

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 27, 2017

Item 36, Report No. 26, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on June 27, 2017.

**36 INTEGRITY COMMISSIONER INTERIM CODE OF CONDUCT COMPLAINT INVESTIGATION
REPORT #110116(F) IN RESPECT OF FORMER DEPUTY MAYOR MICHAEL DI BIASE**

This item was referred to the Special Committee of the Whole meeting of June 27, 2017, for consideration. Refer to Special Committee of the Whole Report No. 28, Item 1.



memorandum

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| COMMUNICATION |
| CW - JUNE 20/17 |
| ITEM - 36 |

TO: HONOURABLE MAYOR AND MEMBERS OF COUNCIL
FROM: SUZANNE CRAIG, INTEGRITY COMMISSIONER
DATE: THURSDAY, JUNE 15, 2017
SUBJECT: COMMUNICATION: CODE OF CONDUCT COMPLAINT #010116(f) INVESTIGATION INTERIM REPORT IN RESPECT OF FORMER REGIONAL COUNCILLOR / DEPUTY MAYOR MICHAEL DI BIASE

Recommendation

The Integrity Commissioner recommends that:

1. That consideration of the Code of Conduct Complaint #110116(f) Investigation Interim Report in Respect of Former Regional Councillor / Deputy Mayor Michael Di Biase, be deferred to permit additional time for tabling of the Integrity Commissioner's Final report.

Contribution to Sustainability

Not applicable.

Economic Impact

Not applicable.

Communications Plan

Purpose

The purpose of this report is to update Mayor and Members of Council on the Code of Conduct Complaint Investigation Report #110116(f) and to recommend that consideration of the complaint be deferred to allow additional time for tabling of the Final Report.

Background

The Office of the Integrity Commissioner received a Code of Conduct Complaint on November 1, 2016. The Complainant wrote that he had reasonable grounds to believe that the Respondent had contravened Rule No. 7 of the Code (Improper Use of Influence). The Complaint Form/Affidavit was accompanied by 3 pages of detailed particulars of his allegations.

The complaint was provided to the Respondent with a request for his written response. The Respondent provided a written response to the complaint.

After my review of the supporting documentation to the complaint and my initial discussions with the Complainant, I determined that Rule 1(c) of the Code (which requires a Member to avoid the improper use of the influence of their office) was also engaged by the allegations, in addition to Rule 7 (Improper Use of Influence).

On May 19, 2017, the Respondent resigned as a Member of Council.

On June 6, 2017, I provided the Complainant and the Respondent with a copy of my Interim Report containing my preliminary findings of the investigation. I further advised that I would be submitting my Final Report to the City Clerk's Office on June 8th for consideration at the June 20, 2017 Committee of the Whole meeting.

On June 7, 2017, I received email correspondence from the Complainant that included comments with respect to my Interim Report.

On June 7, 2017, I received email correspondence from the Respondent in which he requested that I not proceed with the submission of my Final Complaint Investigation Report, until I had provided him with what he believed to be an equitable opportunity for reply.

On June 7, 2017, I forwarded correspondence to the Respondent advising that I am mindful of providing all Respondents to a complaint with a reasonable opportunity for any comments regarding an Interim Report. I further stated that in a recent decision of the, Ontario Superior Court of Justice, Divisional Court, Justice Marrocco stated at paragraph 118:

The [City of Vaughan] Complaint Protocol, which is a City bylaw and therefore also part of the statutory scheme, does not contemplate participation by the [Respondent to the Code Complaint] after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings.

On June 8, 2017, I submitted my Interim Report to the City Clerk's Office, to be placed on the Committee of the Whole agenda of June 20, 2017, as required by the City of Vaughan Council and Committee process. I had intended to receive comments from the Respondent and Complainant with respect to the Interim Report and these into consideration to finalize my Final Report. The Final Report was to be tabled at the June 20, 2017 Committee of the Whole meeting.

On June 15, 2017, I received an email from the Respondent in which he stated:

"I have read your Interim Report (Committee of the Whole Item, June 20, 2017) on line that included your preliminary findings. I am at a lost to understand why you would release your preliminary findings to the Public. In your e-mail dated June 7, 2017 you stated the following:

I will allow you until June 14, 2017 to provide me with any comments that you may have regarding my Interim Report.

"I am reviewing my options in light of the information noted above. However, before I move forward with any decisions I would like to know if your preliminary findings will change to reflect the facts as noted in the information I provided to your office on June 13th, 2017."

In the interest of fairness, I have decided to provide the Respondent with a copy of the Final Report prior to submitting the same to the City Clerk's Office. Deferral of this item will provide additional time for the Respondent to review the Final Report prior to consideration by Council. The City Manager has provided a separate communication recommending that this matter be referred to a Special Committee of the Whole meeting to be scheduled at 9:30 a.m. on June 27, 2017, prior to Council.

Relationship to Vaughan Vision 2020/ Strategic Plan

This communication promotes the commitment of the City of Vaughan Mayor and Members of Council to openness and transparency in government decision-making. In addition, this communication promotes Service Excellence through the public reporting of activities of the independent ethics officer in relation to accountability and transparency in municipal government.



memorandum

Regional Implications

Not applicable

A handwritten signature in black ink, appearing to read 'Suzanne Craig', is written over a horizontal line.

Suzanne Craig
Integrity Commissioner



memorandum

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| COMMUNICATION |
| CW - <u>June 20/17</u> |
| ITEM - <u>36</u> |

DATE: June 16, 2017

TO: Mayor and Members of Council

FROM: Daniel Kostopoulos, City Manager

RE: **Committee of the Whole – June 20, 2017 – Item 36**
Integrity Commissioner Interim Code of Conduct Complaint Investigation Report #110116(F) In Respect of Former Deputy Mayor Michael Di Biase

Recommendation

The City Manager recommends:

1. That consideration of the Interim Report of the Integrity Commissioner re: Code of Conduct Complaint Investigation Report #110116(F) in Respect of Former Deputy Mayor Michael Di Biase be referred to a Special Committee of the Whole meeting to be scheduled on June 27, 2017 at 9:30 a.m.

Background

The Integrity Commissioner submitted the above noted Interim Report for consideration at the June 20, 2017 Committee of the Whole agenda. Due to some unanticipated process requirements, the Integrity Commissioner has submitted a Communication to the City Clerk's office confirming she will require more time before submitting the final report which will not be ready for June 20.

In an effort to accommodate procedural requirements and full consideration of the final report I've asked our City Clerk to schedule a Special Committee of the Whole meeting on the morning of June 27th at 9:30 a.m. before the regularly scheduled Council meeting at 1 p.m. This will provide adequate additional time required for the Integrity Commissioner to submit the final report as well as fully accommodate Council's and the public's consideration of the Report.

Sincerely,

Daniel Kostopoulos
City Manager

INTEGRITY COMMISSIONER INTERIM CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #110116(F) IN RESPECT OF FORMER DEPUTY MAYOR MICHAEL DI BIASE

Recommendation

The Integrity Commissioner recommends:

1. That Committee of the Whole at its meeting of June 20, 2017 give consideration to the recommendations contained within a Communication to be provided with the investigation findings of the Code of Conduct complaint #110116(f) which was filed against former Regional Councillor and Deputy Mayor Michael Di Biase.

Contribution to Sustainability

This report promotes Service Excellence through the public reporting system of activities of the independent ethics officer in relation to accountability and transparency in municipal government.

Economic Impact

There is no economic impact to the report.

Communications Plan

An attachment to this Interim Report will follow and will be presented to Council as a communication at the June 20, 2017 Committee of the Whole meeting.

Purpose

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

Background - Analysis and Options

I. Summary

This Interim Report presents the preliminary findings of my investigation under the City of Vaughan Code of Ethical Conduct (the "Code") relating to the conduct of former Regional Councillor and Deputy Mayor Michael Di Biase (the "Respondent") in connection with a complaint raising the following issues:

1. the allegation that the Respondent used the influence of his office as Regional Councillor of the City of Vaughan to affect the decision of the Toronto and Region Conservation Authority ("TRCA") to withdraw their objection to the settlement made by the current landowners (the "Owner") of 230 Grand Trunk Avenue (the "Property") and the City of Vaughan.

If this allegation is made out, it will be grounds for a finding that the actions of the Respondent constitute an improper use of influence of office through his attempt to interfere with the decision-making of the TRCA. By way of background, the TRCA is an agency responsible for, among other things, advising municipalities on the protection of lands, including by restricting or prohibiting development.

In particular, my preliminary findings point to the Respondent having conveyed to the TRCA Board that the City of Vaughan had "dealt with" the issue of reaching an agreement with the Owner regarding the proposed development at 230 Grand Trunk Avenue (the "Development").

In addition, my preliminary findings point to the Respondent having attempted to improperly influence the decision of the Council of the City of Vaughan ("Council") by inaccurately conveying the position of the TRCA and suggesting that the TRCA had withdrawn its objection to the Development when it had not.

My preliminary findings further point to the Respondent's subsequent attempt to improperly influence the TRCA Board and how thereafter, the TRCA planning staff briefed the Board on outstanding issues which substantiated staff's recommended position. The recommended staff position was that the TRCA should participate in a pending proceeding before the Ontario Municipal Board ("OMB").

According to the complaint, the Respondent did not cease in his misrepresentations. At a City of Vaughan community meeting on May 2, 2016 regarding the Development, the complaint alleges that the Respondent stated that the City of Vaughan had "their hands tied on this." The complaint sets out that this comment led the residents in attendance to conclude that the TRCA would be withdrawing its objections to the Development at the appeal hearing before the OMB.

II. The Allegations in the Complaint

In October 2016, I received an informal complaint under the Code. The Complainant sought the participation of my office to seek an informal resolution of the complaint. Following a series of meetings with the Complainant, he communicated to me that an informal resolution of the complaint would not be possible.

The Complainant submitted a Formal Complaint on the City's Complaint Form/Affidavit on November 1, 2016. The Complainant wrote that he had reasonable grounds to believe that the Respondent had contravened Rule No. 7 of the Code (Improper Use of Influence). The Complaint Form/Affidavit was accompanied by 3 pages of detailed particulars of his allegations.

The complaint was provided to the Respondent with a request for his written response. The Respondent provided a written response to the complaint.

After my review of the supporting documentation to the complaint and my initial discussions with the Complainant, I determined that Rule 1(c) of the Code (which requires a Member to avoid the improper use of the influence of their office) was also engaged by the allegations, in addition to Rule 7 (Improper Use of Influence).

On May 19, 2017, the Respondent resigned as a Member of Council (a "Member") following the filing of my report in respect of a separate complaint against him alleging sexual harassment.

After the Respondent's resignation, I considered whether the complaint had been rendered moot. For example, courts have the discretion to decide not to hear a matter if there is no longer any live controversy between the parties because of a change in circumstances (*Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342). I find that I have a similar discretion under section 8 of the Code Protocol, which permits me to decline to pursue an investigation if there are insufficient grounds to do so.

In this case, however, the Respondent has provided a response denying the allegations in the complaint and there appears to be a live controversy about the nature of the Respondent's conduct, even if it is unclear that Council can impose any sanction on the Respondent in light of his resignation. Even if there were no live controversy, I would have exercised my discretion in these circumstances to complete my complaint investigation report given the public interest in having these issues come to the attention of the public.

In reaching this conclusion, I have considered my statutory obligation to provide findings to Council in respect of a complaint alleging unethical behavior of a Member. I have further considered the intent of Part V.1 of the *Municipal Act* and the purpose of the Code, which is to shine light on the actions of elected officials so that they may be held accountable by the public for their actions while in office. Publicly reporting on the results of complaints also encourages individuals to come forward, knowing that any findings in respect of their complaints will be submitted to Council even if the Member subject of the complaint is no longer in office.

A. Issue #1 – Allegations of Improper Use of Influence

The Complainant alleges improper use of influence by the Respondent at the June 2015 meeting of Council. In particular, the complaint alleges that the Respondent improperly used his influence as a Member to convince other Members of Council that the TRCA had decided to withdraw from the pending OMB proceeding. According to the complaint, the Respondent did so at a number of meetings, including but not limited to: (i) a Public Hearing meeting in April 2016; (ii) a May 2, 2016 community meeting of the City of Vaughan; and (iii) 2016 meetings of the TRCA Board.

The complaint alleges that the Respondent made certain representations during a closed session of the June 2015 Council meeting. The Respondent advised that he was aware of the discussions at the TRCA and represented that it had no outstanding concerns about the Development. The Respondent suggested that the TRCA would likely withdraw its objection to the Development in connection in the pending OMB proceeding.

According to the complaint, the Respondent then attempted to convince the TRCA to withdraw its objection before the OMB on the basis that the City of Vaughan “had dealt with it”, meaning the issue of the Development.

The Complainant therefore alleged that the Respondent used his influence of office to mislead the Board members and staff of the TRCA and to misrepresent the position of the TRCA to the City of Vaughan Council, in breach of Rule No. 7 of the Code (Improper Use of Influence).

B. Issue #2 – Allegations of Extending Preferential Treatment

The complaint also alleged that the Respondent’s actions were intended to expedite development on 230 Grand Trunk Avenue for a developer who has contributed significantly to his election campaigns. The Complainant provided information about comments made by the Respondent after the 2014 election. The Complainant relied upon these comments to substantiate his allegations that the Respondent’s actions constituted preferential treatment to an organization in which the Respondent had a pecuniary interest.

III. Relevant provisions of the Code

A. Rule 7 (Improper Use of Influence)

Rule 7 of the Code prohibits Members from participating in activities that grant or appear to grant any special consideration, treatment, or advantage to an individual which is not available to every other individual:

Rule No. 7 - Improper Use of Influence:

1. No Member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Such conduct would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also

prohibited is the holding out of the prospect or promise of future advantage through a Member's influence within Council in return for present action or inaction by the beneficiary.

Members are required to be free from bias and prejudice in respect of the decisions that are part of a Member's political and legislative duties. I find that the test for determining whether there is a reasonable apprehension of bias in respect of a Member is the same as the test established by courts with respect to an administrative tribunal:

... [W]hat would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly. (*Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, [2015] 2 SCR 282 at para. 20)

B. Rule 1(c) (Avoiding Improper Use of Influence and Conflicts of Interest)

Rule 1(c) of the Code requires Members to avoid the improper use of influence and prohibits them from extending preferential treatment to organizations in which they have a pecuniary interest:

1. (c) Members of Council shall avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real. Members of Council shall not extend, in their discharge of their official duties, preferential treatment to family members, organizations or groups in which they or their family member have a pecuniary interest.

C. The Respondent's Response to the Complaint

The Respondent provided a written response to the complaint. In his response, the Respondent expressed his concern that the complaint was an improper "attempt to apply Rule 7 [of the Code] which specifically deals with interactions between Members of Council and the City administration." In his view, the Code did not apply to interactions with members of the TRCA Board or TRCA staff.

The Respondent went on to express his complete disagreement with the allegations contained in the complaint and his belief that:

[The Complainant] is unhappy with the outcome of the Ontario Municipal Board hearing... 'This is a decision of an independent body which must be respected despite the fact that there may be some disagreement with the outcome. When I have stated that the City's hands were tied, I was referring to the fact that the OMB decision dictates the land uses on the subject lands.

Part of my role on the Board of the TRCA is to discuss and debate issues that come before the Board. Disagreement between members of the Board may occur on occasion and may be expressed at meetings of the Board, such as the meeting of May 27, 2016 referenced by [the Complainant]. This does not substantiate the allegation that the TRCA Board or staff were misled in any way.'

D. The Investigation Process

I conducted interviews with 15 individuals in respect of my investigation. I did not exercise my summons powers under the *Public Inquiries Act* and all information that I received during interviews and requests for documents were provided voluntarily pursuant to my exercise of the Code Protocol investigation powers. Section 10 of the Code Protocol states in part:

10. (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

In the course of my investigation, I also reviewed public and confidential City documents, emails, audio recordings of meetings and certain other materials.

III. Background

A. TRCA

In a City of Vaughan Committee of the Whole Staff Report (#5.1 - February 7, 2017), City of Vaughan staff provided a description of the outstanding OMB proceeding involving the Development. In that proceeding, the Owner had appealed the designation of the Property as protected lands:

On March 9, 2016, the Ontario Municipal Board ("OMB") issued a decision following a Settlement Hearing between the City of Vaughan, the TRCA and the landowner, allowing an appeal by the Owner to re-designate the lands as part of an appeal to the City of Vaughan Official Plan 2010 (VOP 2010). The OMB decision approved the designation of the entire property from "Natural Areas".

A previous Owner illegally removed/cut down the majority of the woodlot and was successfully prosecuted under the York Region Forest Conservation By-law. Subsequent to the tree removal activity, new trees were planted. The previous Owner appealed the VOP 2010 Natural Areas designation of the site to the OMB on June 6, 2012. The site was purchased by a new owner, who assumed the OMB Appeal on April 10, 2015.

The Owner submitted Draft Plan amendments in January 2016 and April 2016. In a memorandum dated June 21, 2016, the TRCA provided comments with respect to the original development application (Phases 1 and 2). The TRCA advised that the property contained environmental heritage/hydrologically sensitive features and significant wildlife habituated and endangered species. In addition, the TRCA advised that the Preliminary Environmental Impact Study submitted in January 2016 in support of the application by the Owner did not complete the required assessment.

In a letter to community residents dated June 8, 2016, the TRCA described the state of the OMB proceeding. The letter indicated that the TRCA continued to oppose the Owner's OMB appeal but was working towards a settlement that would address the outstanding environmental concerns about the Development:

Thank you for attending Authority Meeting #4/16, of the Toronto and Region Conservation Authority (TRCA), held on May 27, 2017. The matter of development at 230 Grand Trunk Road was addressed by the Authority by the adoption of Resolution #A75/16 in regard to an appeal of the Vaughan Official Plan 2010... which was approved as follows:

THAT the following Resolution #A142/15 approved at Authority Meeting #7/15, held on July 24, 2015, be received and become a public record:

THAT the participation of Toronto and Region Conservation Authority (TRCA) as a party before the Ontario Municipal Board (OMB) be re-affirmed as it relates to

the subject appeal of the Vaughan Official Plan (VOP 2010) on lands ...;

THAT TRCA staff be directed to appear on behalf of TRCA on the subject appeal before the OMB and to continue to represent TRCA on matters relating to natural heritage and Provincial interest (landform, erosion, water management, hazard lands);

THAT staff be directed to continue to work towards a settlement with the City of Vaughan, the appellant and other parties to ensure that the requirements of the Living City Policies, TRCA's Ontario Regulation 166//06, as amended..., Oak Ridges Moraine Conservation Plan (ORMCP) and Provincial Policy Statement (PPS) are met.

TRCA was the only Party present at the OMB hearing to ensure the designation of the site considers the requirements of TRCA's The Living City Policies, TRCA's permitting and regulatory requirements, the ORMCO and the PPS. This approach to policy was essential as the proponents had not completed any detailed technical studies necessary to confirm development potential. The landowner and the Ontario Municipal Board supported this position and the settlement was approved.

TRCA was placed in the unique situation of attending an OMB hearing in opposition to a proposed land use re-designation without the support of provincial, municipal and regional partners. We managed to ensure that TRCA's interests and environmental mandates, and through the process also components of the mandate of others, were protected and addressed within the Official Plan.

We can assure you that we will continue to protect TRCA's interests and carry out our regulatory mandate as the development process progresses. (**emphasis added**)

B. Region of York

I have been advised by senior staff at the Region of York that although Planning Act applications are circulated to the Region of York ("Region") for review, the authority to approve subdivision applications lies with the local municipality (in this case, the City of Vaughan).

Although the Region is circulated certain applications, it does not usually become involved in specific site disputes unless it determines that there are regional interests at issue. In respect of the Property, the Region concluded that the outstanding issues related to "the limits of development with respect to natural versus urban uses on a site specific basis", which was within the mandate of the TRCA:

We knew that the TRCA had an interest in this matter. They possess the appropriate staff to determine the limits of development...The Region ensures that the local official plans contain appropriate policies to protect the natural environment. When boundary issues or the quality and quantity associated with the natural environment, the Region defers the protection of the Regional interest to the technical experts at the TRCA...The TRCA represents the Region's interests through [a] Memorandum of Understanding.

The situation with the Grand Trunk property is that an application to change/amend the Vaughan Official Plan was not made. The change in land use occurred through the OMB process, outside of a typical public process. Local Councils would have had to endorse any settlement offer, but in in-camera sessions, due to the confidential nature of a Board proceeding.

IV. Preliminary Findings of the Integrity Commissioner

When evaluating the integrity and ethical conduct of a Member of Council, my role is to apply the rules of the Code to the facts gathered throughout the investigation and to make a determination as to whether there has been a breach of the Code.

A. Issue #1 – Allegations of Improper Use of Influence

In his response, the Respondent explained that when he stated that the “City’s hands were tied” at the community meeting of May 2, 2016, he was referring to the fact that the OMB decision dictates the land uses on the subject lands.

In the course of my investigation, I was provided with evidence by individuals present at both the relevant TRCA Board meetings and the City of Vaughan meetings, as well as relevant staff and of both the City of Vaughan and the TRCA and other witnesses . In addition, I had the opportunity to review audio recordings of the Respondent’s remarks at review notes made by individuals in attendance at relevant meetings of both the City of Vaughan and the TRCA .

The Respondent’s recorded remarks, as well statements by witnesses present at meetings where the Respondent made remarks with respect to the subject of this complaint, contradict his evidence with respect to his comment that the “City’s hands being tied”.

My preliminary findings point to the Respondent’s representation not being accurate. As indicated in its letter of June 8, 2016, the TRCA was planning to oppose the Owner’s appeal at the OMB hearing. Despite the Respondent’s attempts to persuade the TRCA to withdraw from the proceeding, the TRCA Board continued to oppose the appeal.

As a result, the Respondents remark that the “City’s hands were tied” was inaccurate and misleading and further fueled the perception that his comments were designed to further the interests of the Owner.

In the course of my investigation, I also interviewed individuals who had attended the relevant TRCA Board meetings and the City of Vaughan meetings and provided evidence of the Respondent’s comments at these meetings. Important to my preliminary findings is the fact that the Respondent held significant positions of authority at the times relevant to the allegations of this complaint: Vice Chair of the TRCA, Deputy Mayor and Regional Councillor of the City of Vaughan and a Regional Councillor representing the City of Vaughan on York Regional Council in relation to planning matters. The Respondent was in the unique position of being able to vote on a decision to enter into a settlement agreement with the landowner of the proposed development, and being on the agency that had responsibility for advising municipalities on what lands should be protected.

B. Issue #2 – Allegations of Extending Preferential Treatment

The Complainant alleges in the complaint that the Respondent’s actions were intended to expedite the Development for the Owner, who had contributed significantly to the Respondent’s election campaigns. The Complainant provided information confirming comments made by the Respondent after the 2014 election to substantiate the Owner’s past support for the Respondent.

If a Member seeks to secure a benefit or unfair advantage of any kind for an individual or organization, in return for that individual’s donation to or support for their election campaign, it would clearly constitute an improper use of influence, contrary to the Code. Such conduct would also likely amount to evidence of corruption, the enforcement of which is outside of the investigative jurisdiction of the Integrity Commissioner. However, to be clear, listening to various business interests from the community and considering these as part of an informed and transparent decision-making process, is an allowable activity under the Code. The hist of the matter is when a Member seeks to afford an unfair advantage to an individual or organization

thus departing from his/her public service obligation to fulfil their oath of office To establish that a Member has improperly extended preferential treatment to an in the public interest.

To establish that a Member has improperly extended preferential treatment to an organization in breach of the Code, the following elements must be present:

1. The Member must know the donor who made the campaign donation, and;
2. The Member of Council must also know that the donor made a campaign donation; and
3. The Member must have made a promise (or must have acted so that it was reasonable to believe that he or she made a promise) to grant a future unfair advantage or provide a benefit in return for the donor's support for their election campaign.

Unless all three elements are present, the mere receipt of a campaign donation from an individual or corporation would generally not give rise to a Code conflict and would not trigger the application of Rule 1(c) of the Code.

Although it appears that the Respondent was aware that the Owner made a campaign contribution, there is not sufficient evidence to conclude that the Respondent's actions were carried out with the intent to extend preferential treatment to an organization because it had donated to his election campaign.

V.Public Reporting Requirement of the Integrity Commissioner

On June 6, 2017, I provided to the Complainant and the Respondent a copy of my Interim Report containing my preliminary findings of the investigation.

I advised the parties that they were being provided a copy of my preliminary findings in advance of the issuance of my Final Report pursuant to section 12(1) of the Code Protocol. I invited the parties to provide comments on any errors or omissions of fact. The parties were also invited to furnish a statement that I would take into consideration in drafting my Final Report to Council with any recommended sanctions.

I advised the parties that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint.

Given that the Respondent is no longer a sitting Member of Council I had advised the parties that my preliminary decision was that no sanction would be recommended to Council, I therefore decided that an abbreviated period within which the parties were required to provide their comments was appropriate. I advised both parties that I would like to submit my Final Report to the City Clerk's Office on June 8, 2017 so that the Final Report could be place on the regular agenda for the June 20, 2017 Committee of the Whole meeting.

On June 7, 2017, I received an email from the Respondent, which contained the following statement:

Dear Ms. Craig

Please find enclosed a copy of my email and a copy of your Interim Report.

I am requesting that you do not proceed with your final report, pending providing me an equitable opportunity for me to reply.

On the above-noted email, the Respondent copied the City Manager, the Deputy City Manager of Planning and Growth Management, the Deputy City Manager of Legal and Human Resources and the Mayor of the City of Vaughan.

On June 7, 2017, I forwarded the following correspondence to the Respondent:

I am in receipt of your email correspondence dated June 7, 2017, in which you requested that my office not proceed with delivering a final report until you were provided with an equitable opportunity to reply.

Please be advised that I take this matter very seriously and am mindful of providing you with a reasonable opportunity to put forward any comments regarding my Interim Report.

The Code of Conduct complaint investigation process for the City of Vaughan is prescribed in the Code Complaint Protocol. Section 12(1) of the Code Complaint Protocol states that:

The Integrity Commissioner shall report to the complainant and the member general no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint...

In a recent decision of the, Ontario Superior Court of Justice, Divisional Court, Justice Marrocco stated at paragraph 118:

The Complaint Protocol, which is a City bylaw and therefore also part of the statutory scheme, does not contemplate participation by the [Respondent to the Code Complaint] after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings.

In my cover letter to you dated June 6, 2017, which you received today with a copy of my Interim Report, I stated that I was providing you with an abbreviated version of my findings. I invited you to provide a statement that I will append to my Final Report to Council. I concluded by stating that I will be submitting my Final Report to Council to the City Clerk's Office on June 8th for consideration at the June 20, 2017 Committee of the Whole meeting.

I have taken into consideration your request for a period of time to respond to the Interim Report. While I am not required under the statutory scheme of this Office to provide you an opportunity to respond to the preliminary findings, I have asked you for comments as is my practice prior to finalizing my report findings and submitting my report to Council for consideration. I will allow you until June 14, 2017 to provide me with any comments that you may have regarding my Interim Report.

Finally, as you are aware, I am required to maintain secrecy with respect to all matters that come to my knowledge in the course of my duties under Part V.1 of the *Municipal Act*, until such time as I submit my final report to Council in open session. I note that in your email forwarded to me today, you have copied the City Manager, the Deputy City Manager of Planning and Growth Management, the Deputy City Manager of Legal and human Resources and the Mayor of the City of Vaughan. Please be advised that the Interim Report that I forwarded to you is not a final report and as such, you should not have disclosed it to any third parties, except for your own legal counsel.

Section 223.3(1) of the *Municipal Act, 2001* (the “Act”) empowers the Integrity Commissioner to report to Council, which are in turn made public. Section 223.6(2) of the Act confirms that the Integrity Commissioner has the discretion to disclose in the report “such matters as in the Commissioner’s opinion are necessary for the purposes of the report”:

Report to council

223.6.

...

Report about conduct

(2) If the Commissioner reports to the municipality... his or her opinion about whether a member of council... has contravened the applicable code of conduct, the Commissioner may disclose in the report **such matters as in the Commissioner’s opinion are necessary for the purposes of the report.**

In addition, section 12 of the Code Protocol explains that where a complaint is sustained, as it has been here, the Integrity Commissioner is required to “outline the findings, the terms of any settlement, or recommended corrective action”.

It is apparent from these provisions that my findings and the evidence on which they are based **must be disclosed in a public report**, whether or not the Respondent remains a sitting Member of City Council. It is also part of the Integrity Commissioner’s function to make public any findings that a Member has breached the Code of Conduct, in order to ensure the transparency of municipal government and to denounce and deter misconduct by public officials.

Relationship to Term of Council Service Excellence Strategy Map (2014-2018)

This report supports the following priority set forth in the Term of Council Service Excellence Strategy Map (2014-2018):

Continue to advance a culture of excellence in governance

Regional Implications

Not applicable.

Conclusion

I have brought forward this interim report in fulfilment of my reporting mandate and my obligation to submit to Council any findings at the conclusion of a Formal Complaint investigation.

Given that a sanction can only be imposed on a sitting Member, the Office of the Integrity Commissioner respectfully submits the above findings without any recommended sanction.

Attachment

N/A

Report prepared by:

Suzanne Craig
Integrity Commissioner

Respectfully submitted,

Suzanne Craig
Integrity Commissioner