

# **Report on Councillor Frances Nunziata's Use of Constituent Contact Information**

**Jonathan Batty  
Integrity Commissioner**

**July 17, 2024**

**ICT**

OFFICE OF THE  
**INTEGRITY  
COMMISSIONER**  
TORONTO

## **A. INTRODUCTION**

1. This report describes my investigation of Councillor Nunziata's use of constituent contact information in the 2022 municipal election and whether it violated the Code of Conduct for Members of Council (the "Code of Conduct").
2. My report outlines the process my inquiry followed, describes the relevant City policies, sets out the evidence I considered and the principles I applied in making my findings and recommendations.
3. As required, before finalizing my report to Council, I notified Councillor Nunziata of my proposed findings and recommendations and provided her an opportunity to comment on them in accordance with Article 4.4 (F) of Chapter 3 of the Toronto Municipal Code and s. 35 of the Complaint and Application Procedures of the Office of the Integrity Commissioner. She responded accordingly.
4. Councillor Nunziata has accepted my findings and recommendations. She has taken full responsibility for her actions and those of her staff and is committed to taking the necessary steps to make sure the confidentiality of constituent contact information is protected.

### **The Complaint**

5. On October 26, 2022, two days after election day in the 2022 municipal election campaign, I received the following complaint from a member of the public:

On Monday, October 17th I received an email from the Vote Nunziata campaign asking for my vote in the upcoming municipal election. I have never signed up for campaign updates from her and this was the only electronic campaign update I received. The only way she could have got my email was from her weekly newsletter mailing list that she assembled and maintained as a Councillor (using city resources).
6. The complainant included a copy of the email they received (see attached). It was a message from Councillor Nunziata's re-election campaign and asked the recipient of the email to vote for her on October 24, 2022.
7. The complainant said that while they had signed up for newsletters from Councillor Nunziata's City Hall office, they never signed up for campaign updates from her and this

was the first electronic campaign communications they had received. The complainant described that they replied to the campaign email that day, and two days later, asking how they ended up on the list. They did not receive a response.

8. The complainant noted:

The campaign email did include a “why did I get this?” link in the footer, so clicking that I was told “You were subscribed to this list because: You are receiving this email because you opted in via our website.”

9. They also noted:

I know for absolute certainty that I did not opt-in via her campaign website, but I recognized that maybe someone else had opted me in without me realizing?

10. The complainant believed the only way their email address could have been given to Councillor Nunziata’s re-election campaign was if it had been obtained from her City Hall office, because they had signed up for her constituency newsletter. They complained that Article 7 (Election Campaign Work) of the Code of Conduct had been contravened, as had the requirements set out in my Office’s “2022 Municipal Election Requirements” interpretation bulletin.

### **Intake Review**

11. I assessed the complaint in accordance with my Office’s Complaint and Application Procedures, and found the matter was within my jurisdiction and sufficiently engaged Article 7 by raising a question of whether Councillor Nunziata improperly used City resources between August 1, 2022 and Voting Day (October 24, 2022). I also found the complaint engaged Article 15 with respect to Council-approved policies about use of resources in a municipal election campaign. I concluded there was sufficient basis to investigate this matter.
12. I notified the complainant and Councillor Nunziata of my decision to investigate this matter on November 22, 2022 and noted to both that my decision to investigate did not mean that I had found Councillor Nunziata had violated the Code of Conduct. I further noted to Councillor Nunziata that if additional issues arose during the investigation, I would consider them and give her the opportunity to respond.

## Councillor Nunziata's Response

13. Councillor Nunziata responded on November 29, 2022 that:

- 1) She believed the complaint was politically motivated.
- 2) Because the City's records retention requirements and the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) do not apply to her office's records, my Office did not have jurisdiction to investigate this matter.
- 3) Her City Hall office's Mailchimp account was not used for her election campaign and the activity report for that account shows that nothing was sent to the complainant's email address from July 29, 2022 until November 4, 2022.

14. On March 15, 2023, I replied to Councillor Nunziata that, in advance of the 2022 municipal election, my Office's interpretation bulletin (citing Article 5 (Confidential Information) of the Code of Conduct) had advised as follows:

Members must not use the contact information they have obtained in their official role dealing with constituents for election-related activities. Constituent contact list information obtained in their official capacity should not be provided to a member's re-election campaign team. Members who maintain contact lists from their previous election campaigns, or from other private activities outside their office, must keep the collection and storage systems separate from City resources.

15. I also noted for Councillor Nunziata that while communications with constituents is treated as information that is personally controlled by members of Council for purposes of the *Municipal Freedom of Information and Protection of Privacy Act* (as her response noted), that did not resolve the question whether her office's resources had been used to share information and create a contact database for election use. This was the question my investigation was looking to answer.

16. To focus the investigation on the relevant question about where her re-election campaign obtained the complainant's email address, I asked the following questions, to which Councillor Nunziata responded on April 5, 2023. Her answers are included in italics:

- 1) Please explain if contacts/email addresses from your City Hall or constituency office were shared, exported, copied, or transferred to your 2022 re-election campaign. If they were, please explain whether the information was used by a Mailchimp account or a different software application used by your campaign.

*No, they were not exported, transferred, or copied. I never instructed anyone to use City Hall resources nor am I even capable of doing that myself. The City Hall CMS system has over 40,000 contacts.*

- 2) If not obtained from your City Hall or constituency office, please explain how your campaign obtained the email address [personal email address of complainant redacted]. For example, if this email address is recorded in a contact list from a previous election campaign, or from a source outside your City Hall or constituency office, please advise me of the source and any documents that can verify this.

*Email addresses were obtained in a variety of different ways including but not limited to: daily door-to-door canvassing, phone canvassing, calls into the office, emails that were sent to the campaign office, lists that were shared from previous elections from other candidates (Provincial and Federal) including the Mayor's campaign, lists that were also used from my past elections, etc. I cannot explain exactly how this particular email address was obtained as there was no one singular way we were receiving data and therefore identifying the source of this particular email address is impossible. Also just to be clear I do not know this person personally and would have no reason to single out [their] email address.*

## **B. LAW AND POLICY**

### **The Law**

17. Under s. 157(1) of the *City of Toronto Act, 2006*, City Council is required to adopt a code of conduct governing its members. In addition to the rules Council has adopted about election campaign work (Article 7) and adherence to Council policies (Article 15), Council has adopted separate rules governing confidential information (Article 5) and the use of City property, services and resources (Article 6). The latter two rules must be adopted in order to comply with provincial requirements found in s. 1 of Ontario Regulation 58/18 made under the *City of Toronto Act, 2006*.
18. The Code of Conduct's rules, noted above, are as follows (emphasis added):

#### **Article 5 (Confidential Information)**

5.0 A member must not:

- a) disclose or release to any unauthorized person, including a 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;**
- b) use confidential information for personal or private gain, or for the gain of relatives or any person or corporation;**

c) disclose the content of any matter that has been discussed at a closed meeting under the Council Procedures By-law, or the substance of such deliberations, until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public; or,

d) 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.

#### **Article 6 (Use of City Property, Services and & Other Resources)**

6.0 A member must not:

a) use or permit the use of City resources for activities other than the business of the Corporation; or,

b) obtain personal financial gain from the use or sale of City-developed intellectual property since all such property remains exclusively that of the City.

#### **Article 7 (Election Campaign Work)**

7.0 A member must follow the provisions of the Municipal Elections Act, 1996.

7.1 A member must not:

**a) use the facilities, equipment, supplies, services or other resources of the City, including member newsletters and websites linked through the City's website, for any election campaign or campaign-related activities;**

b) undertake campaign-related activities on City property during regular working hours unless permitted by City policy; or,

c) use the services of persons for election-related purposes during hours in which those persons receive any compensation from the City.

#### **Article 15 (Council Policies & Procedures)**

15.0 A member must observe the terms of all policies and procedures established by City Council unless they have first requested and been granted an exemption by Council.

19. My Office is mandated by s. 160 (1)(a) of the *City of Toronto Act, 2006* to investigate complaints that the Conduct of Conduct has been contravened. The City is obligated to disclose to me, on request, the information I believe necessary in such an inquiry, which includes "free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the City or a local board (s. 160 (3) and (4)). Where the City does not have that information, I

have the power to issue summonses to compel people to testify and produce the information I require (s. 160 (2)).

20. Councillor Nunziata initially submitted that I do not have jurisdiction to investigate the complaint because of:
  - 1) The City's Records Retention By-law.
  - 2) The application of *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) discussed in City Council's October 24 and 25, 2011 decision in CC13.4 - Appeals of Access Decisions in Relation to Councillor Records and Retention of Outside Counsel.
21. With respect, neither of these things apply to the issues I investigated.
22. The Corporation of the City of Toronto's record retention requirements are set out in Chapter 217 of the Toronto Municipal Code. These standards govern how the corporation's (and its agencies') administrative and service delivery records are collected, stored, and disposed. This was not at issue in my investigation.
23. Council's October 2011 decision deals with the application of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). At that time, the City of Toronto was fielding MFIPPA access to information requests seeking disclosure of records held by members of Council. In response, the City of Toronto decided that these records were not in the custody or control of the City. The City's decisions about these records were appealed to the Information and Privacy Commissioner (IPC). Council endorsed the City's decision to deny access and approved independent legal counsel be retained to provide independent advice to members on appeals and proceedings involving the IPC.
24. Ultimately the IPC agreed that a member of Council's records were in most cases not in the "custody or control" of the City. However, even if not in the "custody" of the City, these records are being used by members of Council, on City property and/or using IT devices provided by the City, in their representative role helping constituents. As the IPC noted in one of these appeals<sup>1</sup>:

[T]he city does not control what the councillors create or receive, how or if they store them on the city's server, and what they choose to do with the material after that, including the right to destroy it if they wish. As a result, to the extent that

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<sup>1</sup> Toronto (City) (Re), 2012 CanLII 85161 (ON IPC) at paragraph 76, <https://canlii.ca/t/fvvpd4>.

records of this nature may be in the possession of the city because they are located either in hardcopy at the office of the municipal councillor, or electronically on the city's server, I find that such possession amounts to "bare possession" and that the records are not in the custody of the city in these circumstances.

25. In that decision, which concerned a request to access communications between a member of Council and two lobbyists, the IPC also found that, while MFIPPA does not apply to a member of Council's records, it does not mean that the use and management of such records is exempt from oversight under the Code of Conduct. As the IPC adjudicator noted, she agreed with another IPC adjudicator hearing an appeal dealing with the City of Toronto (emphasis added)<sup>2</sup>:

In arriving at this result [that MFIPPA does not apply in most cases to a member of Council's records], **I acknowledge that there is also a public interest in the activities of elected representatives, and my determinations do not affect other transparency or accountability mechanisms available with respect to those activities.**

26. Neither Chapter 217 of the Toronto Municipal Code nor MFIPAA apply to the matters I am investigating. My investigation about how Councillor Nunziata's office has managed constituent information does not – and could not – concern matters beyond the Code of Conduct.

## **Policies and Guidance**

27. As set out below, Council has adopted policies governing the use of constituent information and members of Council have been provided comprehensive guidance on how to comply with these requirements.

### Human Resources Management and Ethical Framework for Members' Staff

28. The Human Resources Management and Ethical Framework for Members' Staff (the "Ethical Framework") is a policy approved by Council which is applicable to all Members of Council's staff. It outlines the obligations for political staff and for members of Council as managers of their staff. Staff are provided a copy at the start of their employment, and it is attached to and forms part of their employment contract.

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<sup>2</sup> Ibid. at paragraph 82, citing Toronto (City) (Re), 2012 CanLII 81955 (ON IPC) at paragraph 53, <https://canlii.ca/t/fvfzt>.



29. Section Three – Ethical Framework for Members’ Staff lists the obligations people employed in members’ offices must follow. It includes rules governing how records in members’ offices must be managed:

### **6. Information Management**

- a. Members' staff should be aware of the following types of records that are created or managed in a Member's Office, and must take care to manage this information accordingly:

#### *Constituency Records*

- Records that document a Member's relationship with their constituents as an elected representative are considered personal records (e.g. constituent complaints about City service or other property matters). These records belong to the Member, regardless of whether it's the Member or their staff that collected or created the information. Often these records contain personal or sensitive information about constituents.

#### *Political Records*

- Records containing political information are likewise the personal records of the Member and generally not subject to the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Political information is found in communications with persons and organizations, including other Members of Council, about matters not specifically related to ward issues.

#### *City Records*

- • City business records are records considered under MFIPPA as being in the custody or control of the City. If a Member's staff emails City staff about an issue or forwards a constituent's email to City staff for follow-up, then that email becomes a City record. Items on a Committee agenda are also City records.

- b. Members' staff should keep constituency, political and City records separate from each other.
- c. Members' staff should ensure that contact information obtained from constituents is not stored and reused to communicate further with the constituent without their express written consent.
- d. Members' staff should restrict access to confidential and sensitive personal information received in the Member of Council's Office to only those who need to see it in order to protect personal information.

30. This policy notes that communications with a constituent, although not City records, should be treated confidentially, and not shared or used for other purposes without express consent of that constituent, as it may include sensitive and personal information.

## Guide to Access and Privacy for Councillors

31. Information that constituents share with a member of Council, including their emails for purposes of being added to an e-newsletter, must be treated as confidential information. This is explained in the City's guide for members of Council entitled a "[Guide to Access and Privacy for Councillors](#)."
32. Section 2 of the guide, "Protecting confidential information," provides that a constituent's information should not be shared or used for any other purpose beyond the reason they have contacted the member without the express consent of that constituent:

### 2.3 PERSONAL INFORMATION

Personal information supplied by a constituent to deal with a specific matter should not be used for other unrelated purposes. For example, if an individual asks to be included on a distribution list about a particular issue, that individual should not be identified with the issue in a newsletter without their permission. Councillors should not disclose the constituent's personal information to others without the constituent's consent either. Access and privacy training for Councillors and their staff is available on request by contacting the Executive Director, Corporate Information Management Services.

33. Section 2 of the guide, "Managing information in a Councillor's office," clarifies that while MFIPPA may not apply to a member's office records, that information (including the information shared in emails) must be secured in the member's office and not inadvertently disclosed to others:

### 3.3 MANAGING CONSTITUENCY INFORMATION

Documents and records received or created interacting with constituents are considered personal. Constituency records generally relate to issues the Councillor is dealing with involving one or more members of the public who either live or own a business within the Councillor's ward. Constituency records may include letters, emails, faxes, telephone messages, and mailing lists.

Constituency information is not subject to *MFIPPA*. The IPC has confirmed that, except in unusual circumstances, a Councillor is not an officer or employee of the City. Councillors' constituency liaison records are considered "personal" and are not subject to *MFIPPA*. Accordingly, under *MFIPPA*, a person generally does not have a right to access a Councillor's constituency records.

### 3.4 PROTECTING PERSONAL AND CONFIDENTIAL INFORMATION

Documents containing confidential or personal information should be stored in locked cabinets except when in active use. Data stored on laptop computers, USB drives or similar devices should be encrypted or otherwise password protected. Documents and devices should not be left unattended in vehicles or in other offices.

Care should be taken to ensure that personal information is not disclosed during public meetings without prior, written consent of the affected individual(s).

#### Council Member Knowledge Base

34. The policy and guidance about the confidentiality protections given to a constituent's information, including their email address for addition to distribution list, is also explained in the Council Member Knowledge Base (the "Knowledge Base"), an online resource made available by the Clerk's Office.

35. When managing constituency records, the Knowledge Base states:

Constituency records document the relationship with constituents as an elected representative and include information in programs such as email and constituency management systems.

Examples include: constituent discussions about property matters; complaints about City service; a survey sent out by a Councillor; a newsletter mailing list.

The information collected can only be used for its original intended purpose.

36. To protect confidentiality, the Knowledge Base reiterates a constituent's information should only be used for the purpose it was provided -- because that is what the public expects (emphasis added):

Confidentiality and privacy responsibilities for Members fall under the Councillor's Code of Conduct. **Care should be taken to ensure that the expectations of members of the public are taken into account.**

A Councillor may collect information in verbal or written forms such as emails, surveys, telephone calls or at a meeting. **The information collected can only be used for the purpose for which it was intended.**

37. The Knowledge Base also notes that during elections, a member and their staff must be diligent in keeping their official and campaign activities separate:

An election year is a time of heightened public scrutiny. Accordingly, Members and their staff need to establish a clear separation between their election-related activities and their official duties.

38. Lastly, the Knowledge Base advises that during an election the Office of the Integrity Commissioner provides guidance to members and their staff about the rules during an election for particular activities like “communicating with the public.”

#### Municipal Election Requirements Interpretation Bulletin

39. As noted in the Introduction, my Office issued an Interpretation Bulletin titled [2022 Municipal Election Requirements](#) to members of Council on March 4, 2022 (updated August 2022) with guidance about use of constituency mailing lists. It reiterated that using constituency information for campaign purposes was contrary to Article 5. Reminder #3 (Communicating with the Public) stated<sup>3</sup>:

The requirements in Article 5 (Confidential Information) apply to a member’s election activities. Members must not use the contact information they have obtained in their official role dealing with constituents for election-related activities. Constituent contact list information obtained in their official capacity should not be provided to a member’s reelection campaign team. Members who maintain contact lists from their previous election campaigns, or from other private activities outside their office, must keep the collection and storage systems separate from City resources.

#### C. EVIDENCE FROM THE INVESTIGATION

40. We interviewed Councillor Nunziata. We also interviewed her Chief of Staff and an assistant in her office. Both had worked in Councillor Nunziata’s City Hall office during the election and volunteered on her 2022 re-election campaign outside office hours. We also interviewed Councillor Nunziata’s Campaign Manager. They fully cooperated with the investigation.
41. The Campaign Manager described that Councillor Nunziata’s core campaign team was very small. It primarily consisted of herself, working outside business hours on a part-time basis, and volunteers from Councillor Nunziata’s City Hall office. The campaign shared documents on a Google drive. The campaign sent out emails using either the campaign’s Gmail address [votenunziata2022@gmail.com](mailto:votenunziata2022@gmail.com) or Mailchimp in conjunction

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<sup>3</sup> Paragraph 22

with the campaign's Gmail address. Mailchimp is an email marketing platform that can be used to send mass emails from an email address.

42. The email that was the subject of complaint was sent from Councillor Nunziata's re-election campaign using a Mailchimp account it purchased. Councillor Nunziata's City Hall office also has a Mailchimp account, paid for by her office budget, to send out e-newsletters to constituents. Before the 2022 municipal election, when constituents signed up for Councillor Nunziata's e-newsletter, they were told it would only be used by the City Hall office for e-newsletter distribution.
43. The Campaign Manager did not know how to use Mailchimp. If she was sending out a mass email, she would use Gmail and would use a distribution list the campaign compiled that was from a database purchased by a supplier, compiled from canvassing, and other direct communications the campaign had with constituents. If the campaign was sending out a mass email using Mailchimp, it would be sent by one of the volunteers from Councillor Nunziata's office as they knew how to use Mailchimp.
44. While the complainant signed up with Councillor Nunziata's City Hall office to receive these e-newsletters, the October 17, 2022 email the complainant received was not sent from Councillor Nunziata's City Hall Mailchimp account. The mass email was sent using Mailchimp from the campaign's Gmail address.
45. When the complainant signed up to receive Councillor Nunziata's office e-newsletters on August 5, 2021, their contact information (name, residential address, telephone number and email address) was entered into the office's information management system, the Constituency Management System (CMS). Councillor Nunziata's office verified this by providing us a copy from CMS of the complainant's contact information. CMS is a database that was designed, built and supported by the Clerk's Office to help members of Council manage constituent contact information.
46. The complainant's contact information stored in CMS was also entered into the office's Mailchimp account as they had been asked, and had given their consent, to be put on the e-newsletter distribution list.
47. The question the investigation had to answer was how the complainant's email address came into the possession of Councillor Nunziata's re-election campaign. Councillor

Nunziata submitted the email address did not come from her City Hall office, but could have come from:

- 1) daily door-to-door canvassing,
- 2) phone canvassing,
- 3) calls into the office,
- 4) emails that were sent to the campaign office,
- 5) lists that were shared from previous elections from other candidates (Provincial and Federal) including the Mayor's campaign, or
- 6) lists that were also used from past elections.

48. The complainant's evidence is that they did not provide their email address in the manner described in 1) to 4), above.
49. When asked about whether Councillor Nunziata's re-election campaign had received contact information in the manner described in 5), above, the Campaign Manager said she was not aware of this. However, she did advise that the campaign had purchased a private database of contact information for people in the Ward.
50. The complainant only moved into Councillor Nunziata's Ward in 2021. As this post-dated the 2018 election, their contact information would not have been found in records from Councillor Nunziata's previous re-election campaigns.
51. To rule out the possibility that the complainant's contact information was shared from Councillor Nunziata's City Hall office to her re-election campaign, we asked for and received help from the Office of the Chief Information Security Officer (CISO) to conduct a forensic investigation of electronic records on the City's computer servers. See Appendix A for the details of the forensic investigation.
52. The forensic investigation showed that the Chief of Staff personally transferred the contents of Councillor Nunziata's CMS database to her re-election campaign shortly before the complainant received the campaign email at issue in this matter.
53. This is contrary to what Councillor Nunziata advised my Office at the outset of this investigation. In the course of my investigation, Councillor Nunziata said to me that she had relied on the Chief of Staff to draft the response to my Notice of Investigation. In

short, the Chief of Staff provided incorrect information to my investigation (through Councillor Nunziata) that necessitated the time and expense of a forensic investigation.

#### **D. ANALYSIS**

54. In determining whether Councillor Nunziata has breached any of the provisions of the Code of Conduct, I have applied the standard of proof of a “balance of probabilities.” Proving something on a balance of probabilities means proving that something is more likely than not to have occurred. In applying this standard, I have also considered the evidence from the perspective of an objective observer, apprised of the circumstances, and the reasonable conclusions that they would make.
55. Although the “balance of probabilities” standard is lower than the criminal standard of proof (“beyond a reasonable doubt”), it requires more than mere speculation to be met. It requires that findings must be made on evidence that is “clear, convincing and cogent.”<sup>4</sup>
56. The complaint I received alleged constituent contact information was inappropriately shared from Councillor Nunziata’s office with her re-election campaign and this was prohibited by Article 7 (Election Campaign Work) of the Code of Conduct.
57. As I noted previously to Councillor Nunziata, this complaint also raised questions about the application of Article 5 (Confidential Information) and Article 15 (Council Policies & Procedures).
58. My analysis in this matter focuses on Article 5 (Confidential Information) and Article 7 (Election Campaign Work) as they deal most directly with the issues. As I note below, the analysis about the application of Article 15 is subsumed within the analysis of Article 5. Similarly, the analysis about the application of Article 6 is subsumed within the analysis of Article 7.

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<sup>4</sup> Report Responding to City Council's Request for an Investigation into the Conduct of the Board Members of the Toronto Parking Authority and the Emery Village Business Improvement Area, (June 10, 2019) see: <https://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-134432.pdf> at 20.

## Article 5 (Confidential Information)

59. When someone shares their contact information with their member of Council's City Hall Office, they are entitled to have it used by the member and their staff, solely for the purpose it was provided. To respect their privacy, the information must be treated as confidential.
60. Article 5, as noted at paragraph 18, prohibits the unauthorized disclosure of confidential information and the use of such information by a member for their own personal purposes.
61. As described above at paragraphs 27 to 38, the policies that Council has adopted, and the guidance that members and their offices have been provided are clear on these principles.
62. As described above at paragraph 36, the Clerk's Office has advised members of Council and their offices that confidentiality and privacy responsibilities fall under the Code of Conduct.
63. As described above at paragraph 39, my Office provided specific guidance for the 2022 municipal election that Article 5 prohibits constituent contact list information members obtain in their official capacity from being shared in their re-election campaign team.
64. The Chief of Staff's downloading and transfer of the CMS database in Councillor Nunziata's City Hall office to her re-election campaign ignored these requirements. Even if the complainant's contact information had been obtained through some other means (which appears unlikely), that cannot excuse the fact that the Chief of Staff transferred the complainant's contact information, and the contact information of thousands of other people, from Councillor Nunziata's City Hall office without their consent.
65. I find that Councillor Nunziata violated Article 5 (Confidential Information). Councillor Nunziata is responsible for what her staff do on her behalf. Members of Council are busy and, by necessity, may have to rely on the IT expertise of their staff and may need to delegate administrative tasks to adhere to the details of Council policy. However, the initial response to the complaint demonstrated that the privacy policies in place were unknown to Councillor Nunziata and the Chief of Staff and the specific guidance on protecting the confidentiality of constituent information had not been consulted.



## Article 7(Election Campaign Work)

66. Article 7(Election Campaign Work) prohibits members of Council, and their staff, from using the resources of their City Hall offices for any election campaign or campaign-related activities.
67. As the forensic investigation shows, the Chief of Staff used his City Hall office to create an Excel file for use by Councillor Nunziata's campaign and downloaded the contents of her office's CMS database into that file.
68. I also find that Councillor Nunziata violated Article 7 (Election Campaign Work). As noted above, Councillor Nunziata is responsible for what her staff do on her behalf. While an election is a demanding time for a member of Council seeking re-election, if their staff is going to volunteer on their campaign, the member needs to review their staff's activities to ensure their office resources are not being used for their campaigns. In the case of a chief of staff, this is not a task that a member of Council can delegate to someone else in the office. The forensic investigation discovered a datafile the Chief of Staff had created and downloaded solely for the benefit of Councillor Nunziata's re-election. There does not appear to have been any effort to monitor the Chief of Staff to ensure he was maintaining the appropriate separation between his work in the City Hall Office and his work as a campaign volunteer.

## **E. FINDINGS AND RECOMMENDED PENALTY**

69. In addition to finding that Councillor Nunziata violated Articles 5 and 7 of the Code of Conduct, I recommend to Council that they vote to reprimand Councillor Nunziata. In recommending this, I have taken the following considerations into account.
70. Councillor Nunziata has been a member of Council for a number of terms and this is the first time there has been an investigation and report to Council that her office transferred constituent contact information to one of her re-election campaigns. Had there been a previous investigation and report to Council about Councillor Nunziata and her office doing so, I would have considered recommending a suspension of remuneration.
71. Councillor Nunziata, her staff, and her campaign manager were cooperative in answering questions and supplying information. Councillor Nunziata has taken full

responsibility and has committed to taking the necessary steps to make sure the confidentiality of constituency contact information is protected.

72. However, the transfer of constituent contact information was not accidental or inadvertent. The datafile was intentionally created and the information was transferred in a manner that was not easily detected. Also, when this matter was first raised, my Office was advised there had been no transfer and the complainant's information must have been obtained from other sources. To be clear, Councillor Nunziata had no intention to mislead my Office; she did not know the truth until my investigation revealed it.
73. While only one person complained to my Office, the information of literally thousands of people was transferred to Councillor Nunziata's campaign using a USB drive. When asked, the Chief of Staff was sure the USB drive was in the office but could not advise who would have it.
74. This is not the first time this type of matter has come to Council. Former Councillor Justin Di Ciano was first elected to Council in 2014. In 2018, he initially registered and ran for re-election but, when Council was downsized, did not re-register as a candidate for one of the new Wards. Following that election, this Office received a complaint that he had transferred constituent contact information from his City Hall office to a separate account where he emailed in support of another member's campaign. The complaint was investigated and Commissioner Jepson reported to Council that Article 7 had been contravened and, but for the fact Mr. Di Ciano was no longer a member of Council, the conduct warranted a reprimand. Council received the report for information.
75. Finally, in interpreting and applying Articles 5 and 7 to this matter, I note the first and fundamental principle in the Preamble to the Code of Conduct is that members should serve their constituents in a conscientious and diligent manner. Repurposing a constituent's contact information, without their prior consent, is not conscientious or diligent. In this case, personal contact information from the CMS database for an entire Ward was transferred from the protected confines of the City of Toronto's servers to an external IT system. The adequacy of the privacy and security controls where this information was housed, and may potentially be archived, is not known.

## F. CONCLUSION

76. When constituents share their personal information with their member of Council, they expect it will be used only for the purpose it was provided. If due care is not exercised, it erodes public trust.
77. The unauthorized use or disclosure of personal information by governments, businesses or other organizations is an important public concern. This matter was important to investigate. My Office did so without retaining resources outside the City administration.
78. Councillor Nunziata accepts my findings and I understand is taking steps to apologize to her constituents and the complainant directly.
79. Councillor Nunziata accepts that she and her office did not exercise due care and has undertaken to review the policies and guidance governing the management of constituent contact information with her staff and undertake the training available to prevent this from happening again. I encourage all members of Council, and their staff, to do so.

Respectfully submitted,

Jonathan Batty  
Integrity Commissioner

## APPENDIX A

### Forensic electronic records search

1. Under subsections 160(3) and (4) of the *City of Toronto Act, 2006*, I have authority to obtain information from City records, including electronic records, if I believe the evidence will be relevant in an inquiry. On April 26, 2023, I requested the assistance of the City of Toronto Office of the Chief Information Security Officer (CISO) to assist with a forensic investigation of electronic data from Councillor Nunziata's City Hall office which is stored by the City of Toronto.
2. The forensic investigation had three components:
  - a. A review of the use of Councillor Nunziata's City Hall office Mailchimp account.
  - b. A search for emails sent and received by Councillor Nunziata and her staff using their @toronto.ca email accounts between May 1 and October 17, 2022 that contained any attachments that included the complainant's personal email address.
  - c. A review of Excel files created and saved on the City of Toronto's computer drives by Councillor Nunziata and her staff between May 1 and October 17, 2022 that included "CMS" in the filename.

### Mailchimp Account review

3. Councillor Nunziata assisted with this part of the investigation and shared her log-in credentials for her City Hall office Mailchimp account. The account's use history was examined November 21, 2023 to see if there had been any data exports from that Mailchimp account to Councillor Nunziata's campaign Mailchimp account. The forensic investigation determined there had been no export.
4. From this, my Office concludes the complainant's email had not been directly transferred on the Mailchimp platform from Councillor Nunziata's City Hall account to her campaign account.

### City of Toronto email search

5. On December 15, 2023, in order to assess whether constituent data had been sent by email, I requested CISO to search for any City of Toronto emails sent from any @toronto.ca used by Councillor Nunziata and her staff, that were:
  - a. sent between May 1, 2022 to October 17, 2022,
  - b. had file attachments, and
  - c. included the complainant's email address.
6. That search found two emails with Excel file attachments containing the complainant's email address.

7. The two emails, one sent October 13 and the other October 15, 2022, had identical subject lines and identical Excel files attached. They were sent by an assistant from her personal email account to the Chief of Staff's City of Toronto email address. These emails were sent in the few days before the mass campaign email that is the subject of this complaint.
8. The assistant's emails replied to an October 12, 2022 email from the Chief of Staff sent from [votenunziata2022@gmail.com](mailto:votenunziata2022@gmail.com). The email she was replying to from the Chief of Staff had subject line "Mass E-mail" sent to the assistant's personal email account. The Chief of Staff's email asked for help processing some data in an attached Excel spreadsheet to send a "Mass email (email blast) of about 300 emails from our gmail account." The email the Chief of Staff attached to his email was named "CMS Version 3 (2).xlsx."
9. We were able to open and review the attachment sent by the Chief of Staff and examine its properties. This file was created by the Chief of Staff on September 20, 2022 on the City of Toronto's IT system.
10. The attachment had ten columns (Unit#, House#, Title, FirstName, LastName, ContactDetails, Detail, Supporter Y/N/U and Sign L/S). When we interviewed the Chief of Staff and reviewed this spreadsheet with him, the Chief of Staff explained "Sign L/S" was included so that beside a person's name it could be recorded whether someone wanted a small or large campaign lawn sign.
11. The assistant was able to help the Chief of Staff as he had requested and sent him back the spreadsheet with some updates in a differently named Excel file "FVL-2022-eMail addresses only.xlsx". By mistake, she replied and sent this email and its attachment to the Chief of Staff's City of Toronto email. If not for this mistake, the Excel file that the Chief of Staff had created on the City's IT system would not have been discovered.
12. The Excel spreadsheet the Chief of Staff created had 35,210 rows of data. The spreadsheet included names, residential addresses, telephone numbers and email addresses for people living in Ward 5. There were many duplicate entries. For many peoples' entries, neither telephone numbers nor email addresses were recorded. For many entries, there was only a residential street addresses and no name or contact information. In total, it is estimated that there were about 8,000 email contacts in the spreadsheet.
13. The information in "CMS Version 3 (2).xlsx." was downloaded from Councillor Nunziata's Constituency Management System (CMS) by the Chief of Staff. We reviewed this finding with the Chief of Staff. He explained he did this simply because he wanted to backup the data in CMS because the office had been told by the Clerk's Office that CMS was being decommissioned. While the Clerk's Office had communicated that to members' offices, it did so after the municipal election – weeks after the Chief of Staff downloaded the file. The Chief of Staff's explanation also failed to account for the fact that the spreadsheet he created was designed to be used for recording who wanted a lawn sign.
14. It is clear the Excel spreadsheet the Chief of Staff created and populated with data from CMS was designed to be used for campaign purposes by including columns to track who was a supporter and who requested a lawn sign.

15. After discovering this Excel spreadsheet, we needed to confirm how and when it was created and how the information it contained was transferred to Councillor Nunziata's re-election campaign.

### **Review of Excel files created in Councillor Nunziata's office**

16. On March 1, 2024, I requested CISO locate and provide my Office copies of all Excel files accessed, created, modified or deleted between May 1, 2022 and October 17, 2022, that included "CMS" in the filename from any of Councillor Frances Nunziata's office's shared City server drive(s) and/or the Chief of Staff's personal drive on the City server.
17. This forensic search found the same Excel file the Chief of Staff had emailed to the assistant. It had the same title, "CMS Version 3.xlsx" and was saved on the Chief of Staff's personal H:\ drive. The file properties confirmed he had created the file on Tuesday, September 20, 2022 at 10:49 a.m., on his City of Toronto laptop, by extracting data from another CMS.
18. This forensic search also located an identical file with the name "test2", which had extracted data from CMS and saved it to this file sixteen minutes before the other file was saved.

### **Conclusion**

19. The forensic investigation shows that the Chief of Staff personally downloaded data from Councillor Nunziata's CMS database into an Excel spreadsheet on September 20, 2022. He saved this onto his personal drive on the City server. This drive could not be accessed by other staff in Councillor Nunziata's office.
20. By October 12, 2022, it is clear that this Excel spreadsheet was no longer located only on the City of Toronto's secure server. We know this because, using Councillor Nunziata's campaign email address, the Chief of Staff emailed this file to the assistant on October 12, 2022.
21. How was this spreadsheet transferred from City Hall to Councillor Nunziata's campaign?
22. We know this information was not exported using the Mailchimp platform.
23. We know this Excel file was not sent from an official @toronto.ca used by Councillor Nunziata or her office staff as the forensic email search would have discovered this.
24. We know that only the Chief of Staff had access to the spreadsheet, as it was saved on his personal drive and nowhere else in Councillor Nunziata's office's drives.
25. This meant that the Chief of Staff either:
  - a. logged on to an external email account (either a personal email account or the campaign Gmail account) from his City of Toronto computer to send an email from that external account attaching this Excel file from his City of Toronto H:/drive, or

- b. downloaded the data file from his City of Toronto H:/drive to a portable drive (e.g. a USB drive).
- 26. When interviewed, the Chief of Staff said he did not know how to log on to an external email account from a City of Toronto computer. He said he would have transferred the Excel file from Councillor Nunziata's City Hall office to her re-election campaign using a USB drive. The constituent contact information was then uploaded from the USB drive so it could be used by the campaign.



Dear Friends & Neighbours,

Thank you for allowing me to serve you. On October 24<sup>th</sup>, 2022, I am asking for your support in continuing to serve you as City Councillor for Ward-5.

I believe my greatest accomplishment has been and will continue to be, helping you with your concerns and assisting you to navigate through the bureaucracy at City Hall. I consider every moment of public service to be an honour and privilege; I want to keep working and fighting for you, and our community -for another four years.

On October 24<sup>th</sup>, 2022, I am asking for your vote so that we can continue building and fighting for our community together.

Sincerely,

A handwritten signature in black ink that reads "Frances Nunziata".

Frances Nunziata