

**COMMITTEE OF THE WHOLE JANUARY 12, 2010**

**REPORT ON COMPLAINT OF VIOLATION OF CODE OF CONDUCT FOR MEMBERS OF COUNCIL RE FILE: 09.29.09**

**Recommendation**

The Integrity Commissioner recommends that Council consider the recommendations contained in the attached report.

**Contribution to Sustainability**

N/A

**Economic Impact**

N/A

**Communications Plan**

N/A

**Purpose**

Under the Code of Ethical Conduct Complaint Protocol (the "Complaint Protocol), the Integrity Commissioner shall report to Council the result of the investigation.

**Background - Analysis and Options**

At the conclusion of a complaint investigation, the Integrity Commissioner may make recommendations on sanctions to Council. The sanctions that may be imposed are a reprimand or suspension of the remuneration paid to the member of Council. If the Integrity Commissioner determines that there has been no contravention of the Code of Ethical Conduct, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act*.

Although I have not made a determination that there has been a contravention of the Code in relation to the Mayor's actions, based on the information that I have received and in relation to the obligations of Members of Council contained in the Code of Ethical Conduct, Rule 3, I make the following recommendation:

- a) Mayor's Jackson's office receive training on the confidentiality and security requirements for City documents;
- b) Members of Council consider clarification on the interaction between their obligations under the Code of Ethical Conduct and other policies which apply to Members' staff.

### **Relationship to Vaughan Vision 2020/Strategic Plan**

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved. However, the recommendations are adopted, training on management of confidential City documents may impact allocated resources.

### **Regional Implications**

There are no Regional implications to the recommendations contained in this report.

### **Attachments**

Appendix A- Integrity Commissioner's Report File 09.29.09

### **Report prepared by:**

Suzanne Craig  
Integrity Commissioner

Respectfully submitted,

Suzanne Craig  
Integrity Commissioner

December 22, 2009

**RE: MAYOR LINDA D. JACKSON**

**Background**

[1] On September 24, 2009, a private citizen filed a formal complaint with the City of Vaughan City Clerk's Office. The request was received by the Office of the Integrity Commissioner on September 29, 2009. In the request, the private citizen (the "Complainant") asked the Office of the Integrity Commissioner to investigate into alleged breaches of Rules 3, 5 and 8 of the Code of Ethical Conduct (the "Code") in relation to information and findings contained in the report prepared by Ben Soave Associates Inc. (the "Soave Report").

[2] The complaint relates to alleged comments made by Mayor Jackson in relation to the Soave Report, the alleged refusal by Mayor Jackson to cooperate fully in the Soave investigation, her alleged unwillingness or inability to exercise the duties of her position and be accountable for the decisions she makes in relation to her office and her alleged lack of acknowledgment of the necessity of maintaining the security of City documents,.

[3] On September 29, 2009 the Office of the Integrity Commissioner confirmed receipt of the formal complaint and advised the complainant and the respondent that a complaint file had been opened.

[4] This complaint is governed by the interim Complaint Protocol which was adopted by Vaughan City Council at its meeting held on June 23, 2008, in addition to the Code of Ethical Conduct for Members of Council, City of Vaughan, approved on September 2009.

## **The Complaint**

[5] In the complaint, the Complainant alleged that Mayor Linda Jackson breached Rules 3, 5 and 8 of the Code, which require an elected Member of Council to maintain the confidentiality of information and records received as a result of being an elected official, refrain from disclosing or releasing confidential information acquired by virtue of their office, refrain from using City facilities, equipment and other resources for any election campaign or campaign-related activities and cooperate with City staff and other Members of Council to strive towards maintaining an atmosphere of decorum during Council and Committee meetings.

## **The Relevant Provisions of the Complaint Protocol for the Code of Ethical Conduct for Members of Council**

[6] Sections 3 and 5 of the Complaint Protocol, in addition to the Council direction of June 11, 2007, provide the Integrity Commissioner's jurisdiction to investigate into the alleged contraventions of the Code:

### Part A: Informal Complaint Procedure

3. Individuals (including City employees, members of the public, Members of Council or local boards) who identify or witness behavior or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council – (the “Code of Conduct”) may address the prohibited behavior or activity themselves as follows...

### Part B: Formal Complaint Procedure

5. Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behavior or activity by a member of Council that appears to be in contravention of the Code of Conduct for Members of Council, may file a formal complaint with the required information on the prescribed affidavit.

## **Facts**

[7] On June 19, 2009, the City received a copy of the Soave Report commissioned by Mr. Ben Soave regarding the investigation of unauthorized disclosure and distribution of City documents in November 2008.

[8] After the release of the June 2009 Soave Report, the City's Corporate Communications department stated that the investigation was complete.

[9] Mayor Jackson did cooperate with the Soave investigators until such time as she was no longer able to do so for her stated health-related reasons.

[10] The Soave Report found that the unauthorized disclosure of the City documents in November 2008 “were most likely disclosed from the Mayor's office to an external third

party which Ben Soave Associates Inc. (BSA) has not been able to positively verify and, in fact the Soave Report states that “the documents in question were most likely disclosed to an external (third party) by a person or persons in the Mayor’s office”

[11] Although the original BSA investigation was complete, there had been further direction provided to BSA by the City of Vaughan.

[12] Each Member of Council is responsible and accountable for the actions of their office.

[13] A member of the Mayor’s office staff who may be in a position to further clarify some of the questions of both the BSA investigation and the current investigation by the Integrity Commissioner, is unavailable for interview.

[14] There has been no confirmation from York Regional Police that there was an ongoing official police investigation with respect to the matter subject of the Soave Report.

### **Findings**

[15] As a general proposition, a Complainant who alleges that a Member of Council has contravened the Code must establish the allegations asserted in the complaint and bears the onus of proving that the breaches put forward in the complaint took place.

[16] In making a determination of findings of the facts brought forward, I can accept all of the information brought forward, some of the information or none. I may also draw reasonable conclusions based on the information that I accept.

### **Contravention of rules of the Code**

#### **Rules 3, 5 and 8**

[17] Rule 3 of the Code requires a Member of Council to refrain from disclosing by any means (which includes through their office) any confidential information acquired by virtue of their office. Records held by the City are either public documents or confidential documents by virtue of their contents and prevailing rules contained in the Municipal Freedom of Information and Protection of Privacy Act and the Municipal Act.

[18] Based on the information that I have obtained, although BSA was unable to positively verify from whom City documents were disclosed in November 2008, the information substantiates the conclusion and the Soave Report concluded that the disclosure to a third party was likely from the Mayor’s office.

[19] Council Member’s Staff can be distinguished from other members of the staff of City of Vaughan. They each receive direction from their Member of Council and carry out their duties at the pleasure of that Member of Council. In almost every function that

they carry out in the Member's office, Council Member's Staff act as the agents of the Member, following their direction. Council Member's Staff have no obligation of political neutrality in the work they do or positions they take. I agree with the statement of the former Integrity Commissioner of the City of Toronto, Mr. David Mullan, when he said that "when [Council Members' staff] stand in the shoes of the Member, they should personally be bound by the constraints that the *Code of Conduct* places on that Member".

[20] Some rules of the Code of Ethical Conduct speak directly to the coverage of Members of Council Staff. Rule 2 regarding "Gifts and Benefits", for example, states that "For these purposes, a fee or advance paid to or a gift or benefit provided with the member's knowledge to a member's spouse, child, or parent, or to a member's staff... is deemed to be a gift to that member". In other parts of the Code of Ethical Conduct, Council Member's Staff are included by inference rather than by express language.

[21] The dilemma that arises in coming to a conclusion in this investigation is whether Members of Council are responsible for the conduct of staff under the current Code. The substance of this complaint for which the Office of the Integrity Commissioner has jurisdiction, relates to allegations of Code contraventions that occur no more than 6 months prior to the complaint being filed. The Integrity Commissioner has jurisdiction over complaints against Members of Council. The extent of that jurisdiction and the scope of the obligations of Members with reference to actions of their staff will need to be clarified at some point in the future. However, insofar as Members of Council are regularly privy to confidential information acquired by virtue of their office, and insofar as their staff often have access to the same confidential information as the Members of Council, the rules regarding Confidential Information (Rule 3) and the Key Principles (Rule 1) necessarily include the transfer of responsibility and adherence to the rules where there is delegation from Member of Council to their staff.

[22] Rule 1 of the Code contains key principles that underline the ethical requirements of Members of Council. Integrity, honesty and being held to a higher standard form the foundation of the ethical expectations for Members of Council. In addition Members of Council must be conscientious in their service, demonstrating respect for members of the public and striving to foster and enhance respect for government. Working as a body known as City Council, respecting the approved policies of that body, putting aside partisan interests, is the underpinning of the Code of Ethical Conduct.

[23] The complaint alleges the respondent's "unwillingness to cooperate fully with the Soave investigators even though she wasn't being asked to do more than many other City officials were" and "[h]er lack of acknowledgment of the necessity of maintaining the security of City documents. Although I have no direct evidence to support the position that Mayor Jackson breached rule 3 of the Code, and although the alleged events of November 2008 fall outside of the jurisdiction of my investigation, I have serious concerns regarding what the BSA Report concludes in relation to where the unauthorized disclosure of City documents "is likely" to have originated. Members of Council hold all City information in trust and are stewards of that information, on behalf of the residents of the City. It is imperative that Members of Council and their staff, by extension, take

seriously the requirement of confidential information contained in Rule 3 of the Code. The jurisdiction of the Office of the Integrity Commissioner does not extend to the matter subject of the Soave Report and as a result, I will not comment further on the subject of that investigation.

[24] As in other investigations of this office to date, this investigation has concluded that there is a need to go beyond good intentions and well-meaning actions in order to demonstrate good governance and accountability and to maintain the public trust. Integrity has many definitions, however the Code of Ethical Conduct for the City of Vaughan requires that Members of City Council carry out their duties with impartiality and equality of service to all, recognizing that as leaders of the community, they are held to a higher standard of behaviour and conduct. The question that needs to be addressed in this particular investigation is whether the allegations of the complaint are found to constitute a breach of the Code. The complainant alleges that the Mayor breached the Code of Ethical Conduct by “[h]er lack of acknowledgment of the necessity of maintaining the security of City documents, her unwillingness to cooperate fully with the Soave investigators... and her [...] unwillingness or inability to exercise the duties of her position and be accountable for the decisions she makes in this regard...”.

[25] I do not have sufficient substantiated information to render a finding that the Mayor did breach Rule 3 of the Code personally. I find that, there is no factual evidence that I have received to uphold a determination in relation to allegations of a breach by the Mayor of rules 5 or 8. However, based on the information that I have received throughout this investigation, it appears clear that there is a serious need to maintain the security of confidential City documents held in the custody and control of the City. This confidential information is acquired by virtue of their office and a Member of Council, in particular the Head of Council and Chief Executive Officer of the municipality is required to ensure that their staff is fully aware of the rules governing confidential documents. In my discussions with Mayor Jackson during this investigation, she has stated that she understands fully the responsibility of maintaining the security of City documents.

[26] At the conclusion of a complaint investigation, the Integrity Commissioner may make recommendations on sanctions to Council. The sanctions that may be imposed are a reprimand or suspension of the remuneration paid to the member of Council. If the Integrity Commissioner determines that there has been no contravention of the Code of Ethical Conduct...the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act*.

[27] Although I have not made a determination that there has been a contravention of the Code in relation to the Mayor’s action, based on the information that I have received and in relation to the obligations of Members of Council contained in the Code, I make the following recommendations:

- a) Mayor's Jackson's office receive training on the confidentiality and security requirements for City documents;
- b) Members of Council consider clarification on the interaction between their obligations under the Code of Ethical Conduct and other policies which apply to Members' staff.

Suzanne Craig  
Integrity Commissioner