

COMMITTEE OF THE WHOLE FEBRUARY 23, 2010

REPORT ON COMPLAINT OF VIOLATION OF CODE OF CONDUCT FOR MEMBERS OF COUNCIL RE FILE: 12.14.09(A)

Recommendation

The Integrity Commissioner recommends that Council consider the recommendations contained in the attached report (Attachment 1), that Mayor Linda D. Jackson seek from appropriate City staff reasonable and complete answers to the questions of the Complainant, or provide the prohibitions in legislation or approved City policy that preclude her from so doing and that Mayor Linda D. Jackson provide me with a copy of the response to the Complainant.

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

A formal complaint was received by The Office of The Integrity Commissioner on December 14, 2009. A file was opened and an investigation was started.

Relationship to Vaughan Vision 2020/Strategic Plan

N/A

Regional Implications

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

Attachments

Attachment 1 – Final Report re File 12.14.09(a) – Mayor Linda D. Jackson
Attachment 2 – Addendum Report re File 12.14.09(a) – Mayor Linda D. Jackson

Report prepared by:

Suzanne Craig
Integrity Commissioner

Respectfully submitted,

Suzanne Craig
Integrity Commissioner

**RE: MAYOR LINDA D. JACKSON
File: 12.14.09(a)**

Background

[1] On December 4, 2009, a private citizen filed a formal complaint with the City of Vaughan City Clerk's Office. In the complaint, the private citizen (the "Complainant") asked the Office of the Integrity Commissioner to investigate into alleged breaches of Rules 1 (a), (b), (c), (d), (e), (g), (i), 2, 3, 4, 5, 7, 9, 10, 14, 16, 18 and 19 of the Code of Ethical Conduct (the "Code") and "others as the Integrity Commissioner sees fit".

[2] On December 9, 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.

[3] This complaint is governed by the City of Vaughan 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.

[4] The Complainant filed a complaint to Ontario's Privacy Commissioner, alleging that the City of Vaughan had released confidential medical and other documents. In his complaint the Complainant said that documents that had been part of his settled wrongful dismissal suit against the City of Vaughan had been given to a third party when he filed a complaint to a professional body against another former City employee.

[5] The City of Vaughan's City Solicitor stated publicly that the City was obliged to provide certain documents to a third party to allow the ex-employee to respond. The City Solicitor was quoted in an August 2009 media article as saying that "[n] either city staff nor external counsel have provided any information inappropriately."

[6] Since the settlement of the legal matter between the Complainant and the City, there appear to have been many separate but overlapping matters that have left the Complainant unable, in their view, to understand why their documents were provided to a third party.

[7] After, what was seen by the Complainant as, failed attempts to receive satisfactory answers from senior City officials, the Complainant directed his questions to Members of Council and in the final instance, the Mayor of the City of Vaughan.

The Complaint

[8] The substance of the complaint rests on one pivotal point. The Complainant sought an answer to "who released [his] personal information to third parties, and under whose authority and whether or not Council's authority is required for these actions".

[9] In the complaint, the Complainant states that Mayor Linda Jackson breached Rules 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. Further, the complainant purports that Mayor Linda Jackson has “breached the public trust by refusing to answer [his] questions and by refusing to uphold the integrity of the Office of the Mayor and finally by refusing to conduct herself in accordance with the role of CEO”.

[10] Based on the information contained in the materials that accompanied the complaint, this complaint appears to have three components. The first component of the complaint relates to actions that occurred on or around October 2007 and April 2008. The second component of the complaint relates to questions posed to senior officials of the City of Vaughan on or around August 2009. The third component of the complaint relates to questions that the Complainant directed to Mayor Linda Jackson and other Members of Council on or around September 2009.

The Relevant Provisions of the Complaint Protocol for the Code of Ethics and Conduct for Members of Council

[11] Sections 3 and 5 of the City of Vaughan Complaint Protocol (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.

[12] Section 6 of the Complaint Protocol contains the rules that bind the Integrity Commissioner in her decision to investigate all or part of the complaint. The current Complaint Protocol, although adopted by Vaughan City Council in June 2008, is a document that is currently in review with several amendments pending. Notwithstanding the Complaint Protocol’s interim status, it serves as the City of Vaughan’s procedure for authority and decision-making of the Integrity Commissioner. Section 2 states that “after September 30, 2008 all complaints must be addressed in accordance with the below captioned procedure within six (6) months of the alleged violation or no action will be taken on the complaint.

[13] Subsection 6 (3) of the Complaint Protocol requires the Integrity Commissioner to advise the Complainant that a matter is not a Code of Conduct violation “[i]f the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or complaint procedure under another Council policy...”. If any of these stated conditions exist, the Complaint Protocol requires (“the Integrity Commissioner shall...”) the Integrity Commissioner to advise the Complainant in writing that the complaint is:

- (a) an allegation of a criminal nature consistent with the *Criminal Code of Canada*;
- (b) in relation to non-compliance with the *Municipal Conflict of Interest Act*;
- (c) more appropriately addressed under the *Municipal Freedom of Information and*

Protection of Privacy Act;

- (d) seems to fall under another policy of the City of Vaughan;
- (e) for any other reason, does not appear to be within the jurisdiction of the Integrity Commissioner;
- (f) in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding, Human Rights complaint or similar process, the Integrity Commissioner **may, in his/her sole discretion** suspend any investigation pending the result of the other process.

[14] Section 8 of the Complaint Protocol states that:
“If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, and where this becomes apparent in the course of an investigation, terminate the investigation.

Jurisdiction

[15] Each formal complaint filed with the Office of the Integrity Commissioner is reviewed to determine whether:

- there was sufficient information to assess the allegations;
- if the circumstances in all or part of the complaint prevented the Integrity Commissioner from dealing with the complaint because it concerned a matter that is outside the Commissioner’s jurisdiction.

[16] As stated above, the first component of the complaint relates to actions that occurred on or around October 2007 and April 2008. Pursuant to Section 2 of the Complaint Protocol, I was barred from taking any investigative action in relation to this part of the complaint. The second component of the complaint relates to questions posed to senior officials of the City of Vaughan on or around August 2009. It is my position that although this component of the complaint falls within the six-month timeline required by section 2 of the Complaint Protocol, the substance of the matters to which the questions relate are covered by subsection 6(3)(f) “Matter already Pending”. Further, the Integrity Commissioner has no jurisdiction to deal with complaints against City or staff labour relations matters which are more appropriately addressed through a grievance or other labour relations process.

[17] The third component of the complaint relates to questions that the Complainant directed to Mayor Linda Jackson and other Members of Council on or around September 2009. This part of the complaint falls within the jurisdiction of the Integrity Commissioner and is the basis of the current investigation.

Facts

[18] On September 11, 2009, the Complainant forwarded an email to Mayor Linda Jackson and other listed Members of Council, quoting rules of the Code of Ethical Conduct that, in the Complainant’s view, required Members of Council to provide “a response to the troubling matter from all as to when it will be investigated and probe this matter and respond to me and the integrity commissioner with your findings of the investigation”.

[19] On October 9, 2009, the Complainant forwarded an email to Mayor Linda Jackson and Council referencing correspondence in relation to another matter and renewing his request for responses to the questions posed in earlier emails.

[20] On October 28, 2009, the Complainant forwarded an email to Mayor Linda Jackson (in which the “To” line was addressed to ‘Jackson, Linda’ and ‘Mayor and Members of Council’) in

which he asked for responses to the following questions:

1. What is the decision-making process by which a City official receives direction from City Council to,
 - (a) respond to a request for information
 - (b) act on behalf of the City regarding a law suit/human rights challenge,
2. What is the Council resolution that came out of the closed meeting that gave the City Solicitor authority to disclose "relevant" documents, as referenced by her comments to the media (media comment was that the "City" was obliged to disclose the relevant documents"?)
3. Please explain what "obligation" the City was under to disclose relevant information i.e. is there a City by-law, statute, that imposes that obligation on the City. If so, please cite that authority."

[21] In the Affidavit that commenced the formal complaint, the Complainant's statements included the following:

- (A) that from June 11 to October 28, 2009, the Complainant submitted a list of questions "first to the City Solicitor and/or the City Manager..." "to find an answer to who released my personal information to third parties, and under whose authority and whether or not Council's authority is required for these actions."
- (B) "I have subsequently attempted to participate in mediation with the mayor. The Mayor chose to bring her lawyer to the mediation and the mediation was unproductive and of no result".

[22] With reference to the Complainant's statement in the above paragraph [21] (B), although the Complainant did request informal mediation be attempted, no mediation was scheduled and did not take place as the Respondent declined the request. The Complainant clarified with me that the statement in the Complaint Form was intended to convey that no mediation took place and that the statement should have been more clearly worded.

Analysis

[23] The sections of the Code of Ethical Conduct that were cited in the complaint were sections 1 (a), (b), (c), (d), (e), (g), (i), 2, 3, 4, 5, 7, 9, 10, 14, 16, 18 and 19.

[24] Having carefully reviewed the supporting documentation submitted by the Complainant, the information provided by those I interviewed and the evidence relied on therein, I find that the Complainant has not provided sufficient evidence to go forward with an investigation of alleged contraventions of sections 1(a), (c), (d), (e), (g), 2, 4, 5, 7, 10, 14, 16, 18 and 19.

[25] The investigation that I have conducted of this complaint, therefore, only relates to assertions made by the Complainant that Mayor Linda Jackson contravened sections 1(b), (i), 3 and 9 of the Code of Ethical Conduct.

[26] Rule 1(b) of the Code of Ethical Conduct states that Members of Council should be committed to performing their functions with integrity and transparency. The commentary to this section goes on to clarify and underscore the public's right to reasonable access to information in relation to how decisions of the City are made. "This right of access includes the right of [every member of the] public to receive complete and understandable information which must be balanced against the requirement to protect the legitimate interests of the City and the respect for approved policies of the City.

[27] When the Complainant directed his questions to Mayor Linda Jackson in email correspondence of October 9, 2009, a response was provided to him by way of the City Solicitor in which he was advised that it was “not appropriate for the City to be engaging in direct communication with [him] relating to issues on which [he is] represented by legal counsel”.

[28] Rule 1(i) of the Code of Ethical Conduct requires Members of Council to fulfill their roles as set out in the *Municipal Act* and other governing legislation, while respecting the role of City staff in the administration of the business affairs of the City. Council as a whole must be able to access information, on a need to know basis, in order to fulfill its decision-making duties and oversight responsibilities of the City. Council as a whole and not an individual Member of Council is the decision-making authority for the municipality. As such, no individual Member of Council can direct a City staff person to produce documents, except as part of Council as whole and following processes and procedures set by by-law.

[29] Questions from members of the public inquiring about decisions made and decision-making processes of the City should be answered by the appropriate City staff. Where Members of Council require clarification from City staff on matters relating to decisions made relating to City business or Council resolutions, Members should follow the approved City processes that would bring the matter that requires clarification properly before Committee or City Council.

[30] Subsection 1(i) of the Code of Ethical Conduct speaks clearly on Members obligation to fulfill their roles as set out in the *Municipal Act* while respecting the role of staff in the administration of the business affairs of the City. However, the obligation contained in this rule does not restrict a Member of Council from following up with senior management of the City to determine the outcome of a particular request in relation to a Council decision.

[31] The question raised by this complaint is whether there was an ethical responsibility imposed on the Mayor to respond to the questions of the Complainant, based on the rule(s) in the Code of Ethical Conduct. In the event that there is an ethical responsibility imposed, how far in depth is a Member of Council required to go to satisfy the Code requirement.

[32] Answers to questions that pertain to day-to-day City business, transactions and policy fall within the mandate of the City administration. In addition, City staff are required to follow the City policy that dictates 10 days within which a response should be provided to the public. Of guidance to Members of Council when deciphering the division of responsibility at the City, is the commentary to Rule 1(i) which states that:

Members of Council recognize that the decision-making authority for the municipality lies with Council, not an individual Councillor and that it is the role of the officers and employees of the municipality to implement council's decisions and establish administrative practices and procedures to carry out council's decisions.. Members of Council recognize and respect the role of City staff and affirm that only Council as a whole has the capacity to direct staff members...

[33] A careful analysis of the substance and types of questions that the Complainant directed to the Mayor will shed light on the sphere of responsibility (Member of Council or City administration) and therefore whether there are ethical obligations based on Code rules for Members of Council. The first question appears to be one that could be answered in a straightforward manner. Again, the first question was:

1. “What is the decision-making process by which a City official receives direction from City Council to,
 - (a) respond to a request for information
 - (b) act on behalf of the City regarding a law suit/human rights challenge,”

In other words, this question could be paraphrased in the following way:

*What are the steps involved when City Council directs a City official to respond to a request for information **and/or** act on behalf of the City regarding a law suit/human rights challenge*

On first glance, this appears to be a question of policy and administrative practice and as such, within the purview of City staff to answer.

The second question was:

2. "What is the Council resolution that came out of the closed meeting that gave the City Solicitor authority to disclose "relevant" documents, as referenced by her comments to the media (media comment was that the "City" was obliged to disclose the relevant documents".

The question being asked in point 2 is what Council motion or other resolution of Council, if any did the City Solicitor take as direction to "disclose relevant documents". If there was a Council motion or other resolution that gave direction to disclose documents, this should be recorded in the minutes of the meeting referenced by the Complainant and as such, should be part of the public record. Where and how to find that record is a question that fall within the responsibility of City administration to answer or in the alternative, explain where in the City's record holdings the information can be found.

The third question was:

3. "Please explain what "obligation" the City was under to disclose relevant information i.e. is there a City by-law, statute, that imposes that obligation on the City. If so, please cite that authority."

The City of Vaughan's City Solicitor stated publicly that the City was obliged to provide certain documents to a third party. Although the answer may be found in the legal principle of common law and the obligation to indemnify an employee who was carrying out their official duties in good faith, based on the questions of the Complainant, there was not a clear understanding of what the obligation of the City entailed. It appears as though the answer to the question of what obligation the City was under to disclose the relevant information was one that falls within the purview of the City administration to answer.

[34] Section 3 of the Code of Ethical conduct requires Members of Council to maintain the confidentiality of City documents, including those containing information regarding:

- the security of the property of the municipality;
- personal and health information about an identifiable individual; and
- labour relations or employee negotiations and personnel matters.

[35] Although Members of Council should ensure and maintain the confidentiality of sensitive information acquired by virtue of their office (which would include information discussed in closed session of Committee or Council and information regarding litigation, potential litigation and matters before administrative tribunals) there is nothing in the Code of Ethical Conduct that prohibits a Members of Council from providing responses or seeking from City staff, responses to general questions on procedure or process in relation to how a decision on a confidential matter will or has been reached.

[36] Rule 9 of the Code of Ethical Conduct states that “Members shall endeavour to conduct and convey Council business and all their duties in an open and transparent manner other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner in closed session, so that stakeholders can view the process and rationale which was used to reach decisions, and the reasons for taking certain actions”.

[37] The commentary of Rule 9 clarifies the obligation contained in the rule that “...Members of Council should clearly identify to the public how a decision was reached and upon which law, procedure and policy their decision was based.”

[38] In a recent decision of the Information and Privacy Commissioner of Ontario, Order MO-2488, the adjudicator found that the volume, length and content of emails and calls from an appellant, demonstrated that they were made for nuisance value and that the access requests were “made for a purpose other than to obtain access for the purposes of the Act”. The use in this report of the reference taken from Order MO-2488 is relevant insofar as comments received from those interviewed in this investigation suggested to me that the Complainant’s motivation in filing a complaint with the Office of the Integrity Commissioner was purely to create a nuisance and that the complaint was made for a purpose other than to identify a contravention of a Member of Council under the Code of Ethical Conduct.

[39] The Province of Ontario’s Municipal Councillor’s Guide outlines the role of head of Council (the Mayor) as prescribed in the *Municipal Act, 2001*, which is:

- (a) to act as the municipality’s chief executive officer (CEO);
- (b) to preside over council meetings so that its business can be carried out efficiently and effectively;
- (c) to provide the council with leadership;
- (d) (l) without limiting clause (c), to provide information and recommendations to the council with respect to the role of council described in clauses 224 (d) and (d.l);
- (e) to represent the municipality at official functions; and
- (f) carry out the duties of a head of council under this or any other Act.

Pursuant to section 226.1 of the *Municipal Act*, as chief executive officer of the municipality, the head of council shall,

- (a) uphold and promote the purposes of the municipality;
- (b) promote public involvement in the municipality’s activities;
- (c) act as the representative of the municipality both within and outside of the municipality, and promote the municipality locally, nationally and internationally; and
- (d) participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents

[40] With this prescribed role, many citizens within the municipality will have high expectations for the head and CEO of council. Although the head does not have any more power than any other member of council to make decisions on behalf of the municipality, the Mayor does promote and uphold the purposes of the municipality. As stated in the Code, one of the key principles that underline the rules in the Code and therefore the ethical decision-making of the City’s Council, is the “public’s right to **reasonable** access to information in relation to how decisions are made”. This right of access includes the right of the public to receive complete and understandable information which must be balanced against the requirement to protect the legitimate interests of the City and the respect for approved policies of the City”.

[41] The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) states that Council is head of the municipality for the purposes of adherence to the Act. The Act identifies Council as the head for the purposes of decision-making, however, each municipality has delegated in some measure, the decisions around responding to formal access requests and protection of privacy to and individual City official. The Mayor, as the head of council however, is

required to carry out the duty of head of Council under the *Municipal Act* and other Acts and to uphold and promote the rules and by-laws of the City of Vaughan, which include the rules of MFIPPA and the Code of Ethical Conduct.

[42] The questions to be asked are whether the Mayor of the City of Vaughan upheld and promoted the public's right to receive complete and understandable information about the decisions of the City; the right of Members of Council to access information, on a need to know basis, in order to fulfill its decision-making authority; the public's right to not have their personal and health information disclosed without their consent. Was there an ethical responsibility under the Code for the Mayor to have answered the questions of the Complainant?

Conclusion

[43] 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.

[44] 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 1, 3 and 9

[45] Rule 3 (5) of the Code of Ethical Conduct requires a Member of Council to not permit any persons other than those who are entitled thereto to have access to information that is confidential. Records held by the City are either public documents or confidential documents by virtue of their contents and prevailing rules contained in MFIPPA and the Municipal Act. One of the cornerstones of the public's trust in the decisions of the City of Vaughan is the understanding that any City sensitive records about an identifiable individual, including health records, will be held confidential pursuant to the rules to which the City is bound under MFIPPA.

[46] Based on a review of the information that I have obtained, the Complainant's questions subject of this investigation are to be distinguished from any substantive discussion regarding pending or past litigation matters. Further, the determination of whether there has been a breach of MFIPPA by the Mayor or the City is outside of my jurisdiction and falls within the decision-making authority of the Information and Privacy Commissioner of Ontario.

[47] In summary, the Complainant asked Mayor Linda Jackson the following questions:

- 1 What is the decision-making process by which a City official receives direction from City Council to,
 - (a) respond to a request for information
 - (b) act on behalf of the City regarding a law suit/human rights challenge,
- 2 What is the Council resolution that came out of the closed meeting that gave the City Solicitor authority to disclose "relevant" documents, as referenced by her comments to the media (media comment was that the "City" was obliged to disclose the relevant documents".
- 3 Please explain what "obligation" the City was under to disclose relevant information i.e. is there a City by-law, statute, that imposes that obligation on the City. If so, please cite that authority."

[48] The first component of the role of chief executive officer of a municipality listed in the *Municipal Act*, section 226.1 is to uphold and promote the purposes of the municipality. It is clear that one of the most fundamental purposes of a municipality is to ensure transparency and openness in City decision-making by clearly identifying to the public how decisions were and upon which law, procedure and policy the decisions were made.

[49] Rule 1(b) reiterates the obligation of transparency found in section 226.1 of the *Municipal Act* and Rule 1(i) strengthens the imperative of section 226.1 of the *Municipal Act* by underscoring Council's obligation to oversee the officers and employees' implementation of Council decisions and to ensure that administrative practices allow for the fulfillment of transparency and understandable reasons for City decisions being made. In other words, a Member of Council cannot insert him or herself in the day-to-day administration and implementation of City decisions, however, Council as a whole and overseer of the legitimate interests of the City, must obtain information through the appropriate processes and pursuant to the rules of the procedural by-law and other City policies, in order to carry out its function in a conscientious and diligent manner.

[50] Although decisions of a municipality are made by Council as a whole and the head does not have any more power than any other Member of Council to make decisions on behalf of the municipality (The Municipal Councillor's' Guide, Province of Ontario p.2), as chief executive officer, the head of Council has a duty to uphold and promote the purposes of the municipality and one such component of that role is to ensure or inquire into whether Council has made decisions that respect the key principles that underline the rules in the Code of Ethical Conduct, the *Municipal Act*, *MFIPPA* and other governing legislation

[51] 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 is the underpinning of the Code of Ethical Conduct.

Findings

[52] If Rule 1 of the Code, in particular 1(b) is to have any real meaning and if it is to be taken seriously by Members of Council with an expectation by Members and the public that it has value in the ethics regime being facilitated by the rules of the Code, Rule 1(b) cannot be the default vehicle through which the public seeks remedy for every unanswered question asked of the City. I do not condone the Complainants method for seeking answers from the Mayor (numerous emails and other communications with escalating frequency and severity in tone) and I recognize that there are legal issues that must and should be kept distinct from the subject of this investigation,. However, although the behaviour of the Complainant is taken into consideration when weighing the information I have received throughout the investigation, the determination that I must make is one of whether ethical rules have been contravened by a Member of Council.

[53] Integrity in action requires that Members of City Council carry out their duties of office in a way that brings meaning to the rules of the Code of Ethical Conduct and fulfills in a real and tangible way the obligations to oversee the City's adherence to governing legislation. Recognizing that Members of Council as a whole are the governors of the City, they are held to a high standard of behaviour and conduct that allows the public to have confidence in the integrity of municipal government.

[54] Based on the information that I have received, I find that Mayor Linda Jackson did not adhere to the principles contained in Rule 1(b) of the Code of Ethical Conduct. I do not have sufficient information to make a finding of contravention of Rule 3 of the Code and I find that

Mayor Linda Jackson did not contravene Rule 9 of the Code.

[55] 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.

[56] I find that Mayor Linda Jackson contravened Rule 1(b) of the Code of Ethical Conduct. However, based on the information that I have received, I further find that the contravention was made through inadvertence and without a full inquiry into the requirements of the City to provide clear answers to a member of the public. I therefore do not recommend any sanctions against Mayor Linda Jackson.

[57] I have not received information that would demonstrate that the questions asked by the Complainant are unreasonable or that to answer the questions would violate approved policies of the City and I therefore make the following recommendations to Council:

1. That Mayor Linda Jackson seek from appropriate City staff reasonable and complete answers to the questions of the Complainant, or provide the prohibitions in legislation or approved City policy that preclude her from so doing.
2. That Mayor Linda Jackson provide me with a copy of the response to the Complainant.

Signed,

Suzanne Craig
Integrity Commissioner

**RE: MAYOR LINDA D. JACKSON
File: 12.04.09(a)
ADDENDUM TO FINAL REPORT**

Considerations

Subsequent to my final Report, additional information was brought to my attention.

In the first instance, I wish to clarify that the substance of the complaint is not that the Mayor breached the Code of Conduct because she failed to provide *satisfactory* answers to the complainant to the pivotal question “who released his personal information, under whose authority and whether Council’s authority is required for this action”. Although I state in paragraph 7 the word satisfactory, the Code speaks to reasonableness.

In paragraph 10 of the final Report, I indicate 3 components of the complaint. I clarify and confirm that the Integrity Commissioner only has jurisdiction to deal with the third component which relates to questions that the Complainant directed to Mayor Linda Jackson and other Members of Council on or around September 2009. I stated this in paragraph 17 of the final Report.

I have reviewed additional information, as well as, information that had previously been provided to me during the course of the investigation.

I will clarify that the final Report identifies 3 emails dated September 11 2009, October 9 2009 and October 28 2009. For further clarity I will outline facts in this Addendum upon which I relied on but that were not previously identified in the final Report.

Facts

- On June 8, 2009 the City Solicitor advised the complainant that she had instructed external counsel to support a former employee’s response to a complaint that was filed with a professional organization by the complainant. . This fact is evidenced by the following documents shown to and/or provided to the Integrity Commissioner:
 - the complainant’s email dated June 10, 2009 to the City Solicitor and copied to the Mayor and Members of Council and the external counsel;
 - the complainant’s email dated July 24, 2009 to external counsel;
 - the City of Vaughan’s media release dated August 18, 2009 the media story of August 19, 2009.

- On August 4, 2009, the Mayor responded to the complainant’s emails to date by saying:

“I have looked into your complaint and met with the Deputy City Manager and the Commissioner of Legal Services about disclosure of documents by the City. Based on the information I received from them I am satisfied that neither City staff nor our external counsel has disclosed any documents inappropriately. Your concern was also vetted through our external counsel for an opinion as well. At this time, I don’t believe that a follow up meeting is required based on the information I received from staff.”

- On September 10, 2009 the complainant advised by email of several legal avenues that he was pursuing (which included complaints under the Freedom of Information legislation, the Police, litigation, and complaints to the Law Society of Upper Canada) and that he was pursuing these avenues because he felt he should be compensated for his 'damages'. This email was sent to the Mayor and Members of Council and copied to the Integrity Commissioner and others.
- On September 29, 2009 the complainant's lawyer sent a letter to the City of Vaughan, to which the City responded on October 5, 2009 as follows:

"Contrary to the assertions in your letter, please be advised that the City has complied with all applicable legislation and other pertinent duties and responsibilities, and the City has abided by the terms of its settlement agreement with [the complainant]. The allegations in your letter are completely unfounded, and we will not be responding to the inquiries made therein. The City will vigorously defend any application you commence in this matter." This letter was drafted by the City Solicitor, in consultation with internal and external counsel, and copied to the Mayor.

- On October 9, 2009 the City Solicitor advised the Mayor by email, (with a copy to the Integrity Commissioner):

"It would not be in the City's best interest to respond to such questions which are both hypothetical and fact-specific. Also, it is not appropriate for us to be engaging in direct communication with [the complainant] particularly on matters where he is already represented by legal counsel. We have already responded to his legal counsel last week – you were copied."

- On October 9, 2009 the City Solicitor provided a response to the complainant's email of October 9, 2009 (which was copied to the Mayor and Members of Council, the Integrity Commissioner and others) as follows:

"In response to your email, it is not appropriate for the City to be engaging in direct communication with you relating to issues on which you are represented by legal counsel. We have already responded to your legal counsel."

The purpose of the Code of Ethical Conduct is to enhance public confidence and trust in the Members of Council and to demonstrate to the public that the Members share and have agreed to a common understanding of acceptable ethical behaviour and that they will be held to a higher standard of conduct as elected officials.

The Code also aims to guide Members by establishing common standards and an independent means of answering questions related to the proper conduct of Members.

One of the most important roles of the Office of the Integrity Commissioner is to provide individual Members of Council with confidential opinions on the application of the Code to their specific situations. The Code came into force on November 2, 2009. It is a new document here at the City of Vaughan, as are Codes in other municipalities. As I apply the provisions of the Code to concrete situations, it becomes clearer to Members and to the public, the correct interpretation of rules. As a premise, the Code, the application of its rules and any interpretation of the application of the rules to specific situations cannot contravene existing laws of the municipal, provincial or federal governments.

The Code is a compilation of rules that are shared and have been accepted by Vaughan City Council. At the end of the day, the Code is a document of City Council that demonstrates their common understanding and agreement to be held to the highest standards of conduct. In

reaching my conclusions in this report, I was fully aware of the concerns of the potential use by current or future litigants to circumvent the discovery process. Should City Council, as a decision making body, be sufficiently concerned about this risk, the Code could be adjusted to exclude from the ambit of the Integrity Commissioner's investigative authority, questions on access to information in relation to how decisions are made when posed by current or future litigants.

Certainly in considering any report and recommendations that I bring forward to City Council, a motion may be adopted that the Code be amended and that I give further consideration to my recommendations in light of an adopted amendment to the Code. The question may arise as to whether rules of the Code, as interpreted by my office, interfere with or diminish legal advice obtained by Members. I understand the concern and I share it. I am careful not to interpret the rules of the Code that speak to the public's right to reasonable access information in relation to how decisions are made, overly broadly. It is important that rights of Member(s) to rely on legal advice is protected. At the same time it is important to keep present that, in adopting the Code, Members have accepted as appropriate "...the right of the public to receive complete and understandable information which must be balanced against the requirement to protect the legitimate interests of the City and the respect for approved policies of the City."

Reasonable access to information in relation to how decisions are made does not put a requirement on individual Members of Council to directly answer ever question posed by a member of the public and to the extent to which the member of the public deems the answer to be satisfactory. The qualifier "reasonable" includes *complete and understandable* balanced against the need to protect the *legitimate* interests of the City and the respect for *approved* policies of the City. On page 2 of the Code under *Commentary*, Council has adopted a common understanding that "[t]hese standards are designed to provide a reference guide and a supplement to the legislative parameters within which the members must operate." The inclusion of the word "reasonable" in the commentary reflects the fact that performing their functions with integrity and transparency does not require Members to afford any and all access to information on how decisions are made and certainly their performance must be balanced against the requirement to protect the legitimate interests of the City. On page 3 of the Code under the title *Framework and Interpretation*, point 1 states that "[t]his *Code of Ethical Conduct* ...is to be given broad, liberal interpretation in accordance with applicable legislation and the definitions set out herein." I think that my interpretation of the application of rule 1 (b) to the matters raised in this investigation are entirely appropriate in that it is aimed at recognizing the public's right to *reasonable* access to information that is *complete and understandable* .

In deciding whether a Member has fulfilled their duty imposed by Rule 1(b) of the Code, it was necessary to determine whether the focus of the actions and behaviour of the Member recognized the public's right to reasonable access to information on how decisions are made. After examining the facts available to me during this investigation, and on the basis of the substance of the complaint and not other issues incidental to the same, I determined that I do not have sufficient information to make a ruling on a contravention of Rule 3 relating to confidential information and that there was no breach of Rule 9. This conclusion reflects the general view of this Office that the Integrity Commissioner should not be involved in policy, employment, privacy, legal or political disputes. The question that hangs in the air is what complaint brought to the Integrity Commissioner does not deal with one or more of the previously mentioned matters in some measure. My answer is that, to date, none. However, my job has been to extrapolate the Code requirements from the other matters and focus in on what is, in my view, the role vested in me by City Council: the interpretation and application of the rules of the Code.

It would be disingenuous to think that no complaint would be filed under the Code that was not in some measure incidental to City policy, employment or labour relations, privacy, legal or political matters. To wit, Section 6 of the Complaint Protocol identifies that the Integrity Commissioner shall advise the complainant in writing if the complaint is on its face, a criminal matter, a Municipal Conflict of Interest Act matter, a Municipal Freedom of Information and Protection of Privacy matter, a matter to which other policy applies or for which the Integrity Commissioner

lacks jurisdiction or in relation to which the complaint is subject to an outstanding complaint *under another process* such as a court proceeding, Human Rights complaint or similar process. Exactly where to draw the line between the various Code and non-Code issues will often be difficult to determine and will depend on the circumstances of the case. However, as Members of Council stated when adopting the Code, this is a living document and will expand and contract over time to bring meaning and effectiveness to the spirit and letter of the rules of integrity and transparency.

I understand that the rules of confidentiality contained in the Municipal Act in relation to the Office of the Integrity Commissioner relate also to the need to prevent attention to be drawn to allegations of wrongdoing unless and until the Integrity Commissioner has completed her investigation and submitted a report of her findings to City Council. This reflects an important principle of procedural fairness and I take the confidentiality of the investigation very seriously. I am also very aware of and concerned about complaints being filed under the Code with a view to damaging the reputation of a Member. There is often a significant amount of time between when a complaint is filed and when I make a determination that there are no grounds for an investigation or I have completed an investigation and submit the report to City Council. Speculation on an ongoing investigation and the mere fact that a complaint has been filed by a Member can be damaging to the reputation of a Member. I say this to make very clear that I understand the environment within which I work, I respect the work of Members of Council and how hard they work for their constituents and I treat all complainants fairly.

In my previous reports, as well as this report, even if I decide not to proceed on certain aspects of the complaint once I have clarified some of the facts underlying the situation referred to me, or find that the complaint itself falls outside the time parameters of the Complaint Protocol, I have believed it to be instructive and serving the interests of transparency to make public in a report some of my considerations in not taking the matter further in whole or in part. The Code and the Office of the Integrity Commissioner are new to the municipal landscape and to operate on a technical basis and simple state in or out of my jurisdiction, in or not in compliance does not, in my view translate into the promotion of Accountability and Transparency envisioned by the authors of the amendments to the Municipal Act.

Conclusions

As stated in the final Report, the substance of the complaint rests on one pivotal point. The Complainant sought an answer to “who released [his] personal information to third parties and under whose authority and whether or not Council’s authority is required for these actions”. He was told that neither City officials nor external Counsel disclosed information inappropriately.

In the complaint, the Complainant states that Mayor Linda Jackson breached Rules 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. I found and stated in the final Report that I did not have sufficient information to make a determination that Mayor Linda Jackson breached Rule 3 of the Code. It is my understanding that the Office of the Information and Privacy Commissioner of Ontario has ruled on the privacy complaint filed by the complainant under the *Municipal Freedom of Information and Protection of Privacy Act*. (MFIPPA). I do not believe that it is within my jurisdiction to comment on the substance of the ruling of the Information and Privacy Commissioner of Ontario (IPC). I will limit my comment to the statement that a ruling has been given by the IPC and it is my understanding that the IPC stated that the matter subject of the privacy complaint falls outside of the application of MFIPPA and therefore the IPC did not rule on the merit of the complaint. I therefore, confirm that I do not have sufficient information to rule that Mayor Linda Jackson breached Rule 3 of the Code of Ethical Conduct.

The complainant purports that Mayor Linda Jackson has “bre[a]ched the public trust by refusing to answer [his] questions and by refusing to uphold the integrity of the Office of the Mayor.”

The complaint was not against all Members of Council but against the Mayor. Although the emails from the complainant to the Mayor that I have received and reviewed during this investigation had many individuals on the “to” lines and “cc” lines, the text of the emails to which the questions below refer, were directed to the Mayor. Again, the questions were as follows:

- 1 What is the decision-making process by which a City official receives direction from City Council to,
 - (a) respond to a request for information
 - (b) act on behalf of the City regarding a law suit/human rights challenge,
- 2 What is the Council resolution that came out of the closed meeting that gave the City Solicitor authority to disclose “relevant” documents, as referenced by her comments to the media (media comment was that the “City” was obliged to disclose the relevant documents”.
- 3 Please explain what “obligation” the City was under to disclose relevant information i.e. is there a City by-law, statute that imposes that obligation on the City. If so, please cite that authority.”

The answers received by the Complainant were:

- On August 4, 2009, the Mayor responded to the complainant by saying:

“I have looked into your complaint and met with the Deputy City Manager and the Commissioner of Legal Services about disclosure of documents by the City. Based on the information I received from them I am satisfied that neither City staff nor our external counsel has disclosed any documents inappropriately. Your concern was also vetted through our external counsel for an opinion as well. At this time, I don’t believe that a follow up meeting is required based on the information I received from staff.”
- On October 5, 2009 the City responded as follows:

“Contrary to the assertions in your letter, please be advised that the City has complied with all applicable legislation and other pertinent duties and responsibilities, and the City has abided by the terms of its settlement agreement with [the complainant]. The allegations in your letter are completely unfounded, and we will not be responding to the inquiries made therein. The City will vigorously defend any application you commence in this matter.” This letter was drafted by the City Solicitor, in consultation with internal and external counsel, and copied to the Mayor.
- On October 9, 2009 the City Solicitor advised the Mayor by email, (with a copy to the Integrity Commissioner):

“It would not be in the City’s best interest to respond to such questions which are both hypothetical and fact-specific. Also, it is not appropriate for us to be engaging in direct communication with [the complainant] particularly on matters where he is already represented by legal counsel. We have already responded to his legal counsel last week – you were copied.”

On October 9, 2009 the City Solicitor provided a response to the complainant’s email of October 9, 2009 (which was copied to the Mayor and Members of Council, the Integrity Commissioner and others) as follows:

“In response to your email, it is not appropriate for the City to be engaging in direct communication with you relating to issues on which you are represented by legal counsel. We have already responded to your legal counsel.”

In paragraph 3 of my final Report, I stated that "If there was a Council motion or other resolution that gave direction to disclose documents, this should be recorded in the minutes of the meeting referenced by the Complainant". I have been advised by City staff that this is not the case and that a closed meeting would only require the City to state that there is a matter falling under the one of the criteria for which a closed meeting can be held. Closed meeting rules and the investigation of the same, would be the responsibility of the City's Closed Meeting Investigator.

In paragraph 45 of my final Report, I refer to medical records, as stated in the complaint. In one of the additional documents that I received, it states that the 2 documents which might be described as medical records did not disclose any confidential information. It is my position that the authority on the determination of medical records under MFIPPA lies with the Information and Privacy Commissioner of Ontario. I defer to her authority on this matter.

In paragraph 56 of my final Report, I state that the contravention of Rule 1(b) was made through inadvertence. I further add that the Code is new, the Rules are new and the Members of Council are working together with my office to fully understand the meaning of the application of the rules of the Code that City Council adopted. I therefore confirm that the Mayor's actions were through inadvertence and in good faith.

I conclude that the complainant did receive responses that indicated the City's legal position in relation the complaints to the IPC, the Police, litigation relating to employment and labour relations matters and the Law Society of Upper Canada. I believe that the City Solicitor was entirely appropriate in clarifying and providing the City's legal position in relation to the IPC, Police, litigation and Law Society matters.

I believe that the questions posed in the complaint under the Code of Ethical Conduct relate to policy, procedure or process of the City. I repeat at this time that I do not condone the complainant's method used for seeking answers from the Mayor. However, although the complainant received responses in relation to the City's position regarding legal issues and the City absolutely has the right and further, the obligation to protect its legitimate legal and financial interests which includes avoiding or mitigating costly litigation, it is my position that the questions posed to the Mayor by the complainant and subject of this complainant investigation, were not within the ambit of the jurisdiction of the IPC, the Police, the courts or the Law Society of Upper Canada, but rather procedural and reasonable responses in answer to the questions were not given.

Suzanne Craig
Integrity Commissioner