

RE: CITY OF BARRIE CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #020823 Under the City of Barrie Council and Committee Member Code of Conduct Concerning Councillor Clare Riempa

Summary

This report presents my conclusions as part of the investigation under the City of Barrie Code of Conduct (the “Code”) relating to the conduct of the Councillor Clare Riepma, Ward 1 Councillor, for the City of Barrie in connection with a complaint raising the issue of disclosure of confidential information, including personal information and aspects of deliberations of Council that were subject of an in-camera meeting.

The City of Barrie’s City Clerk’s Office developed a process to safeguard the confidentiality of documents that Members of Council will receive as part of confidential meeting package for items that will be on the in-camera Council or Committee meeting agenda. At the material time subject of this Complaint, the City of Barrie Council meetings were all virtual in 2020. The City Clerk’s Office staff went around to Members’ homes and picked up sealed packages of their confidential records - so they could be shredded. The Respondent returned a number of items, however, the document subject of the Complaint, was not provided back to the City Clerk’s Office when these collections were undertaken.

Maintaining the confidentiality of in-camera meeting package documents is vitally important for maintaining the public trust and ensuring protection of legal and financial risk of the municipality as well as third parties. The matter subject of this complaint raises serious concerns about the obligations of Members of Council with respect to maintaining confidentiality of documents received and discussed in-camera. Although all rules of the Code are important, the obligations contained in Section 10 of the Code are of particular importance not only with respect to the perception held by the public about how seriously Members of Council take their duties, but also to the reputation of the City and the confidence that the public has in the ethical decision-making of their elected officials to ensure that information received and discussed at in-camera meetings remains confidential.

The following principles undergird the confidentiality obligations of all Members of Council under the Code:

- Members of Council have a Code duty to not disclose in any format to any third party, information discussed or circulated during a in-camera Council or Committee Meeting. This duty of non-disclosure of confidential in-camera meeting information is also a statutory requirement under the rules of the *Municipal Act, 2001* **and** the *Municipal Freedom of Information and Protection of Privacy Act*.
- Disclosure of confidential information discussed or circulated at an in-camera Council or Committee Meeting is not only grounds for a complaint under the Code against the Member who has disclosed the information, but also could expose the City to legal liability.

As is my practice when a Code complaint is received, I conducted a preliminary review to determine if the matter is on its face, a complaint with respect to non-compliance with the Code.¹ I determined that there was sufficient information to conduct a summary investigation and make a determination of whether the Respondent's actions were, in fact, in breach of their ethical duties under the Code.

The Complaint and Process:

1. The allegations in the complaint

On August 2, 2023, I received a Formal Complaint under section 25.2 of the Council and Committee Member Code of Conduct (the "Code"), naming Councillor Clare Riepma as Respondent. The Complaint alleges that, in contravention of Rule 10 of the Code, the Respondent was responsible for:

The dissemination of confidential information to a resident [a named individual]. The individual was in possession of confidential General Committee Minutes dated October 20, 2020, watermarked with Councillor Riepma's name which were collected by the City Clerk during [a named individual's] meeting with Mayor Nuttall on June 20, 2023.

Pursuant to section 25 of the Code, I conducted a preliminary classification to determine if the matter was a complaint under the Code and not covered by another process.

I decided to commence a formal investigation, pursuant to section 26.2 of the Code and gave notice to both the Complainant and the Respondent. I requested that the Respondent provide me with a written response to the allegations contained in the Complaint within fourteen (14) days.

I met and interviewed the Mayor and staff who were present for the relevant parts of the meeting of June 20, 2023. I also met with the individual who was in possession of the confidential documents at the June 20, 2023 meeting.

On September 21, 2023, I took a sworn statement from the individual who was in possession of the confidential documents. This person stated:

- That they had attended an in person meeting on June 20th, 2023 with the Mayor and two other residents.
- The meeting was to discuss a proposed bicycle path along the waterfront to eliminate the proliferation of motorized bikes so that the path could facilitate bicycles and pedestrians. The individual said that they had gone to the waterfront often over the years and motorized bikes go up to 35 kilometers an hour and "somebody's going to get hurt".

¹ Code of Conduct, City of Barrie, section 25.2(e)

- The individual had brought with him to the meeting, a folder which contained about 40 pictures that they had taken of the motorized bikes and the danger due to their speed.

When asked under oath if they had ever seen the 10-page confidential document, the Confidential Notes, of the General Committee Report of the in-camera meeting held on October 20, 2020, the individual replied:

- "No"

When the individual was asked if they had ever been given that package of papers and if so by whom, the individual said that they had never seen the papers before.

During the course of my investigation, a witness advised that when the individual was asked at the June 20, 2023 meeting from whom had they received the information, they had given the name of a former Member of Council. However, in subsequent interviews, I determined that the facts that I received did not support the assertion.

When the individual was asked if he had ever met the Respondent, they said he had met with him and had brought the same folder of photographs to him to discuss the issue of the speed of motorized bikes. When asked what happened at the meeting with the Respondent, the individual said:

- I found out he was the council member for the park area, so I presented him the pictures, and I just got a feeling that he wouldn't have done a good job. I would be the only one to present it properly and be able to answer all the questions that they might ask because I had a nice little portfolio of the pictures and everything, all labelled and everything like that.

When asked if the portfolio/folder with the pictures that they showed Mayor Nuttall at the June 20, 2023 meeting was the same portfolio that they had shown to the Respondent, his response was:

- "Yeah".

The individual had given the pictures and the folder to the Respondent at a meeting, and the Respondent had returned the folder to the individual after a period of time.

The examination under oath of the individual concluded with me asking if anyone else had access to the portfolio/folder. The individual responded:

- "No, it was on my desk at home, and I live alone and I never saw those documents and I didn't give them to anyone".

The individual in whose possession the confidential documents were found, stated that they met with the Respondent at least once and that one meeting occurred sometime in 2020 or 2021. However, when pressed, the individual could neither confirm if they met with the Respondent more than once nor could he confirm when those meetings occurred.

As part of my review of the Complaint to determine if and when the disclosure of the confidential documents occurred, I went over the complaint allegations provided as supporting documentation to the Complaint. I met with:

- The Mayor of the City of Barrie;
- staff who were called into the June 20, 2023 meeting to identify the confidential documents;
- City of Barrie IT staff to determine if the confidential documents had been sent electronically from the City's Clerk's confidential portal (the IT professional determined they had not);
- City staff who manage the distribution and return of confidential documents to be discussed at in-camera meetings;
- The individual residents who also attended the June 20, 2023 meeting; and
- A former Member of Council who had previously lived down the street from the individual in possession of the confidential documents.

2. The Respondent's Position

The Respondent provided a written reply to the Complaint in accordance with section 26.2 of the Code. In the written reply to the Complaint the Respondent stated:

I was completely surprised and taken aback when I received your Notice of Complaint. I have no recollection of giving the material to [a named individual] and normally I return all of my confidential materials to the Clerk's Office.

I have only met [a named individual] once in my life. That was several years ago when I met with [them] at a McDonalds restaurant at [their] request. At that meeting [they] asked me to:

1. Relocate a stop sign on Sunnidale Road which [they] believed was too far from the intersection.
2. Re-align lanes at Mulcaster and Dunlop to permit three lanes going west to increase intersection capacity.
3. Regulate electric bikes on walkways in the waterfront.

At the meeting [they] provided me with an envelope with a number of pictures that [they] had taken. I told [them] that I would look into the matters [they] raised and get back to [them].

I checked out [their] concerns and a week or so later I called [them] and told [them] that moving the stop sign wasn't necessary, re-aligning the traffic lanes could not be done due to a lack of space and wasn't necessary, and that in order to regulate e-bikes and similar vehicles properly we would need provincial legislation changes. [...] A few days later I dropped off [their] envelope in [the] mailbox because there was no answer at the door.

How [a named individual] got the confidential minutes is a mystery to me. The only rational explanation that I can suggest is that somehow the minutes got included in

the other materials in his envelop that I returned to him. I have no recollection of doing this, and if that is the way it happened, it was inadvertent on my part.

[...] Keeping confidential matters confidential is vitally important in the running of the City and is foundational to the trust Council members need to have in each other.

[...] In the future I will be increasingly diligent to make sure that this doesn't happen again.

Analysis and Conclusion

Upon receiving the Complaint, the confidential documents at issue were dated October 20, 2020. As I did not know if the documents had been distributed in 2020 or more recently, I decided to commence an investigation to determine the facts upon which I would make a finding. Section 24.5 of the Code states that:

[...] Complaints must be submitted no more than one year after the alleged violation occurring. No action will be taken on a complaint received beyond these deadlines.

In the Complaint before me, in accordance with the time limitation set by the Code, the Complainant identified an alleged breach of section 10 of the Code and made a complaint to the Integrity Commissioner.

During the course of the investigation, I was unable to determine when the confidential documents subject of this Complaint were disclosed by the Respondent to a member of the public. The documents related to a closed meeting discussion on October 20, 2020. The Respondent did not assert that the Complaint was out of time based on the one year limitation period in the Code. Even if the Respondent had raised this issue, I would not have concluded that the limitation period had expired. To assert a limitation matter, the Respondent would have the burden to show, on a balance of probabilities, that the Complaint was out of time. Neither the witness nor the Respondent could recall when their meeting or meetings took place. The documents were discovered in the possession of the member of the public in 2023. I was not prepared to conclude that the disclosure occurred more than one year before the Complaint, which came shortly after the documents were discovered in the possession of the member of the public.

I determined that the Respondent did disclose confidential in-camera documents to a member of the public. The Respondent acknowledged that maintaining the confidentiality of in-camera documents is a significant responsibility for a Member of Council. I accept the Respondent's evidence that his disclosure was inadvertent. Even so, the Respondent's actions seriously undermined the public trust that undergirds the confidentiality requirements of closed meetings.

Recommendation

In light of the Respondent's contrition, acknowledgement of the seriousness of the confidentiality obligations, and evidence that disclosure was inadvertent, in accordance with section 27.3 (a) of the Code, I would have made the recommendation of the

imposition of a reprimand on the Respondent. However, after completing my investigation, new information was provided to me.

I provide me updated findings in the Addendum to this Complaint Investigation Report.



Suzanne Craig
Integrity Commissioner

Submitted January 5, 2024