



INTEGRITY COMMISSIONER REPORT FOR INFORMATION

Report to Council Regarding Two Alleged Breaches of Confidentiality

Date:	September 5, 2012
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

On September 21 and 22, 2011, City Council requested that the Integrity Commissioner investigate two alleged breaches of confidentiality. The first took place at an Executive Committee meeting on July 28 and 29, 2011. The second related to confidential information provided to City Council on September 21 and 22, 2011.

After an investigation into both allegations, I conclude that the Executive Committee incident did not involve any violation of the confidentiality provisions of the *Code of Conduct for Members of Council* (the "*Code of Conduct*"). The breach of confidentiality that took place at the time of the Council meeting could not be substantiated because there was insufficient information to establish the details or the source of the alleged breach.

RECOMMENDATIONS

The Integrity Commissioner recommends that City Council receive this report for information.

FINANCIAL IMPACT

This report will have no financial impact.

DECISION HISTORY

On September 21 and 22, 2011, City Council adopted a motion on consent (CA8.4) that the Integrity Commissioner investigate the circumstances of an alleged breach of confidentiality at an Executive Committee meeting held on July 28 and 29, 2011 with respect to the short listing of candidates by the Civic Appointments Committee.

During the September Council meeting, a second motion was adopted requesting that the Integrity Commissioner investigate an alleged leak of confidential personal information related to the public appointments before City Council at the September 21 and 22, 2011 meeting. The motion requested that the Integrity Commissioner conduct this investigation in conjunction with the request for investigation made by Item CA8.4.

Under s. 160 of the *City of Toronto Act, 2006*, City Council may request an inquiry by the Integrity Commissioner into whether a member of council has contravened the *Code of Conduct*.

ISSUE BACKGROUND

Complaints to the Integrity Commissioner may be investigated in one of two ways. The first is by way of a formal complaint, by an individual who has sworn an affidavit that sets out reasonable and probable grounds to allege that a member of Council, local Board or adjudicative Board has breached the relevant *Code of Conduct*. The second method is by way of a motion adopted by City Council which requests an investigation by the Integrity Commissioner.

In this case, both investigations were initiated by way of motion adopted by City Council.

COMMENTS

INVESTIGATION

For the purposes of this report, the allegation related to the July 28, 29, 2011 meeting of the Executive Committee will be referred to as the "Executive Committee" allegation and the allegation related to the September 21 and 22, 2011 Council meeting will be described as the "City Council" allegation. Both motions were phrased generally and did not name any individuals. Accordingly, and taking into account the findings on both matters, no individuals are named in this report. This is in accordance with the *City of Toronto Act* ("COTA"), ss. 161-162.

The following investigative steps were taken:

- Review of City Council decision of September 21 and 22, 2011;
- Review of Minutes of City Council meeting of September 21 and 22, 2011;

- Review of tape of the proceedings at Executive Committee on July 28 and 29, 2011;
- Review of tape of the proceedings at City Council September 21, and 22, 2011;
- Request for follow-up material and information from City Clerk's office;
- Request for follow-up information and detail from the mover of the motion;
- Interviews with Councillors who spoke to the City Council allegation of a leak of confidential material;
- Interviews with Councillors who were identified as potentially having relevant information on the leak of names in the City Council allegation;
- Interview with Councillors in attendance at the Executive Committee related to the *in camera* information allegedly improperly disclosed;
- Interview with a citizen regarding the Executive Committee allegation.

FINDINGS

The "Executive Committee" Allegation

At the meeting of Executive Committee on July 29, 2011, deputations were being heard by the Committee. During that process, a Councillor asked a deputant a question about the nature of the appointment process for candidates to a City board. Shortly after posing the question, another Councillor approached the first Councillor and said something to the first Councillor. The first Councillor ceased the line of questioning and moved to another subject.

Members of the Executive Committee discussed the exchange following the meeting and expressed concern as to whether *in camera* information from a Civic Appointments Committee meeting had been improperly disclosed to the first Councillor. Accordingly, a motion was brought to City Council at its September 21 and 22, 2011 meeting to have the matter investigated.

The investigation revealed that the first Councillor asked the question of the deputant about the nature of the appointment process as a result of information provided by a citizen who had been a former member of the Board who had contacted the Councillor with concerns. This was confirmed by the citizen in question. When the Councillor asked the question, it was based on these concerns and not on confidential information received or obtained from an *in camera* session of the Civic Appointments Committee.

The second Councillor who approached the first Councillor during the meeting confirmed that the exchange had been to flag for the first Councillor the potentially confidential nature of the question. This advice was taken by the first Councillor, who stopped this line of questioning of the deputant.

The "City Council" Allegation

During debate at its meeting of September 21 and 22, 2011, a Councillor advised Council that it had been brought to that Councillor's attention that a member of the press had a list of names being recommended to City Council for appointment. These recommendations had been circulated among members of Council on confidentially marked paper, for multiple appointments to City boards. Another Councillor stated that resumés of the individuals being recommended for appointment were being circulated via "Twitter" while Council was in session.

As a result of these comments, Council adopted a motion to request an investigation into the matter. Interviews were conducted with those who raised the concern. Information received revealed that the sources of information were second hand. None of the Councillors were able to provide information as to the particular Boards to which the leaked names related. Copies of the "Tweets" were not kept or noted, nor was the source of the "Twitter" feed noted. The member of the news media who allegedly had copies was not identified. An internet search for the leaked names or a story about the leaked names did not provide further information. It should be noted that in the past, such interviews have met with failure to cooperate from members of the media who do not reveal the names of sources.

ANALYSIS

The "Executive Committee" Allegation

As a result of the facts found above, I conclude there was no breach of the *Code of Conduct* as a result of the question asked in Executive Committee on July 29, 2011. A Councillor asked a question based on a concern raised by a constituent. A follow-up with that constituent confirmed the Councillor's source. The fact that it could have appeared to be confidential material from an *in camera* meeting was assumed by others. One Councillor took the proactive step of so advising the Councillor. The Councillor moved on with other areas of questioning.

The "City Council" Allegation

Neither the motion, nor the references in the Council minutes provided details of the information leaked, the appointments to which these leaks related or descriptions of the inappropriate "Tweets" or publications. There was no information that tended to show

that a Councillor was responsible for a leak of confidential information. Accordingly, no violation of the *Code of Conduct* by a member of Council could be established.

Councillors and their staff are reminded that the confidentiality provisions in the *Code of Conduct* include matters discussed *in camera*, communications from constituents and personal information obtained as a result of their work. Part of the role of a Councillor is being familiar with these responsibilities. A copy of Article V from the *Code of Conduct* is appended to this report. In addition, the definition of "personal information" from the *MFIPPA* is also appended, because it is referred to in the *Code of Conduct*. The significance of the obligation to keep confidences is multi-faceted. Breaches affect the public confidence, the City's ability to do business, the reputations of others and commercial interests. Councillors are entrusted by the public with confidential and sensitive information. This trust is strengthened whenever Council demonstrates its intention to ensure that confidential material remain confidential.

CONTACT

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SIGNATURE

Janet Leiper, Integrity Commissioner

Attachments:

1. Article V – *Code of Conduct for Members of Council*
2. Definition of “personal information” from the *MIFIPPA*

Attachment 1 – Article V of the *Code of Conduct for Members of Council*

V. CONFIDENTIAL INFORMATION

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

The *City of Toronto Act, 2006* allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the *Code of Conduct*, “confidential information” also includes this type of information.

No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

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

Under the Procedures By-law (passed under section 189 of the *City of Toronto Act, 2006*), a matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations, of the in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.

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

- items under litigation, negotiation, or personnel matters;
- information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);
- price schedules in contract tender or Request For Proposal submissions if so specified;
- information deemed to be “personal information” under the *Municipal Freedom of Information and Protection of Privacy Act*, and

- statistical data required by law not to be released (e.g. certain census or assessment data).
- Members of Council should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

Attachment No. 2 – Definition of “personal information” from the MFIPPA, R.S.O. 1990, Chapter M.56

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual; ("renseignements personnels")