



# **Report Regarding the Conduct of Former Councillor Justin Di Ciano**

**Valerie Jepson  
Integrity Commissioner**

**July 9, 2019**

## Introduction

A member of the public (the "Complainant") filed a formal complaint on October 31, 2018, alleging that former Councillor Justin Di Ciano (referred to as "Councillor Di Ciano" in this report) contravened Article VII (Election Campaign Work) of the *Code of Conduct for Members of Council* ("Code of Conduct").

The Complainant asserted that on Saturday, October 20, 2018, at 10:43 am, he received an email from a Gmail address with Councillor Di Ciano's name that expressed the Councillor's support for a candidate in the October 22, 2018 municipal election. The Complainant said that he received the email at an address he used to sign up for Councillor Di Ciano's constituency newsletter, but which he had never provided to Councillor Di Ciano for any other purpose. He said that he was "aware of multiple other recipients" who had similar concerns.

The email in question was sent using a MailChimp service, copyright "2018 Community Organizer", indicating that recipients received the email because they "opted in to receive communication from Justin Di Ciano." The return contact information was for "Community Organizer" and listed a residential address.

I provided the complaint to Councillor Di Ciano for response. Councillor Di Ciano denied that he contravened the Code of Conduct and stated that the October 20 email was sent in his personal capacity. Councillor Di Ciano said that he did not use any City resources to send the email in question and that he obtained the Complainant's email address from a source other than his constituency office.

In a reply, the Complainant disputed the possibility that he provided the Councillor with his email address other than for the purpose of receiving information from the Councillor's constituency office.

## Investigation Steps

I initially tried to resolve the complaint by attempting to address the threshold issue of whether the Complainant had in fact provided Councillor Di Ciano with his email address prior to him becoming a City councillor. The Councillor searched for records to support this contention, but he has been unable to produce any such records or evidence.

Using the authorities set out in the *City of Toronto Act, 2006*, I obtained email records from the Councillor's office. I also reviewed the expenses claimed by Councillor Di Ciano for his constituency office, obtained additional email records from the Complainant and interviewed one former member of Councillor Di Ciano's staff.

At the conclusion of the inquiry in May 2019, I provided Councillor Di Ciano with a Proposed Statement of Findings and, with the assistance of legal counsel, he made submissions in response in early July. These submissions are described and addressed throughout the report as necessary.

## Findings of Fact

Councillor Di Ciano's term as a member of Council began on December 1, 2014. Until May 2016, the Councillor's office issued several newsletters in a PDF format to an email distribution list, using the "Councillor\_DiCiano@toronto.ca" account. The first time that the Complainant was a recipient of a newsletter from the Councillor\_DiCiano@toronto.ca account was June 18, 2015.

On May 31, 2016, a MailChimp account was created for the Councillor's office. MailChimp is an emailing service. It enables users to input contacts directly or to create a platform that allows users to sign up and control their inclusion on a particular mailing list. MailChimp is marketed as a service that helps users "collect data about contacts and turn those insights into action", for example.<sup>1</sup>

Councillor Di Ciano was reimbursed for using his MailChimp account for newsletters from the Constituency Services and Office Budget Policy (the "CSOB" Policy) on a monthly basis from June 2016 to July 2018. He claimed \$1510.97 (in total) to maintain the MailChimp account.

The Complainant's email address was uploaded into the Councillor's constituency MailChimp account in early June 2016. From July 6, 2016 forward, the Complainant received several newsletters from the Councillor's MailChimp account.

On October 19, 2018, a staff member in Councillor Di Ciano's office exported the contact names from the Councillor's MailChimp account. The next day, the October 20 email supporting a candidate in the municipal election was sent. The staff member had

---

<sup>1</sup> See: <https://mailchimp.com/why-mailchimp/>

no role in relation to sending the October 20 email, and there is no evidence before me to suggest that the October 20 email was sent using the City of Toronto IT platform.

Councillor Di Ciano steadfastly maintains that he was in possession of the Complainant's email address prior to becoming an elected official. As noted, he has searched but is unable to produce personal records to support this contention. The Complainant steadfastly denies that he provided the particular email address in question to Councillor Di Ciano for any reason other than to be included on the constituency mailing list. He stated so in his original complaint, which was by way of a sworn statement.

Through legal counsel, Councillor Di Ciano states that it is an unfair burden upon the Councillor to prove "the provenance" of a single email address years after the fact. I acknowledge these concerns and have provided him with time to try to provide any information whatsoever that could support his claim; he has not been able to do so.

Based on the evidence before me, I conclude on a balance of probabilities<sup>2</sup> that the Complainant provided his email address for inclusion on the constituency email list which was managed using MailChimp from 2016 to 2018. I also conclude that Councillor Di Ciano used the MailChimp service to export contacts from his constituency email list to send out the October 20 email supporting a candidate in the 2018 municipal election. There is no evidence that Councillor Di Ciano used any of the City's infrastructure to draft or send the October 20 email.

## **Code of Conduct, Policies and Guidance**

Although the Complainant referred to Article VII in his complaint, other articles of the Code of Conduct required consideration; specifically, Article VI (Use of City Property, Services and Other Resources) and Article XV (Failure to Adhere to Council Policies and Procedures).

### **Code of Conduct Articles VI (Use of City Property, Services and Other Resources) and VII (Election Campaign Work)**

Articles VI and VII state:

---

<sup>2</sup> The balance of probabilities standard of proof is lower than the criminal standard of proof, beyond a reasonable doubt, but it requires more than mere speculation and requires that for findings to be made, the evidence is must be clear, convincing and cogent.

## **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.

## **VII. ELECTION CAMPAIGN WORK**

Members are required to follow the provisions of the *Municipal Elections Act, 1996*. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and websites linked through the City's website) for any election campaign or campaign-related activities. No member shall undertake campaign-related activities on City property during regular working hours unless permitted by City policy (e.g., all candidates meetings). No member shall use the services of persons for election-related purposes during hours in which those persons receive any compensation from the City.

## **Code of Conduct Article XV (Failure to Adhere to Council Policies and Procedures)**

Article XV states:

### **XV. FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES**

A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies and procedures established by City Council.

This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy.

In January 2018, City Council adopted the policy titled “Use of City Resources during an Election Period.” The policy sets out how the City’s facilities, resources and

infrastructure can be used during an election period to preserve public trust and integrity in the election process and to enable the City to comply with the *Municipal Elections Act*. The Use of City Resources Policy defines “City Resources” *for the purpose of the policy*. Regarding information, the Policy states (emphasis added),

"City information" – means any information in the custody and control of the City, including databases that may be the repository of names, contact information, business records, financial information or other identifiers compiled and used by City employees to conduct City business. Examples of City databases include: grants recipients, lists of event attendees and resident association lists.

Constituent information collected by Members of Council is not under custody or control of the City and are not considered City information for the purpose of this policy.

There are no other relevant policies *established by City Council*, although there are several sources of guidance, which are set out below.

### **Guidance – City Clerk**

The Office of the City Clerk has issued guidance in relation to constituent contact information. Section 5.1 ("Running Your Office"—"Managing your information") from Volume 1 of the [2014-2018 City Council Handbook](#) includes a number of relevant propositions.

Section 5.1.2 includes the following:

#### ***Using personal information***

*Members of Council receive personal information from constituents, City staff, and other sources. Personal information may only be used for the purpose for which it was provided to the Member.*

*For example, if a constituent e-mails their opinion about bike lanes to their Member of Council, the contact information cannot be added to the mailing list of the Member's newsletter.*

Section 5.1.2.1 includes the following:

#### ***Constituent contact information***

- *Clearly state the purpose of any contact information collected from constituents, e.g., to add to mailing lists*

Section 5.1.4 includes the following:

### ***Constituency records***

*Records that document a Member's relationship with their constituent as an elected representative are considered personal records, e.g., constituent complaints about City service or other property matters.*

...

*IMPORTANT: Contact information obtained from constituents must not be reused to communicate on other matters with the constituent without their express written consent.*

### **Guidance – Integrity Commissioner**

This Office issued an Interpretation Bulletin to members of Council in March 2018 entitled "[2018 Election-Related Activities](#)", which contained guidance about use of constituency mailing lists. Section 19 ("Constituent Contact Information") states:

*Members should not use contact information gathered for responding to constituent inquiries for any purposes related to an election campaign, nor for any other purpose than the one for which it was provided to the member ([City Council Handbook, at section 5.1 – "Running Your Office—Managing Your Information" \(81-86\)](#)).*

The Bulletin also provided several examples, including<sup>3</sup>:

*5. May members use information on their office e-mail lists to send campaign emails? Can they use this information if they receive permission?*

No. Mailing list information obtained as a member of Council should not be made available to the campaign team. This is distinct from mailing list information that may have been obtained through campaign efforts, whether this

---

<sup>3</sup> Question 5 is identical to guidance issued by the former Integrity Commissioner in advance of the 2014 election (question 6, 2014 Election Campaign Year FAQs).

year or in the past. The important point is to keep the two functions and collection systems separate.

## Discussion

### Summary of Issue and Position of the Councillor

The Complainant says that it was contrary to Article VII (Election Campaign Work) to use his email address to send the October 20 campaign email. The complaint required consideration of whether it also contravened Articles VI (Use of City Property, Services and Other Resources) and XV (Failure to Adhere to Council Policies and Procedures).

Councillor Di Ciano's overall response to this complaint is that he obtained the Complainant's email address from a source other than his constituency office. I have concluded otherwise. The reason why the Complainant received the October 20 campaign email was because his email address was included in a constituency newsletter mailing list maintained by the Councillor. The issue is whether it was contrary to the Code of Conduct for Councillor Di Ciano to have re-purposed the Complainant's email address in the way that he did.

### Article XV (Failure to Adhere to Council Policies and Procedures)

Article XV requires that members of Council abide by the policies and procedures set by City Council. The only Council-approved policy in place that addresses the issue of mailing lists is the January 2018, "Use of City Resources during an Election Period" Policy. This policy sets out how the City's facilities, resources and infrastructure can be used during an election period to preserve public trust and integrity in the election process and to enable the City to comply with the *Municipal Elections Act*. The Use of City Resources Policy defines "City Resources" for the purpose of the policy. Regarding information, the Policy states (emphasis added),

"City information" – means any information in the custody and control of the City, including databases that may be the repository of names, contact information, business records, financial information or other identifiers compiled and used by City employees to conduct City business. Examples of City databases include: grants recipients, lists of event attendees and resident association lists.

Constituent information collected by Members of Council is not under custody or control of the City and are not considered City information for the purpose of this policy.



As a consequence of the underlined portion of the policy, it is not possible to find that Councillor Di Ciano's use of the Complainant's email address – regardless of the origin – is contrary to any City policy and accordingly, I cannot find that he contravened Article XV of the Code of Conduct.

Councillor Di Ciano's counsel submits that the existence of the underlined portion of the policy creates a sufficient degree of confusion about the treatment of constituent contact information. I agree that the policy framework could be clearer, but the restriction set out above is limited to the application of the Use of City Resources Policy. As will be seen, the relevant provisions of the Code of Conduct contain broad categories of possible resources, which "underline" the key statements of principle in the Code of Conduct.

## Articles VI and VII

Article VI (Use of City Property, Services and Other Resources) and VII (Election Campaign Work) establish that members of Council must not use the resources available to them as members of Council for any purpose other than the work of the City and certainly not for "any election campaign or campaign-related activities." These clauses contain specific examples of the types of things that could be considered resources, and they do not incorporate or refer to the Use of City Resources policy, above.

Article VI refers to (emphasis added): "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)." Article VII refers to (emphasis added): "facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and websites linked through the City's website)."

The question is whether Councillor Di Ciano's use of the Complainant's email address on October 20 contravened Article VI or VII. There is no evidence that he used the City's information technology system to send the October 20 email; however, the evidence is that the email address was derived from a mailing list established and managed by the Councillor's office, including the use of a MailChimp account that was funded by the City. Is this sufficient to give rise to a contravention?

The very conduct that is at the heart of this complaint was addressed in guidance issued by this Office in advance of the 2018 election, which was:

*5. May members use information on their office e-mail lists to send campaign emails? Can they use this information if they receive permission?*

No. Mailing list information obtained as a member of Council should not be made available to the campaign team. This is distinct from mailing list information that may have been obtained through campaign efforts, whether this year or in the past. The important point is to keep the two functions and collection systems separate.

This is the very same guidance that was provided in advance of the 2014 election.

Members of Council are afforded certain benefits and privileges when they become elected, such as a budget for constituency services. The parameters of the constituency budget are set out in the CSOB Policy. The CSOB Policy works together with Articles VI and VII of the Code of Conduct to ensure that public funds allocated to members of Council are used only for City business, not private business activities or, certainly, election-related ones. The CSOB Policy contains specific restrictions during an election year that have the effect of limiting councillors' ability to communicate with residents in the period immediately before the election.

In my view, the Councillor's conversion and re-purposing of his constituency mailing list was a way for him to avoid the policy restrictions but to use the benefit of his mailing list. Using the MailChimp service, he was able to quickly and easily export his constituency mailing list to send out a campaign email, which he would have otherwise been clearly and expressly restricted from doing using his toronto.ca email address and the MailChimp account paid for by the City.

Through legal counsel, Councillor Di Ciano says that the use of MailChimp is insufficient to constitute a use of resources because of the nature of the service. He says that it is significant that MailChimp is an email and marketing service and not a data storage service. He submits that this is important because MailChimp merely enabled the Councillor to use email addresses but not to store or otherwise "maintain" the Complainant's or any other email address. In my view, this is a narrow way to characterize the MailChimp service and overlooks that other City-funded resources, such as staff time, were necessary to manage the MailChimp account and the newsletter in general.

Further on this issue, Councillor Di Ciano's counsel likens the situation to a rolodex and persuasively asserts that if the Councillor brought the Complainant's email address with him on a personal rolodex card, he would be able to take that card with him at the end

of his term without concern and further that the mere fact that the rolodex itself was stored safely on City premises did not convert the data stored in that rolodex into City property. While I find the argument persuasive, the point is only compelling if the email address was obtained by the Councillor through any method other than the Complainant's wish to be included in a constituency newsletter distribution, which is not the case in this instance.

The Code of Conduct must be interpreted in accordance with its key statements of principle, which are said to "underline the Code of Conduct." The statements of principle that are relevant to this case are (emphasis added):

- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by City Council.

To interpret the articles of the Code in accordance with these principles, I must give a purposive and sensible meaning to the articles of the Code of Conduct. Articles VI and VII provide examples but not an exhaustive list of the ways that City resources can be used for purposes other than City work or for election-related purposes. The overall objective of Article VII in particular is to encourage members to maintain a separation between City work and campaign efforts.

In consideration of the principles, the prior clear guidance on the very conduct at issue, the fact that City resources were used to establish and manage the contact list that was re-purposed to send the October 20 campaign email, and the clear obligations in the Code of Conduct to use City resources for City business only, I find that Councillor Di Ciano contravened Articles VI and VII of the Code of Conduct.

This is not to say that the Complainant's email address was "converted" to City property. Had Councillor Di Ciano been able to demonstrate that the Complainant's email address was provided to him through other means, I would have come to a different conclusion. Campaign contact lists and constituency contact lists will inevitably have common email addresses and contact information. To meet the standards in the Code of Conduct, members of Council must take care to maintain a clear separation between their campaign and City work.

## Penalty or Remedial Action

The Code of Conduct and the *City of Toronto Act, 2006* contemplate that contraventions may require remedial actions or sanctions. Remedial actions require participation of the member in question and are geared at correcting behaviour as a member of Council in the future. The penalties available to Council are suspension of a member's pay or a reprimand of the member.

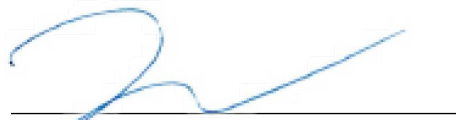
For the following reasons, I recommend that City Council impose no penalty or remedial action in this case. It is clearly not possible to suspend a former member of Council's pay. While it may be within the authority of Council to reprimand a former member, it is my view that imposing a reprimand on a person who is no longer a colleague of the Council members responsible for issuing the reprimand would serve no purpose.

Furthermore, it is my view that no penalty or remedial action would have been warranted in this case. Although he defended against the complaint, the Councillor did not take issue with main point that there should be a separation between campaign activities and City work. Indeed, the evidence shows that he tried to maintain that separation by refraining from using City IT infrastructure to send the October 20 email. I suspect that if the Councillor returns to elected office, he will use greater care to manage the contact information that he obtains by virtue of his constituency office.

## Conclusion

I find that Councillor Di Ciano contravened Articles VI and VII of the Code of Conduct and I recommend that City Council receive this report for information and impose no penalty or remedial action.

Respectfully,



Valerie Jepson  
Integrity Commissioner  
July 9, 2019