissed a complaint. In this instance, the Councillor has legitimately exercised the option of making the report available to the media. Once that took place, it was my view that the report on the complaint should become an official public document on the Integrity Commissioner’s website. This corresponded with the wishes of the Councillor. The only way of accomplishing this and dealing with these “exceptional circumstances” is for the Integrity Commissioner to report on the complaint to Council.

RECOMMENDATIONS

That Council receive this report for information.

Financial Impact

This report will have no financial impact.

DECISION HISTORY

The complaint in this matter was filed on May 20, 2008. I dismissed the complaint in a report dated August 18, 2008 and forwarded my report on the complaint to the parties through the City Clerk as provided for in Section 9 of the Complaint Protocol. The existence of this report became public knowledge through the media some time in the week of September 1, 2008.

ISSUE BACKGROUND

The complainant, John Lyras sought a compliance audit of Councillor Heaps' 2006 election campaign expenditures as provided for in the *Municipal Elections Act*. He continues to pursue this matter in the courts. Subsequently, he alleged that Councillor Heaps violated Article VIII of the *Code of Conduct* by improperly influencing staff on the disposition of a property that Mr. Lyras had wanted to purchase from the City. There was no evidence to support that allegation and I rejected the complaint.

At the time, I determined that there were no exceptional circumstances justifying a report to Council on the complaint other than as part of "an annual or other periodic report": Section 7(3) of the *Complaint Protocol*. As a consequence, the report would not be a public document unless one of the parties chose to make it so, there being no statutory or other prohibition on that course of action. Otherwise, it is only reports to Council on complaints that become public documents: *City of Toronto Act, 2006*, section 162(3).

When Councillor Heaps revealed the report to the media, it raised for me the issue whether there were now exceptional circumstances justifying a report to Council on this complaint.

COMMENTS

If a party to a complaint of violation of the *Code of Conduct* chooses to exercise her or his right to reveal a report, any part of a report, or information about its contents to the media, there is no longer any reason to otherwise preserve the privacy of that report. Indeed, where the revelation is partial or incomplete, it may be absolutely critical to the interests of the parties and the process to ensure that the full report is publicly and officially available. In this instance, there is the added dimension that this complaint involved allegations that the Councillor had acted vindictively because the complainant had exercised his civil right to seek a compliance audit of the Councillor's 2006 election campaign expenses, a proceeding that has been reported widely in the media. It is therefore understandable that the Councillor would want any suggestion of that put to rest publicly. In those circumstances, I formed the view that there were compelling reasons for making the report publicly available on my website. The only way of achieving this is within the context of a report to Council on the complaint. Section 162(3) makes that clear. I therefore determined that I should submit a report to Council with the complaint decision annexed.

CONTACT

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SIGNATURE

David Mullan, Integrity Commissioner

ATTACHMENTS

Appendix I: Integrity Commissioner Decision on Complaint against Councillor Heaps

APPENDIX I

Date: August 18, 2008
To: Ulli Watkiss, City Clerk
From: David Mullan, Integrity Commissioner
Subject: Report on Complaint

Nature of Complaint:

John Lyras complained that Councillor Adrian Heaps violated Article VIII (“Improper Use of Influence”) of the *Code of Conduct for Members of Council* (“Code of Conduct”). More particularly, he alleged that Councillor Heaps used his influence to ensure that the City did not sell a property to Mr. Lyras and that this action was taken in retaliation for Mr. Lyras filing an application for a compliance audit of Councillor Heaps’ election campaign expenses.

Summary of Findings:

I have concluded that the Councillor did not violate the Code of Conduct. While Councillor Heaps was involved in decisions taken by the City with respect to the property in question, there is no evidence to support the allegation that this was in any way motivated by a desire on the Councillor’s part to retaliate against Mr. Lyras for filing the compliance audit application. More generally, there was no evidence that Councillor Heaps acted in any way improperly in his interactions with City staff in relation to the disposition of this property.

Facts:

John Lyras owns a property at 697 Danforth Road. It abuts 699 Danforth Road, a property owned by the City of Toronto as an unopened road allowance. On July 25, 2006, Mr. Lyras wrote to David Twaddle, Acting Manager, Traffic Planning/Right of Way Management inquiring whether 699 Danforth Road might be available for purchase. He indicated that he wanted the land in order to build low density housing.

On August 10, 2006, Mr. Twaddle replied identifying the process under the *Municipal Act* by which this unused highway could be stopped-up, closed and conveyed. Part of that process involved seeking consent from all owners of land abutting 699 Danforth Road. In early September, Mr. Twaddle assisted Mr. Lyras in drafting a consent form. However, Mr. Lyras did not take the matter any further at that time.

Subsequently, on July 17, 2007, Shazia Shaikh contacted Access Toronto asking whether 699 Danforth Road might be available for the development of a community garden as part of the City’s “Clean and Beautiful Initiative.” This request reached Mr. Twaddle on

July 19, 2007. He then wrote to Mr. Lyras on July 27, 2007 asking whether he was still interested in applying to have the property stopped-up, closed and conveyed. He requested an early answer.

When there was no reply from Mr. Lyras, Mr. Twaddle contacted the Ward Councillor's Office in early September to inform Councillor Heaps of Ms. Shaikh's Community Garden proposal, forwarding the correspondence to that point. He also told Ms. Shaikh that she should contact Diane Hilliard in Councillor Heaps' Office in connection with the proposal. In that context, Mr. Twaddle told Ms. Hilliard that Mr. Lyras had expressed interest in securing the property and, on September 18, sent Councillor Heaps a copy of his letter of August 10, 2006 to Mr. Lyras. (This would normally have happened when the letter was initially sent but, at that time, the former Ward Councillor had resigned.)

Ms. Shaikh then contacted Councillor Heaps' Office by letter dated September 11, 2007 requesting his assistance on the Community Garden proposal. This was followed on September 27 by the submission of drawings and an action plan. At that point, Councillor Heaps assigned the file to Caroline Law in his Office. Thereafter, Ms. Law had primary responsibility for carriage of the file and actively promoting the proposal with City Staff on behalf of Ms. Shaikh and her group. As part of these efforts, Councillor Heaps contacted Mr. Twaddle by email on October 18, 2007 informing him of his support for the Shaikh proposal and designating Ms. Law as his point person. Mr. Twaddle then informed Councillor Heaps (also by return email) that he would write to Mr. Lyras to let him know that the property was no longer available. This, he did on October 22, 2007. Approximately, a week later, Mr. Lyras telephoned Mr. Twaddle to inquire about the status of the property and was told that there was a proposal to use the land as a park and that Councillor Heaps' office was promoting this project. Mr. Twaddle has no recollection of conveying that information to the Councillor, Diane Hilliard or Caroline Law. All three also said that Mr. Twaddle did not contact them about this.

While these events were unfolding, Mr. Lyras, on May 2, 2007, had filed an application for a compliance audit of Councillor Heaps' campaign expenses during the 2006 Municipal Election. The City's Compliance Audit Committee rejected this application on July 16, 2007. Mr. Lyras then appealed against that decision to the Ontario Court of Justice. At its meeting of September 18, 2007, the Compliance Audit Committee resolved to instruct the City Solicitor to appear on its behalf at the pre-trial proceedings scheduled for October 15.

Over the next few months, Ms. Law continued to work on this file in conjunction with the Parks, Forestry and Recreation Department which was evaluating the feasibility of the proposal. Eventually, some time in March 2008, as a consequence of the Department's concerns about the project, it was abandoned. In the course of correspondence about the project, an official in the Department had expressed the view that the best use of the property would be development by "Homes [*sic*] for Humanity". Coincidentally, Councillor Heaps had had approaches, most recently on December 28, 2007, from a Director of the Toronto Community Housing Corporation wanting to know whether there

was any surplus land available in his Ward that would be suitable for affordable housing and identifying Habitat for Humanity as a potential participant in such a project.

On April 21, 2008, the Councillor wrote to the Director of the Affordable Housing Office identifying and recommending 699 Danforth Road as a suitable venue for Habitat for Humanity housing. He was also in contact with Facilities and Real Estate which in turn contacted Mr. Twaddle. In response, on April 22, 2008, Mr. Twaddle stated the land was surplus to Transportation's needs and also pointed out that the adjacent property owner had been and might still be interested in acquiring the land. Thereafter, in May 2008, the Affordable Housing Office started the process of having the land declared surplus with a view to securing the site for Habitat for Humanity.

At that juncture, on May 20, 2008, Mr. Lyras filed his complaint with my office. I served the complaint on Councillor Heaps and the parties then exchanged documents outlining their position on the facts and the allegations. I then contacted Mr. Twaddle and the two relevant members of the Councillor's staff to ascertain whether I needed to conduct a more formal investigation. On the basis of the written exchanges and those conversations, I determined that I had sufficient information to make my determination.

Relevant Provisions:

Article VIII of the Code of Conduct provides as follows:

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.

Analysis:

It is a very serious allegation to complain that a Member of Council has used the influence of his office for the purposes of retaliating against a member of the public for exercising his legal right to apply for a compliance audit of that Councillor's election campaign expenses. My investigation of this complaint has not revealed any direct evidence of such wrongdoing. The only basis for a finding of responsibility rests on whether the facts as established by my investigation justify the drawing of an inference that the Councillor engaged in improper use of influence as proscribed by Article VIII of the Code of Conduct. It is my finding that there is no basis for drawing such an inference.

The initiative for the proposal that 699 Danforth Road be used as a community garden came from Shazia Shaikh. She approached Access Toronto who put her in touch with Mr. Twaddle. Mr. Twaddle then told her to work on her proposal through Councillor Heaps' Office and, with that in mind, he sent the correspondence to Dianne Hilliard in Councillor Heaps' Office. This was the first occasion on which either Councillor Heaps or Ms. Hilliard knew of Ms. Shaikh or the proposal for a community garden. At that point, Mr. Twaddle, not having heard from Mr. Lyras for ten months had no reason to believe that Mr. Lyras continued to be interested in the process of having 699 Danforth Road being declared surplus to the City's needs. Nonetheless, before he passed the correspondence

on to Councillor Heaps' Office and informed Ms. Hilliard that Mr. Lyras had been interested in trying to secure the property, Mr. Twaddle wrote to Mr. Lyras on July 27, 2007 asking him if he was still interested in pursuing the acquisition of 699 Danforth Road. That letter went unanswered.

It is certainly true that, by early to mid-September 2007, Councillor Heaps through Dianne Hilliard was aware of the fact that Mr. Lyras had expressed an interest in acquiring 699 Danforth Road and, indeed, on September 18, received a copy of Mr. Twaddle's letter to Mr. Lyras, dated August 6, 2006. However, there was nothing in the information available to either Councillor Heaps or Mr. Twaddle at that stage that Mr. Lyras was in any way still interested in acquisition of the property. That only became known to Mr. Twaddle in late October 2006 when Mr. Lyras contacted him upon receipt of Mr. Twaddle's letter of October 22 to the effect that the land was no longer available. However, as already noted, Mr. Twaddle has no recollection of ever conveying that information to Councillor Heaps, Ms. Hilliard or Ms. Law, a recollection corroborated by those three.

Given this, there is no evidence to support an inference that Councillor Heaps' initial support of Ms. Shaikh's proposal was in any way retaliation against Mr. Lyras for applying for a compliance audit. There is also no evidence that Mr. Twaddle informed Councillor Heaps' Office after Mr. Lyras had contacted him by telephone on or about October 29, 2007 in response to Mr. Twaddle's letter of October 22. In any event, by that point, the Shaikh proposal had already gone to Parks, Forestry and Recreation and was being handled in Councillor Heaps' office primarily by Ms. Law. In those circumstances, it is simply not possible to draw an inference that Councillor Heaps' continued support of Ms. Shaikh's proposal was now motivated by a desire to get back at Mr. Lyras. This is particularly so, as contrary to Mr. Lyras' assertions, there was nothing otherwise improper in the Councillor using the influence of his office to promote with City Staff a proposal aimed at the beautification of a property in his Ward.

Indeed, the same is true of his promotion of the Habitat for Humanity Proposal once the community garden project proved not to be realistic. Once again, this proposal did not come out of nowhere. Councillor Heaps had an active file in his office with respect to surplus properties for affordable housing. Moreover, correspondence within Parks, Forestry and Recreation had identified Habitat for Humanity housing as a more appropriate use of the land than a community garden. Mr. Lyras suggested that, at this point, his own proposal to acquire the land should have been resurrected. In fact, Mr. Twaddle, in his communication with Facilities and Real Estate, informed that Department that there might still be other interest in the land, but it went no further than that. However, this is not surprising. Mr. Lyras stated in his affidavit that he intended to construct low income housing on the property. However, there is no evidence to support the contention that the City or Councillor Heaps was aware of that. In his initial letter of July 25, 2006, Mr. Lyras refers to "low density housing", not "low income housing." Moreover, Mr. Twaddle has no recollection of Mr. Lyras ever stating in the course of their various communications that he was intending to build low income housing if he secured 699 Danforth Road. In all of those circumstances, I am unable to draw any

inference that Councillor Heaps' support of the Habitat for Humanity alternative proposal (once the community garden project fell through) was motivated by a desire to make Mr. Lyras pay for filing a compliance audit application.

Conclusions:

Leaving aside the matter of the compliance audit application, there was nothing at all improper in Councillor Heaps' involvement in the redevelopment of 699 Danforth Road. Promoting a community garden with appropriate City Staff and then Habitat for Humanity affordable housing in one's Ward is a perfectly legitimate and even laudable role for a Member of Council to play. That would have been so even had there been another proposal for the use of the land. Of course, Councillor Heaps' otherwise acceptable behaviour would have constituted a violation of the Code of Conduct if it had been directed towards preventing adoption of the other proposal for the acquisition of the land in whole or even in part because the proponent was exercising his civil right to make a compliance audit application against the Councillor. Indeed, it may not have been unreasonable for Mr. Lyras to view the matter with some suspicion and concern. However, the facts simply do not support that interpretation of the events in question here. At the time of Councillor Heaps' initial involvement in Ms. Shaikh's proposal for a community garden, Mr. Lyras' proposed application was seemingly going nowhere and he did not bother to correct that impression in response to Mr. Twaddle's letter seeking clarification of his intentions. Thereafter, there is nothing in the evidence to sustain any contention that the character of Councillor Heaps' interest in the land changed once Mr. Lyras communicated with Mr. Twaddle on or about October 29, 2007 and that he was now motivated to exact some form of revenge against Mr. Lyras.

David Mullan
Integrity Commissioner