

Report on the Circumstances of a Breach of Confidentiality Regarding Item 39.10

Date: June 10, 2019

To: City Council

From: Valerie Jepson, Integrity Commissioner

Wards: All

SUMMARY

On May 22, 2018, City Council requested that the Integrity Commissioner, in consultation with the City Manager, investigate the circumstances of a breach of confidentiality in regards to Item 39.10 and to report back to City Council at the July 23, 24 and 25, 2018 meeting. This report responds to that request.

The Council request relates to media reports that indicated that a confidential investigation report provided to City Council was provided to the media. It is contrary to Article V (Confidential Information) of the *Code of Conduct for Members of Council* to disclose this kind of information.

Immediately upon receipt of the request, I determined that I could not meet the deadline requested due to the workload in the Office at the time. In consideration of the Office's workload at the time, the information provided in support of the request and the Office's prior experience investigating similar issues, I did not commence any special inquiry but remained alert to evidence of the breach in the context of another related inquiry: the inquiry into whether any members of the Toronto Parking Authority or the Emery Village Business Improvement Area Boards contravened the Code of Conduct (the "TPA Inquiry").

I obtained insufficient information in the TPA Inquiry to assist with determining whether any member of Council was a source of the disclosure. Without further specific information about the source of the leak, it is my view that there are no more prudent or reasonable steps to be taken about this matter.

Disclosure of confidential information is a clear and serious contravention of the Code of Conduct. I encourage City Council as a whole, individual members of Council and their staff and staff in the Toronto Public Service to be vigilant about confidential information. If any of person has specific information about disclosure of confidential information to

any source, whether it be in a media outlet or not, I encourage them to come forward directly to the Integrity Commissioner. Under the new Complaint and Application Procedures, the Commissioner has greater discretion to protect whistleblowers. If members of Council, staff or otherwise are not coming forward for fear of reprisal, they should inform the Commissioner of this concern so that the matter can be dealt with in a way that protects the person coming forward with the information.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council receive this report for information.

FINANCIAL IMPACT

This report has no financial impact.

DECISION HISTORY

On May 22, 2018, City Council requested that the Integrity Commissioner, in consultation with the City Manager, investigate the circumstances of a breach of confidentiality in regards to Item 39.10 and to report back to City Council and the July 23, 24 and 25, 2018 meeting.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.MM41.2>

COMMENTS

Request

On May 22, 2018, City Council requested that the I, in consultation with the City Manager, investigate the circumstances of a breach of confidentiality in regards to Item 39.10 and to report back to City Council and the July 23, 24 and 25, 2018 meeting.

The Council request relates to media reports that indicated that a confidential investigation report provided to City Council was provided to the media. It is contrary to Article V (Confidential Information) of the *Code of Conduct for Members of Council* to disclose this kind of information.

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Discussion

On at least three prior occasions, City Council has requested the Office of the Integrity Commissioner to determine the source of alleged breaches of this obligation on the

basis of newspaper reports evidencing that disclosure occurred. In none of these cases was an investigation able to determine the identity of the discloser.

The most recent case involved the publication in a newspaper of confidential recommendation of appointments to Build Toronto (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.CC55.4>). Commissioner Leiper conducted an investigation through a variety of means including obtaining declarations from members of Council as well as requests to the media outlet in question. Through legal counsel, the media outlet in question advised that the reporter would refuse to answer questions about the source of the information. The Commissioner sought advice from the Office of the City Solicitor about whether there was a basis to challenge the media outlet's position. Although the outcome could not be predicted, litigation was to be expected. She sought direction from City Council, but no further action was requested.

The case before me is similar to the one before Commissioner Leiper in that the number of possible sources of the disclosure of confidential information was large and that the only evidence of disclosure was the publication of the information. Based on the information contained in the referral, I determined that there was no reasonable prospect of success to identifying the source of the disclosure and that it was reasonable to expect that the media outlets in question would respond to requests for evidence in the same fashion. In making this decision, I considered the finite resources of the Office and the fact that due to the election and the changed ward boundaries, many of the possible subjects are no longer City councillors.

However, because the confidential information disclosed related to the TPA Inquiry, an investigation into whether any members of the Toronto Parking Authority of the Emery Village Business Improvement Area Boards contravened the Code of Conduct, I remained alert to the specific concern in the context of that inquiry. Although I was attentive to the issue, I have not obtained sufficient information to determine the source of the disclosure or if there was one.

I informed, and consulted with, the Office of the City Manager about my approach in relation to this referral and no concerns were raised.

Disclosure of confidential information is a clear and serious contravention of the Code of Conduct. I encourage City Council as a whole, individual members of Council and their staff and staff in the Toronto Public Service to be vigilant about confidential information. If any person has specific information about the disclosure of confidential information to any source, whether it be in a media outlet or not, I encourage them to come forward directly to the Integrity Commissioner. A media report that evidences that the disclosure has occurred will not likely be sufficient to commence an inquiry.

Under the new Complaint and Application Procedures, the Commissioner has greater discretion to protect the identity of those who come forward with information. If members of Council, staff or otherwise are not coming forward for fear of reprisal, they should inform the Commissioner of this concern so that the matter can be dealt with in a way that protects the person coming forward with the information.

CONTACT

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SIGNATURE

Valerie Jepson
Integrity Commissioner

ATTACHMENTS

None.