

TO: HONOURABLE MAYOR AND MEMBERS OF COUNCIL

FROM: SUZANNE CRAIG, INTEGRITY COMMISSIONER

DATE: APRIL 17, 2015

SUBJECT: CODE OF CONDUCT COMPLAINT #0114 INVESTIGATION REPORT IN RESPECT OF REGIONAL COUNCILLOR / DEPUTY MAYOR MICHAEL DI BIASE

Recommendation

The Integrity Commissioner recommends that:

1. The Code of Conduct Complaint #0114 Final Investigation Report in Respect of Regional Councillor / Deputy Mayor Michael Di Biase, be received and;
2. That the recommendations set out by the Integrity Commissioner be adopted by Council.

Contribution to Sustainability

Not applicable.

Economic Impact

Not applicable.

Communications Plan

Purpose

To provide a final report to the Mayor and Members of Council regarding the above noted complaint.

Background

Code of Conduct Complaint Investigation Report – Item 8.1, submitted to Committee of the Whole Tuesday, April 14, 2015 and deferred to the Council meeting of Tuesday, April 21, 2015.

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.

Regional Implications

Not applicable



memorandum

Attachments

Appendix 1 – Final Report

Appendix 2 – Respondent's Original Response to Complaint dated January 30, 2015 - redacted

Appendix 3 – Complainant's Issue #2

Appendix 4 (a) – (g) – Scripted emails

Appendix 5 – Code Protocol

Appendix 6 – Respondent's legal counsel, Mr. Morris Manning letter – dated April 13, 2015

Appendix 7 – Integrity Commissioner reply to Mr. Morris Manning – dated April 13, 2015

Suzanne Craig
Integrity Commissioner

RE: CITY OF VAUGHAN COMPLAINT #0114

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A. Summary

This report presents the findings of my investigation under the City of Vaughan Code of Ethical Conduct (the “Code”) relating to the conduct of Regional Councillor and Deputy Mayor Michael Di Biase (the “Respondent”) in connection to a complaint raising four issues:

1. the allegation of an inappropriate relationship between the Respondent and a longtime City of Vaughan contractor, identified in the complaint as Maystar General Contractors (“Company A”), the result of which was a benefit for the Respondent in exchange for his co-operation and assistance with the business of the municipality in relation to Company A;
2. the allegation that the Respondent interfered in various tendering processes of the City in contravention of the procurement rules;
3. the allegation of the inappropriate pressure exerted by the Respondent on various staff of the City of Vaughan with a view to exercising influence or assisting Company A with the business of the municipality; and
4. the allegation of voting without declaration of a pecuniary interest as required by the *Municipal Conflict of Interest Act*, on land planning matters regarding Block 27.

I find that Issue #1 involves allegations which on their face are allegations of a criminal nature under the *Criminal Code*. The Complaint Protocol, section 6(3)(a) provides that where an allegation of criminal conduct is made, I must advise the complainant to pursue the allegations with the Police Service. As a result, I did not investigate the issue and make no findings in that regard.

On Issue #2, I find that the purpose of the Code has been seriously undermined by the actions of the Respondent, and the Respondent has breached Rules 1(1)(c), 3, 7 and 18 of the Code of Ethical Conduct. The Respondent has contravened the City’s procurement rules by inquiring with City staff and third parties about particular tenders, pre-qualification results and scores during the Blackout period. The Respondent was told by senior officials of the City, in particular, the City Solicitor who is no longer with the City, the serious risk posed to the City by a Member of Council inserting or attempting to insert him or herself inappropriately into the procurement process at any time but in particular, during the Blackout period. After the pre-qualification process ended, the Respondent exchanged e-mails with a private citizen, and used information contained in e-mails drafted by the private citizen to directly criticize two competitors of Company A, his preferred company, to the Mayor, Councillors and City Staff, and as the basis for a Council resolution to examine the procurement process. I set out my findings in this report and make recommendations.

On Issue #3, I find that the Respondent applied inappropriate pressure to Staff with a view to exercising influence or assisting Company A with the business of the municipality, and has

breached Rule 1(i), 15 and 16 of the Code of Ethical Conduct. In respect of the allegations of interference with Staff, I find that when City staff responded to the Respondent's requests for information during the Blackout period, by advising him that there is a process that must be followed, they were met with defiance, abusive language and intimidating actions. I further find that the Respondent was aggressive, harassing and intimidating. I also find that the Respondent has breached Rule 19(1) and (2), with regard to reprisals and obstruction. I set out my findings in my report, and make recommendations.

I find that Issue #4 falls outside the six month limitation period in the Code of Conduct. As a result, I did not investigate that issue and make no findings on issue #4.

In this report, I discuss my investigative process, my decisions on jurisdiction, my findings on the allegations in the complaint, my analysis, and my recommendations with respect to sanction.

B. The Complaint

On December 3, 2014, I received a complaint under the City of Vaughan's Code of Conduct for Members of Council (the "Code"). The complaint was submitted on the City's Complaint Form as an affidavit with two appendices, and is witnessed by a Commissioner for taking Affidavits as required by the Code of Conduct Complaint Protocol. The Complainant attached two appendices to the Complaint Form.

- In Complaint Appendix 1, the Complainant wrote that he has reasonable grounds to believe that the Respondent had contravened several sections of the Code, namely sections: 1 (a), (b), (c), (d), (e), (g), (h), (i); 2 (1); 3 (6), (2), (3); 7 (1); 8(1); 9 (1); 13 (1); 14 (1); 15 (1); 16 (2), (3) and 18.
- In Complaint Appendix 2, the complainant provided particulars. While the complainant identified them as two issues, in my view they are sufficiently distinct that I have analyzed them as four separate issues. What I refer to as Issues #1-3 were raised in Complaint Appendix 2, as 'Issue 1' to the Complaint, and what I refer to as Issue #4 was raised in Complaint Appendix 2, as 'Issue 2' to the Complaint.

Issue #1: The Complainant raised an allegation involving the relationship between the Respondent and Company A. The complainant alleged that Company A, a construction firm had done business with the City since 2002, that Company A was involved in the construction of the Respondents cottage located 90 kilometres to the north of the City. The complaint alleges that the Respondent used his influence as Councillor to further Company A's business interests within the City of Vaughan, and that Company A paid contractors for the work they performed on the Respondent's cottage. The complaint notes that this "would be considered a violation of the Ethical Codes of Conduct and also a violation of provincial statutes."

Issue #2: The complaint also alleged that the Respondent used his position as a Member of Council to influence Members of the Vaughan Public Library and Vaughan City staff to award the construction contract of the Pleasant Ridge Library to Company A. The complaint continues by alleging that the Respondent "may have tried to interfere in the tendering process in the

matter of the Vaughan Civic Centre Resource Library” and that this “may have been the subject of a closed session meeting”. The Complainant identified members of City staff who could corroborate the information which he suggested would lead to a finding of contravention of the Code.

Issue #3: The complaint alleged that the Respondent “has used his influence as a Councillor to further [Company A’s] business interests within the City of Vaughan”. In discussion with the Complainant, this was clarified to be an allegation that the Respondent applied inappropriate pressure on Staff to use his influence to further Company A’s business interests.

Issue #4: Finally, the complaint alleges that the Respondent failed to declare an interest in a planning matter involving Block 27 at a June 7, 2011 Committee of the Whole meeting. The complainants stated that he fully understood that the vote exceeded the six month time period allowed for consideration of violations under the Ethical Code of Conduct. (Appendix 3)

C. Process

1. The Complaint

On December 3, 2014, after receiving the complaint, I spoke with the Complainant. He advised that he had information from sources outside of the City that current and former City staff persons felt harassed and intimidated by the Respondent regarding questions around various procurement processes and that these sources did not want their names disclosed by the Complainant.

On December 4, 2015, I spoke with 3 City staff persons, 2 of whom, the Commissioner of Strategic and Corporate Services and the City Solicitor, are no longer with the City, and sought clarification in relation to Issues #2 and 3 of the complaint.

On December 5, 2014, I wrote to the Complainant informing him that I was undertaking an investigation of the complaint and that I was forwarding the complaint to the Respondent.

On December 5, 2014, I wrote to the Respondent providing Notice of a Complaint Investigation and a copy of the complaint, requesting that the Respondent provide my office with a written response to the complaint on or before December 16, 2014. On December 15, 2014, I received correspondence from the Respondent’s legal counsel advising me that due to his court schedule and the upcoming holiday season, he was requesting a time extension in order to provide my Office with the Respondent’s comments to the complaint. I granted an extension until January 30, 2015.

In January 2015, I forwarded correspondence to the Respondent’s legal counsel with a copy of the Code Protocol flow chart to clarify the complaint process.

On Tuesday February 3, 2015 I forwarded correspondence to the Respondent’s legal counsel, with a copy to the Respondent, indicating that I had not received comments in response to the complaint and that I would be making note of this omission for my files. On the same date, after

having received the Respondent's correspondence through interoffice mail, I again wrote to the Respondent's legal counsel advising that I had received their correspondence, that my office is located offsite and not in the City of Vaughan City Hall and as a result, though his correspondence was dated Friday January 30, 2015, it had arrived at my office On February 3, 2015.

On February 5, 2015, I received correspondence from the Respondent's legal counsel advising that he had forwarded me the Respondent's comments in response to the complaint, on Friday January 30, 2015 via fax and courier. On February 5, 2015 I wrote to the Respondent's legal counsel indicating that my office was not located at City Hall and confirming again that I had received his correspondence.

On February 5, 2015, I forwarded the Respondent's comments to the Complainant pursuant to section 10 of the Code Complaint Protocol.

On March 27, 2015, I forwarded a 10-page correspondence to the Respondent's legal counsel in which I included my interim findings and asked for the Respondent's response to the substantive matters provided in the findings.

On March 30, 2015, I received correspondence from the office of the Respondent's legal counsel advising that he was out of the country and would respond to my letter after his return to the office on April 7, 2015.

On March 30, 2015, I responded to the Respondent's letter of the same day advising that I was accommodating his brief adjournment request and providing him with a period until Friday April 10, 2015 to provide me with any comments to my interim findings and that I would receive and consider any comments that he may forward to me before finalizing my complaint investigation report and before finalizing any recommendations to Council. I gave the Respondent notice that I would be submitting a placeholder staff report to the City of Vaughan requesting that the Committee of the Whole at its meeting of April 14, 2015 receive my interim report and give consideration to the preliminary findings of the Code of Conduct complaint investigation.

On April 7, 2015, I received correspondence from the Respondent's legal counsel advising that he had "...returned to the office today and reviewed [my] report". He went on to say that "[g]iven the importance of the matters raised to [his] client and the details of [my] report, in order to properly respond, [he requires] more than the three business days that [were] allowed for in [my] letter of March 30, 2015". The Respondent's counsel advised that "[he would] deliver a response...within the next two weeks." He concluded by stating that "...having regard to the history of this matter, there would not seem to be any urgency requiring [me] to place this matter in the public sphere without giving [him] the time [he required] to review the matter and put forth [his] client's position".

On April 8, 2015, I forwarded correspondence to the Respondent's legal counsel advising him that I took the matter very seriously, mindful of providing him with a reasonable opportunity to put forward any comments regarding my draft findings. I further stated in my letter that:

I acknowledge that your assistant provided me with communication from your office on March 30, 2015 advising that you were out of the country and I have taken into consideration the fact that you returned to your office on April 7th. As is my practice, I have asked you for comments, prior to finalizing my report and submitting my recommendations to Council for consideration.

.....

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 complaint investigation findings. Under Rule 12(1) of the Complaint Protocol for Council Code of Conduct (“Code Protocol”), the Integrity Commissioner must report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.

The Code of Conduct complaint investigation process for the City of Vaughan is prescribed in the Code Protocol. In addition, as you are aware, while 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*, which deals specifically with accountability and transparency of municipalities, the complaint investigation process and report to Council is a public process.

Please provide my office with your comments on or before April 14, 2015. I will provide my complaint investigation report for submission to the April 14, 2015 Committee of the Whole meeting. However, I will refrain from tendering any recommendations to Council pursuant to Rule No. 20 of the Code Protocol, until end of day April 17, 2015. As you know, Committee of the Whole accepts deputations from the public on items listed on the Agenda. The final deliberation of the item will take place at the April 21, 2015 Council meeting.

On April 9, 2015, the Respondent’s legal counsel wrote to me advising the following:

This is in response to your e-mail sent last night at 7:00 p.m.

Please advise when we may expect to receive copies of the evidence you rely on, including all witness statements and documentation. We require those materials in order to respond.

On April 9, 2015, I advised the Respondent’s legal counsel that in addition to the preliminary findings that I had already provided to him, I attached the appendices to the interim report and my proposed recommendation. I further stated in my letter that:

Subject to your client providing input into the preliminary findings and proposed recommendation by April 14, 2015, these draft materials

represent the basis for my proposed findings and recommendations.

.....

I have provided your client with notice of the proposed findings and recommendations, and the basis for those findings. Your client is being given the opportunity to respond. Given the nature of the process, there is no obligation to disclose witness statements. Indeed, the confidentiality of the process as set out in section 223.5 of the Municipal Act, and concerns regarding pressure on City Staff, require that I not provide such information.

On April 9, 2015, the Respondent's legal counsel wrote to me advising that he needed clarification on the procedure that I intended to follow, whether the report would be made public and debated on April 14th or whether the report would be made public and subsequently debated at the April 21, 2015 Council meeting.

I responded that I would submit my complaint investigation interim report with my preliminary findings to the April 14, 2015 Committee of the Whole and that the report would not have any recommendations to Council. I further advised that I did not have authority to answer questions on matters of meeting management on whether the matter would be debated on April 14, 2015 or at the April 21, 2015 Council meeting. I therefore invited the question regarding meeting procedure and public availability of documents, to be forwarded to the City Clerk's Office.

On April 10, 2015 I received correspondence from the Respondent's legal counsel advising that I:

...confirm that the only materials [I] will be place before the Committee of the Whole on Tuesday April, 2015 in relation to my client will be the report, recommendation and e-mails which you have provided to me.

If there are any other materials, please provide them to me forthwith.

On April 10, 2015, I forwarded correspondence to the Respondent's legal counsel advising that:

As stated in my letter to you dated April 9, 2015, I confirm that I have provided you with my preliminary findings and my proposed recommendation. Subject to your client providing input into the preliminary findings and proposed recommendation by April 14, 2015, these draft materials represent the basis for my proposed findings and recommendations which will be finalized for submission to the April 21, 2015 meeting of Council.

As a result of allowing you until April 14, 2015 to provide me with your comments on my preliminary findings and proposed recommendations, I confirm that the materials that I will be place before the Committee of the Whole on Tuesday April 14, 2015 in relation to your client, will be my preliminary report, without recommendation, and the appendices to the report that I have provided to you.

On April 10, 2015, at 5:50 p.m., I submitted my interim report with preliminary findings and the appendices to the report without recommendation, to the City Clerk's Office for placement on the April 14, 2015 Committee of the Whole agenda.

On April 13, 2015, I received correspondence from the Respondent's legal counsel (Appendix 6). The Respondent's legal counsel also submitted this correspondence to the City Clerk's Office and was placed before Council at the April 14, 2015 Committee of the Whole.

On April 13, 2015, I forwarded correspondence to the Respondent's legal counsel (Appendix 7).

On April 14, 2015, Committee of the Whole, my interim report went before Members of Council at the Committee of the Whole, as a Communication Item #8.1.

On April 14, 2015, the Respondent's legal counsel forwarded me correspondence in which he stated and asked the following:

You told Council during your comments that you had case authorities to support your position that the secrecy provisions of the legislation could not give way to the natural justice principle and that you would give those authorities to me in your final report.

Please provide those authorities immediately, as well as your explanation as to why, all of your correspondence to me, you have never made mention of any of those authorities.

I need those authorities immediately in order to determine my client's positions

On April 17, 2015, I received via e-mail, a 15-page correspondence from the Respondent's legal counsel and a copy of his April 13, 2015 letter to me. The 15-page correspondence has been provided to the City Clerk's Office by the Respondent's legal counsel. The April 13, 2015 letter is Appendix 6 to this report.

2. The Respondent's Initial Response to Complaint

Through his legal counsel, the Respondent raised a number of issues after receiving the complaint. The redacted response is attached as Appendix #1, and is referred to in this Report. The Respondent made a preliminary jurisdictional objection that the complaint did not comply with the procedure required by the Code of Conduct Complaint Protocol, which I discuss below. Having considered the Code and Complaint Protocol and the Respondent's submissions, I determined that I did not have jurisdiction to continue with Issues #1 and #4, as set out in Section D2 and D3, below. I did proceed to investigate Issues #2 and #3, as described in Section E below.

3. The Investigation

I initially made the determination that Issues 2 and 3 potentially triggered Rules 1, 3, 7, 9, 13, 14, 15, 16, and 18 of the Code. During the course of my investigation, I determined that there were grounds to examine a potential breach of Rule 19.

I conducted interviews with 32 individuals, 6 of whom I also requested provide me with documentary evidence. 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 under the exercise of the Code Protocol Investigations powers. Section 10 of the Code Protocol states:

(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.

I reviewed public and confidential City documents, the City's past and current procurement by-law, emails, video surveillance, audio recordings of Committee and Council meetings, and minutes of in-camera Board meetings.

I also obtained copies of the Respondent's emails sent from his City e-mail account from the City's Information and Technology Department, in accordance with an IRR request approved by the City Manager pursuant to section 10(2) of the Code Protocol. The request was for e-mails to and from the Respondent from January 1, 2013 to October 31, 2014, including the key words: Father Ermanno Bulfon Community Centre, FEBCC, Vaughan Public Library, VPL, bocce, bocce court, CCRL, VCCRL, Civic Centre Resource Library. The City policy is quite clear that as part of the Integrity Commissioner's authority, during the course of an investigation, he or she is allowed to access all information held by the City, including emails delivered, received and stored on the City server relevant to the investigation.

I note that Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner's duty of confidentiality. It states that "[t]he Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part."

Rule 19 of the Code is entitled Reprisals and Obstruction. This rule states that:

1. No Member shall obstruct the Integrity Commissioner in carrying out of her or his responsibilities;
2. No Members shall threaten or undertake any act of reprisal against a person initiating an inquiry or complaint under the Code of Conduct or who provides information to the integrity Commissioner in any investigation

In addition to the stated intent of Rule 19, this provision works together with the confidentiality provisions of the *Municipal Act, 2001* to ensure that the Integrity Commissioner may conduct her investigations without obstruction from a Councillor, and that those who provide information to the Integrity Commissioner are not subject to reprisal or threats from a Councillor.

D. Preliminary Issues

1. Jurisdiction to Proceed With the Investigation

The Respondent challenged my jurisdiction to proceed with the investigation, asserting that the complaint was frivolous, vexatious or not made in good faith, or else that there were no grounds or insufficient grounds for an investigation.

Section 5 of the Code Protocol states that individuals “*who identify or witness behavior or an activity by a member of Council* that they believe is in contravention of the Code, may file a formal complaint.”

Section 8 of the Code Protocol provides:

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.

(a) Frivolous, vexatious, or not made in good faith

Many Ontario statutes contain provisions that allow an administrative decision-maker to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. In general, in the administrative law context a complaint is frivolous or vexatious when it is a waste of time or when it aims to harass the subject of the complaint. For example, in the context of the *Ontario Human Rights Code*, the Human Right Tribunal has determined:¹

... [F]or the complaint to be trivial or frivolous, the issues must be unimportant, petty, silly, or insignificant enough to be a waste of the tribunal's time. In addition, a complaint completely without factual or legal basis might be considered trivial or frivolous. A vexatious complaint is one that aims to harass, annoy or drain the resources of the person complained against. A complaint made in bad faith is one pursued for improper reasons — a vexatious complaint is an example of one made in bad faith.

¹ *Modi v. Paradise Fine Foods Ltd.*, 2007 HRTO 30 at para. 18

‘Bad faith’ in general connotes the conscious doing of a wrong. Thus, the Information and Privacy Commission has held that bad faith has been defined as:²

The opposite of “good faith”, generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one’s rights, but by some interested or sinister motive. ... “bad faith” is not simply bad judgement (sic) or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.

Importantly, so long as a complaint is properly addressed to matters within the Code of Ethical Conduct, in my view merely having a collateral purpose for making a complaint does not by itself mean the complaint is made in ‘bad faith.’ As the Code itself notes in the Introduction, “Democracy is an active process – one that requires ongoing engagement between citizens and their elected officials. Ethics and integrity are at the core of public confidence in government and in the political process.” A valid complaint that addresses Conduct caught by the Code will generally not be in bad faith, in the absence of actual or constructive fraud, design to mislead or deceive, or a dishonest purpose.

The Respondent claims that the complaint is frivolous, vexatious and not made in good faith in various parts of his response, *inter alia*:

“Rule 1 (a) and (b) is not applicable as they apply to requests for information or inquiries from members of the public. Further no one is required to provide a response to an inquiry such as this as it is **frivolous, unreasonable and harassing**. Having failed to persuade the voters in the last election campaign that there was any substance to the complaint made to the media, [the Complainant] seeks to now have the Integrity Commissioner carry out an **investigation into his improperly and clearly politically motivated complaint.**”

.....

“The speculative nature of his request and his **desire to cast aspersions** on the Regional Councillor is seen in the statements that the investigation is to proceed to interview persons who ‘would have’ or ‘ought to have’ direct knowledge of the matters. The failure to set out the facts those persons had or even out to have had demonstrates a desire to cause an investigation to be made without any proper factual foundation and **reveals improper motivation.**”

² *Town of Ajax (Re)*, 2015 CanLII 2437 (ON IPC) at para. 18.

In my view, the complaint is neither frivolous nor vexatious, nor was it made in bad faith. The issues raised in the complaint are important and significant: they are not a waste of my time. The complaint has some factual and legal basis. Moreover, it is not clear that the aim of the complaint is to harass, annoy or drain the resources of the Respondent without merit.

I find that the complaint was not made in bad faith. I find no sinister motive or wrongdoing motivating the complaint. The fact that the Complainant and Respondent have been political rivals does not colour the complaint with bad faith. A complainant is allowed to have a collateral motive in making the complaint, including a desire to challenge and publicize public decision making.

(b) No grounds or insufficient grounds

I am required to not investigate a complaint where there are no grounds or insufficient grounds for the complaint. This is a very low threshold.

Concerning sufficient grounds, the Respondent writes:

The complainant has failed to set out ‘reasonable grounds; for his belief that Regional Councillor Michael Di Biase has contravened the Code of Conduct in that:

(a) In Appendix I, he has merely listed sections of the Code of Conduct without stating any grounds for belief that any of these sections have been contravened, and

(b) In Appendix 2 he has failed to set out what public records he is referring to and relies on his own statements of self-interest and conjecture to bootstrap up an argument for his unfounded allegations. His ‘findings’ are nowhere set out in support of an allegation of inappropriate relationship. His claim to belief regarding contraventions is, in itself, inappropriately and illegally founded.

[...]

“The statement concerning “reason to believe” that the Regional Councillor has been the vocal proponent of [Company A] once again is bereft of any factual basis in support. The complainant also fails to list any factual basis to support his bald allegations concerning his “reason to believe” that members of the Vaughan Public Library Board were influence by Regional Councillor Di Biase or that he may have tried to interfere in the tending process in the matter of the Civic Centre Resource Library. [The Complainant] encourages the Integrity Commissioner to conduct a fishing expedition in hopes of finding some support for his baseless allegations.”

The letter continues in respect of the Company A allegations:

[The Complainant] alleges that the information gathered was from his 'research of public records and my activities'. His production of copies of Regional Councillor DiBiase's personal emails is unexplained. Clearly, [the Complainant's] actions in obtaining access to personal emails are illegal. Further [the Complainant] misrepresented himself by posing as a potential client to elicit information about the cottage construction. The information he seeks to rely on was obtained illegally and under false pretenses. It would be contrary to the establishment of an Integrity office to have that same office condone such activities by founding an investigation on illegally obtained materials and misrepresentations. Indeed, to do so would compromise the integrity of the Integrity Commissioner."

"[The Complainant] suggests that the Integrity Commissioner use the CBC article as the basis for her investigation. Again, to do so in this case would compromise the integrity of that office. [The Complainant] was registered as a rival candidate in the 2014 municipal election and, as the opponent of Regional Councillor Di Biase, was the source of the article he seeks to have the Commissioner rely on. The CBC article was founded on the information provided by [the Complainant]. Further, the CBC could not get confirmation of the alleged claims by [the Complainant]. When they interviewed the personnel from the companies. The reported findings of the article were those of [the Complainant] and not the CBC, as claimed in [the affidavit]. In fact, when interviewed by the CBC, the representatives of the supplier stated that [Company A] was not the general contractor. The CBC article goes on to state that 'in all the cases involving Company A referenced, Mr. Di Biase casts his votes in accordance with the advice and recommendations of municipal staff'."

"If the Integrity Commissioner feels it appropriate to use the illegally obtained personal emails, a careful review of those emails evidences the fact that Company A is not the general contractor. All of the correspondence from Regional Councillor Di Biase was sent directly to the contractors/suppliers and all correspondence from the contractors/suppliers was sent directly to him. There was no indication that Company A was the general contractor."

I reviewed the media article that the Complainant included as supporting documentation to his complaint. The Complainant has included the actual CBC News article of October 24, 2014.

In addition, the Complainant provided me with verbal information in support of his complaint, information which he did not include in his written submission in order to protect the individuals who had provided him with some of the information on which he relied to make his claim. The Complainant surmised that his complaint would be forwarded in its entirety to the Respondent and had concerns that by including the names of certain individuals, he would be putting them at risk of a possible reprisal from the Respondent.

I find that there are sufficient grounds to investigate. A complainant, in particular a member of

the public, should not be held to such a high standard of proof that they are unable to reasonably bring forward a complaint. This would be a barrier to the effective operation of the office of the Integrity Commissioner. If the threshold is set too high, the public interest in enforcing City Council's standards as contained in the Code would be stymied.

The objective of Code complaint investigation is to discover facts upon which to make a reasonable decision on whether there has been a contravention of the Code Rules. There is nothing in the Code Protocol that requires a Complainant to rely on "public records"; in fact, very often complaints are brought forward on the belief that a contravention has occurred and the records of which the Complainant has knowledge exist and are internal to the City.

Likewise, a complainant need not have personally witnessed the conduct, nor do they have to meet the threshold of "proving" that there has been a breach of the Code in order to have a *bona fide* complaint under the Complaint Protocol.

As a procedural safeguard, this Office has established the practice over the past 5 years of speaking with an individual Complainant and conducting a preliminary review prior to deciding whether or not to commence an investigation. This practice was followed in this case.

As a counter-balance to the low threshold for undertaking an investigation, the Complaint Protocol creates further safeguards. The Complaint Protocol permits the Integrity Commissioner to discontinue an investigation where it becomes apparent that there are insufficient grounds to continue. Further, the Member of Council may make representations on whether there has been a breach of the Code.³ Finally, the Integrity Commissioner will only make findings and recommendations after completion of an investigation.

2. Issue #1 – Allegations of Criminal Conduct

Issue #1 involves an allegation regarding the relationship between the Respondent and Company A. The complainant alleged that Company A, a construction firm had done business with the City since 2002, that Company A was involved in the construction of the Respondents cottage located 90 kilometres to the north of the City. The complaint also alleged that Company A paid contractors for the work they performed on the Respondent's cottage. The complaint also indicates that the Respondent has been a vocal proponent of Company A, and has used his influence as a Councillor to further Company A's business interests within the City of Vaughan.

Section 6 (3)(a) of the Code Protocol provides that:

If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant should be advised that if the

³ (City of Toronto, Office of the Integrity Commissioner, CC41.3, November 13, 2013, City of Vaughan Code Protocol Rule 8)

complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

I have reviewed the Criminal Code, and have determined that the complaint on its face is an allegation of a criminal nature, either under section 123 (municipal corruption) or breach of trust (section 122).

I discuss these provisions below.

(a) **Municipal Corruption: Section 123**

The relevant provision reads:

Municipal corruption

123. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years who directly or indirectly gives, offers or agrees to give or offer to a municipal official or to anyone for the benefit of a municipal official — or, being a municipal official, directly or indirectly demands, accepts or offers or agrees to accept from any person for themselves or another person — a loan, reward, advantage or benefit of any kind as consideration for the official

(a) to abstain from voting at a meeting of the municipal council or a committee of the council;

(b) to vote in favour of or against a measure, motion or resolution;

(c) to aid in procuring or preventing the adoption of a measure, motion or resolution; or

(d) to perform or fail to perform an official act.

Definition of “municipal official”

(3) In this section, “municipal official” means a member of a municipal council or a person who holds an office under a municipal government.

(b) **Breach of Trust/Fraud by Official: Section 122**

The breach of trust provision in section 122 of the *Criminal Code* provides:

122. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Section 122 punishes fraud and breach of trust by persons who hold an office, or are appointed to discharge a public duty.

The essential elements of the s. 122 offence are:

- The defendant was an "official" within the meaning of s. 118;
- The act was committed in the general context of the carrying out of the defendant's duties; and
- The act constituted a fraud or breach of trust.⁴

Municipal councillors are officials within the meaning of section 118. Section 118 defines an "official" as a person who,

(a) holds an office, or

(b) is appointed or **elected** to discharge a public duty.

An elected municipal official may be convicted under this section.⁵

(c) **Elements of Breach of Trust**

The leading decision on the elements of the breach of trust offence is the 2006 decision of the Supreme Court in *R. v. Boulanger*.⁶ The Court held that "public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit."⁷

In *R. v. Boulanger*, the Supreme Court held that in order to convict an individual of the offence of breach of a public trust by a public officer, five elements must be proven beyond a reasonable doubt. They are:⁸

1. The accused was an official;

⁴ *R. v. Lippé* (1996), 111 C.C.C. (3d) 187 (Que. C.A.); *R. v. Perreault* (1992), 75 C.C.C. (3d) 425 (Que. C.A.), leave to appeal to S.C.C. refused (1993) 77 C.C.C. (3d) vi

⁵ *R. v. Sheets* (1971), 1 C.C.C. (2d) 508 (S.C.C.)

⁶ *R. v. Boulanger*, 2006 SCC 32, [2006] 2 S.C.R. 49

⁷ *Boulanger*, at para. 52

⁸ *Boulanger*, at para. 58

2. The accused was acting in connection with the duties of his or her office;
3. The accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office;
4. The conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and
5. The accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, **partial**, corrupt, or oppressive purpose. (emphasis added)

The Court noted that "partiality" denotes an unfair bias in favour of one thing, compared to another (para. 65). With respect to item #5, the Court held that reflects a central concern: "that public officials, entrusted with duties for the benefit of the public, carry out those duties honestly and for the benefit of the public, and that they not abuse their offices for corrupt or improper purposes."⁹

I have written to the Complainant in accordance with section 6(3)(a) of the Complaint Protocol, indicating that the Complainant must pursue Issue #1 with the Police Service, since on its face the allegation is of a criminal nature.

3. Issue #4 Barred by Limitation Period

On Issue #4, the complaint alleges that the Respondent failed to declare an interest in a planning matter involving Block 27 at a June 7, 2011 Committee of the Whole meeting. I find that the matter raised in Issue #4 of the complaint fall outside of the 6 month limitation period within which an alleged violation must have taken place in order to be addressed under the Code Protocol, and I did not investigate this complaint.

The Complainant states in the final paragraph of the complaint "I fully understand that the vote in question exceeds the 6 month time period allowed for consideration of violations under the Ethical Code of Conduct however I would like the Integrity Commissioner to review this matter and provider her comments as to what could or would have been breached under the [Code] had the matter fallen within the 6 month time frame".

In his response to the complaint the Respondent states that:

"[The Complainant] recognizes that this complaint is statute barred. Nonetheless, he would like the Integrity Commissioner to ignore the limitation

⁹ *Boulangier*, at para. 55

period and speculate and provider her comments on what violations could or would have been breached.”

“This request that the rule of law be ignored is further evidence of the impropriety and improper motive of [the Complainant]. Given the nature and purpose of the office of the Integrity Commissioner, it would be again a compromise of the integrity of that office for the rule of law to be disregarded as requested by [the Complainant].”

Section 6(3) of the Code Protocol provides that if the complaint, including the supporting affidavit, is not, on its face a complaint with respect to non-compliance with the Code or the subject of the complaint is governed by other legislation or a complaint procedure under another City policy, the Integrity Commissioner shall advise the complainant in writing that the matter does not fall within the Integrity Commissioner’s jurisdiction to investigate. I have so indicated to the Complainant in respect to the alleged irregularities in the Respondent’s voting record on land planning matters regarding Block 27. Since the matter involves a vote at Council, I note that the Complainant, independent of the current complaint, may within 6 years of the date of a contravention under the *Municipal Conflict of Interest Act*, bring an application before the courts.

E. Issues #2 and 3: Findings re Insertion Into Procurement Process

1. Code Rules Relevant to The Procurement

Interference with rules relating to procurement are located in various parts of the Code. Rule 1 sets out Key Principles underlying the Code. Rule 1 (c) provides in part:

Members of Council shall avoid the improper use of influence of their office, and conflicts of interest, both apparent and real....

Rule 7 expands on the principle set out in Rule 1(c)(i), as it deals with the improper use of influence. Rule 7(1) provides:

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

The Commentary to the Rule explains the role of Councillors in relation to City staff. The Commentary provides:

Pursuant to corporate policy, the City Manager directs City Commissioners, who in turn, direct City staff. City Council and not individual Members of Council appropriately give direction to the City administration.

Rule 3 deals with confidential information. It provides in relevant part:

1. No Member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.
2. No Member shall use confidential information for personal or private gain, or for the gain of relatives or any person or corporation.
3. No Member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.
5. No Member shall permit any persons other than those who are entitled thereto to have access to information that is confidential.
6. No Member shall access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.

Rule 18 provides that: “Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.”

Turning to conduct regarding staff, a number of rules are relevant. Rule 16 governs Conduct Respecting Staff. It provides in relevant part:

2. No member shall use, or attempt to use, their authority for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering in staff’s duties, including the duty to disclose improper activity.
3. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.
4. No member shall maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and all members shall show respect for the professional capacities of the staff of the City.

The Commentary to Rule 16 provides that “it is inappropriate for a member to attempt to influence staff to circumvent normal processes in a matter...”

Rule 15, discreditable conduct, provides that: “Members shall conduct themselves with appropriate decorum at all times.” Rule 1(i) also governs relations with Staff. It provides:

Members of Council shall fulfill their roles as set out in the Municipal Act and respect the role of staff in the administration of the business affairs of the City.

Taken together, these sections of the Code set out the relevant rules for Councillors in relation to a procurement process, including relations with City staff. Councillors should avoid participation

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. Councillors must respect the importance of confidential information. Councillors must not attempt to use their influence for the purpose of intimidating, threatening, or influencing staff members in the performance of their duties. The Code rules are premised on the position that City staff under the direction of the City Manager, serve Council as a whole. Individual Members of Council do not have authority to request confidential information, in particular as it relates to a specific tender during the Blackout Period and ongoing procurement process.

Under the City's Procurement rules, contractors' submissions in response to the RFPQs and the information contained within the submissions are deemed to be confidential since they contain third party financial, technical and commercial information which is proprietary. Submissions constitute records under the custody and control of the City and are therefore governed by the rules of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Disclosure to third parties, the public or individual Members of Council, of the information contained in contractors' submissions could be deemed to be a contravention of the rules of MFIPPA, in addition to potentially putting the City at legal risk.

Finally, the Rules require that Members maintain professional and cordial relations with City staff, and shall not attempt to use their authority to intimidate, threaten, or influence staff.

2. Procurement Investigation Findings

The City issued a Request For Pre-Qualification (RFPQ) for the Father Ermanno Bulfon Community Centre Construction Project (FEBCC) on February 18, 2014 through electronic tendering system and Daily Commercial News. 34 prospective contractors picked up this RFPQ.

The RFPQ closed on March 4, 2014 and 30 contractors responded, none of which were disqualified. Scoring methodology was established by an Evaluation Committee before submissions were scored.

10 contractors were pre-qualified and were notified in writing on May 15, 2014. Tender documents were provided on May 22, 2014 and the tender closed on June 18, 2014.

One of the contractors [Company A] who did not pre-qualify wrote to the City to complain that it should have pre-qualified because it had completed significant projects for the City and claimed that scoring was unfair. In the debrief with City administrative officials, Company A commented that it should be pre-qualified because "*it has always prequalified...and they make donations to Vaughan charities*". Of note, in an interview with a former member of City staff, the former employee told me that when she asked the Respondent why he thought Company A felt the process was unfair, the Respondent said to the former employee in a meeting with another City staff member- "they (Company A) told me and they helped a lot of good causes in the City".

The City issued a RFPQ for the Civic Centre Resource Library Construction Project (CCRL) on January 10, 2014 through electronic tendering system and Daily Commercial News with 31 prospective contractors picking up the RFPQ.

The RFPQ closed on January 27, 2014 and 21 contractors responded. 1 contractor disqualified due to ongoing litigation with the City on another matter. Scoring methodology was established by Evaluation Committee before submissions were scored.

7 contractors pre-qualified and were notified in writing on May 13, 2014, with Tender documents being provided on May 20, 2014. Two contractors who did not prequalify wrote to the City to complain, one of which [Contractor A] stating that it should have pre-qualified because “*it has always pre-qualified....and they make donations to Vaughan charities*”.

3. Findings re Blackout Period

Best practices have established that in order for a procurement process to be fair and to be perceived to be fair, there should be one contact staff person with whom contractors can communicate. Elected officials and City staff are not to be involved in the procurement process during certain periods so that the prospective vendors will not have or will not be seen to have preferential access to information or an unfair advantage in the process. Pursuant to the City of Vaughan Procurement Policy, the working definition for Blackout Period is “the period of time the call for bids being, Requests for Proposals, Tender or Quotation, is issued up to including the date the Contract is recommended for award by the Committee of the Whole”. In the 2 RFPQs subject of this investigation, the recommendation report from the department was not public information given that the approval was required by the Director of Purchasing Services and the recommendations were reconsidered in a meeting of May 8, 2014. In both the FEBCC and the CCRL RFPQs, there were provisions that indicated a Blackout Period from the date of issue of the RFPQ and including the date the pre-qualified contractors were recommended. Any communication between a contractor and City Elected Officials is grounds for disqualification. The Blackout Period for RFPQ14-051 was from February 18, 2014 to May 12, 2014. The Blackout Period for FRPQ14-007 CCRL was from January 7, 2014 to May 13, 2014.

The Respondent approached staff and verbally asked for pre-qualification results to be sent to him in hard copy and not via email on April 28, 2014 and May 12, 2014. These requests for information were both made within the Blackout Period.

Subsequent email requests were sent by the Respondent to staff requesting pre-qualification results to be sent to him on May 28, 2014 and June 6, 2014, both outside the Blackout Period but during the ongoing procurement process.

4. Findings re Conduct Respecting Staff

I am unable to provide excerpts from all the interviews that I conducted as I am required by the provisions of the *Municipal Act*, to maintain the confidentiality of individuals with whom I speak. Section 223.5 of the *Municipal Act* contains the statutory provision outlining the Integrity Commissioner’s duty of confidentiality. It states that “[t]he Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all

matters that come to his or her knowledge in the course of his or her duties under this Part.”

It is the position of this Office that I was obligated to avoid the disclosure of some information received during the course of my investigation where I believed that this information will clearly identify individuals. However, there is information that I received from more than one individual and/or that I received from individuals whose identity is not likely to be inferred from the listing of comments below and I have included these comments as I believe them to be pivotal to an understanding of my decision that I tender to Council at the end of this report

Comments I received include the following:

City staff person A. “I was approached by Regional Councillor Di Biase at [a meeting] and he asked me about the [CCRL]. When I told [Regional Councillor Di Biase] that there was a [procurement] process that had to be followed, he told me to stop wasting time and don’t be a trouble maker and cause problems”

City staff person B. “If there were problems with [Company A] Regional Councillor Di Biase told me ‘just deal with it.’ When I told [Regional Councillor Di Biase] that there is a public tendering process and scoring for contractors had to follow a process, [Regional Councillor Di Biase] said ‘just deal with it and make it happen.’ ”

Board Member 1. With reference to an in-camera meeting dealing with an ongoing procurement matter that had still yet to go to Council for a decision, [Regional Councillor Di Biase] said ‘Just give the job to [Company A]’

Board Member 2. With reference to an in-camera meeting dealing with an ongoing procurement matter that had still yet to go to Council for a decision, [Regional Councillor Di Biase] when told by City staff that [Company A] was disqualified from the procurement process, said ‘Just give the job to [Company A]’

Board Member 3. “Citizen representatives [on the Board] were uncomfortable when [Regional Councillor Di Biase] said ‘oh, just give it to [Company A]’ ”

Board Member 4. “Citizen Board members were angry with what [Regional Councillor Di Biase] said and a few were intimidated because of what [Regional Councillor Di Biase] said.”

Board Member 4. “I was surprised that [Regional Councillor Di Biase] would say ‘just give the job to [Company A]’ in front of the citizen Board members”.

City staff person C. “[Regional Councillor Di Biase] came to me and asked for copies of all the proposals submitted by all proponents and how [City staff] came up with the scores. When [Regional Councillor Di Biase] told me that [Company A] was unhappy that they didn’t get pre-qualified, I asked him how he knew and he said ‘[Company A] told me’ ”

City staff person C. “After I told [Regional Councillor Di Biase] that speaking with a proponent during the Blackout Period of the procurement process puts the

City at risk, [Regional Councillor Di Biase] continued asking for the information just not to me” (...) “I know this because my staff came and told me that [Regional Councillor Di Biase] was ‘advocating’ in favour of [Company A].”

City staff person D. “When I was asked and I told [Regional Councillor Di Biase] that [Company A] did not qualify, he said ‘you have to be ----ing kidding me. They have to pre-qualify.’ I said there was a process and we followed the process but he was not happy with my push back to him.”

City staff person E. “I could tell [Regional Councillor Di Biase] did not like my answer and he just looked at me and said ‘...don’t make waves...’ and walked away. After that the relationship [with Regional Councillor Di Biase] was strained.”

City staff person F. “When he asked me about the delay in procurement for the bocce courts and I explained the [City] process, [Regional Councillor Di Biase] said ‘Just make it happen.’ ”

City staff person G. “[Regional Councillor Di Biase] said ‘Where is the Commissioner? I want to know where he is right now! You better tell him to call be back or its going to be a horrible day for him at Committee’ ”

City staff person H. ‘Tell your boss, when I call, respond to your ----ing phone’

City staff person I. “ When I told [Regional Councillor Di Biase] I couldn’t give him the information because there was an ongoing procurement process, he said ‘I’ll get it.’ ”

City staff person J. “When [Regional Councillor Di Biase] asked me for the results of the pre-qualification, I said the results were not ready and he said ‘send me the result in an envelope to my office not by email and take care of my guys’ and I said when the results are ready they will be sent to all according to our procurement process.”

5. Findings re Confidential Information and Scripted Emails

When City staff and Members of Council told the Respondent that his questions to staff during the RFPQ and ongoing procurement process were contrary to the rules prohibiting Members of Council from inserting themselves into the procurement process, there are several examples of the Respondent responding by emails after the Blackout Period, the verbatim text of which originated from an individual not employed by the City.

The sequence of events shows that the Respondent forwarded confidential information in connection with the business of the City to the outside source requesting a response be drafted for him. Once the response was received by the Respondent from the outside source, the Respondent cut and pasted the scripted response verbatim and used this scripted email in response to queries from senior City staff, other Members of Council and for Motions before

Council. (see Appendix 4(a)-(g)). While there are additional examples contained in Appendix 4, I set out three particular examples below.

(a) **Scripted E-mail: May 26 and May 28 Comparison**

On May 26, 2014 at 3:09 a.m., a private individual not employed by the City provided an e-mail to the Respondent entitled “Response to Barb” (See Appendix #4(c)). That e-mail is two pages long, and raises a number of issues in respect of the pre-qualification process for both the Father Ermano Bulfon Community Centre and the Civil Centre Resource Library. An e-mail which is essentially identical to the e-mail provided to the Respondent by the private individual was then sent by the Respondent to Barbara Cribbett, Interim City Manager, and copied to the Mayor and Members of Council, Re: Pre-Qualification on May 28, 2014 at 11:42 a.m. (Appendix #4(c)). While the entire e-mail is essentially scripted (cut and pasted) from the May 26 e-mail, I set out below specific examples indicating the minor changes made:

Example #1: Comparison – Difference in 3 paragraphs Between May 26 Private Individual Letter and Letter sent to Interim City Manager, under the same heading, “Father Ermano Bulfon Community Centre”, with the 3 minor word changes in the Respondent’s e-mail shown by underlining:

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million (not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this projects.

Based on my brief review of this one company who made the list, I’m confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

What is particularly disturbing about this extract is that the Respondent used information provided directly by an outside individual to make a specific criticism to the Mayor and Members of Council about a company which pre-qualified, at a time when he had already indicated to City Staff his preferences for Company A, a competitor of the company he criticized in his May 28 e-mail.

Example #2: Comparison – No difference in two paragraphs between May 26 Private Individual Letter and May 28 Letter sent to Interim City Manager, under the heading “Civic Center Resource Library”:

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provided for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were done by Construction management, and I could not determine from the information listed if any of their projects received LEED accreditation.

Again what is particularly disturbing about this extract, as in Example #1, is that the Respondent used information provided directly by an outside individual to make a specific criticism to the Interim City Manager, Mayor and Members of Council about a company which pre-qualified, at a time when he had already indicated to City Staff his preferences for Company A, a competitor of the company he criticized in his May 28 e-mail.

Example #3: Comparison – Difference in 2 paragraphs Between May 26 Private Individual Letter and Letter sent to Interim City Manager, the word changes shown by underlining and strike-out

Barb, I do not wish to hold up ~~the~~ these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the Auditor and the Commissioner of Finance (with responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third party reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly. I trust that you will act on my suggestion as it will provide ~~transparency for the~~ a fair and transparent review of the pre-qualification process, and avoid any perception of cover up.

What I found striking in comparing the two e-mails is that the central concepts came directly from the private citizen – the suggestion that there are serious concerns regarding the process, that the Auditor and Commissioner of Finance review bidder submissions against the RFPQ

documents, that the bid review committee not sit in review given their involvement in the pre-qualification process, and that this need be done to “avoid any perception of cover-up”.

(b) Scripted E-mail May 29

Similar concerns arise with respect to an e-mail provided by the private individual to the Respondent on May 29, 2014 at 1:28 p.m. (Appendix 3(f)). Essentially the same e-mail is again cut and pasted, and sent by the Respondent to Councillor Marilyn Iafrate and Interim City Manager Barbara Cribbett, copied to the Mayor and Members of Council at 2:20 p.m., approximately one hour after he received it.

What is unusual about this e-mail is that the private individual drafted paragraphs for the Respondent, such as “I was surprised”, “I looked up the information”, and the Respondent used those statements verbatim in his e-mail to the Councillors. The private individual again suggested the process that the Respondent raised.

Having done a comparison of the two e-mails, there are no changes in these paragraphs, or indeed, to the e-mail as a whole received from the private individual then sent to Councillors and City staff, save for some punctuation changes:

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. Its as simply as that, I was making a point as to why I suggested the auditor be involved....

...On Sunday night, I looked up the information via the links and it raised some serious concerns (as noted in my e mail). I received some additional from Asad on Monday, and after a brief review, I sent my findings and concerns to the city manager.

During that time frame, I learned that at least one company sent in a letter of objection (Also noted in my e-mail). And from my limited knowledge of the procedures, this should trigger a bid review. I suggested to Barb that review should not have the same individuals who were directly involved in the pre-qualification process.

I have provide the City manager and council with the information I gathered, along with my comments. The fact that is getting the attention it has would lead me to believe you that “something does not add up”

(c) Drafting of Motion to Council by Private Individual

Finally, the outside individual drafted a Member’s Resolution regarding the Pre-Qualification process and sent it to the Respondent by e-mail on June 9, 2014 at 1:13 AM. The Respondent moved essentially the same resolution on June 17, 2014. The private individual’s e-mail is at Appendix #3(a), page 1, and the Respondent’s Resolution on page 2. The “Whereas” clauses are essentially identical. In terms of the operative part of the resolution, I set these out in the

chart below, indicating changes between the version provided by the private individual and the version moved by the Respondent, ignoring format changes:

Private Individual E-mail, June 9, 1:13 a.m.	Respondent's Resolution at Council June 17
It is therefore recommended that a review of the pre-qualification process involving these two projects be done by the City Auditor, beginning with but not limited to the reviewing the bid submission to determine	It is therefore recommended <u>in keeping with the City's commitment to continuous improvement</u> , that a review of the pre-qualification process involving these two projects be done by the City Auditor; beginning with <u>The review of the submissions should include</u> but not limited to the reviewing the bid submission to determine <u>the following:</u>
The information submitted fully complied with the strict criteria listed in the bid documents	The information submitted fully complied with the strict criteria listed in the bid documents
Review the scoring to ensure consistent application of the scoring principles as set out in the bid documents	Review the scoring <u>be reviewed</u> to ensure consistent application of the scoring principles <u>and the awarding of points to each bidder</u> as set out in the bid documents
Ensure the collection of references was done as per the city's procedures and the awarding of points done in a consistent manner	Ensure the <u>request and</u> collection of references was done as per the e City's procedures and the awarding of points <u>for each category was done</u> in a consistent manner
This will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our business practices and procedures	This That will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our the City's business practices and procedures

It is quite clear, when comparing the texts, that the private citizen provided the Respondent with the subject matter of the motion. Of concern, again, is that the Respondent had clearly expressed his desire that the projects be awarded to Company A, to Staff and Board members prior to the completion of the RFPQ process, including during the Blackout Period, and continued to vigorously raise concerns with Staff and Councillors about the pre-qualification process – including directly criticizing two competitors of Company A - after the decision was made.

6. Harms re Improper Insertion into Procurement Process

The issue of access by municipal councillors to the details of the responses and information in relation to the City's Request For Pre-Qualification ("RFPQ") and Request For Proposals ["RFP"] and tenders, has been the subject of several reports in various municipalities in Ontario and was a significant issue addressed by the Bellamy Inquiry. Commissioner Bellamy made significant recommendations in relation to Councillors and the procurement process, premised on the basis that procurement processes "should be structured so that they are and clearly appear to

be completely free from political influence or interference.”¹⁰ Her recommendations include the following:¹¹

130. Councillors should separate themselves from the procurement process. They should have no involvement whatsoever in specific procurements. They have the strongest ethical obligation to refrain from seeking to be involved in any way.

131. Members of Council should not see any documents or receive any information related to a particular procurement while the procurement process is ongoing.

132. Councillors who receive inquiries from vendors related to any specific procurement should tell them to communicate with one or more of the following three people, as is appropriate in the circumstances:

- a. the contact person in the tender document, in accordance with the contact rules in place
- b. the fairness commissioner
- c. the person in charge of the complaints process, as set out in the tender documents

The issue of who has access to detailed information with respect to a particular procurement is particularly sensitive, in that the highest standards of integrity and fairness are expected by the bidders, the public and government officials the procurement process in a government setting. In order to demonstrate that the procurement process has been exercised with integrity and fairness, strong emphasis is placed on transparency. That means that the decision making process should be as public as possible. However, in order to protect the legitimate interests of the bidders, the transparency of the process cannot be absolute. Bids often contain confidential and proprietary information that if publicly disclosed, could cause significant damage to the bidder.

The role of Council in the procurement process, generally speaking, is to set out the procurement policies that City staff should operate within. To that end, a municipal Council must set out the City’s procurement policy within the Purchasing and Procurement By-laws and related Purchasing Policies that outline, among other things:

- The conditions under which bids must be sought
- The conditions under which work can be sourced without a competitive process
- The approval process

¹⁰ Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, Report, The Honourable Madam Justice Denise E. Bellamy (“Bellamy Report”), Vol. 2, Good Government, p. 99, Recommendation 129, City of Toronto, 2005

¹¹ Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry, Report, The Honourable Madam Justice Denise E. Bellamy (“Bellamy Report”), Vol. 2, Good Government, pp. 99-103, City of Toronto, 2005

- Bid disqualification and dispute resolution process

Some examples of policies that address the need for transparency are: having Council receive, on an annual basis, reports on the Consultants used by the City and having staff report on the non-competitive sourcing that occurred in the previous year. On an exception basis, many procurement policies require staff to report to a Standing Committee when an award is being recommended to one proponent other than the low bidder, when there is an unresolved dispute with a bidder or when there are other issues (environmental, labour relations)

As an additional oversight measure, many municipal Councils have also passed a policy that allows for the use of an independent fairness monitor that staff can engage to monitor the more complicated and risky procurements. Also, where there are concerns that staff, Council members or the bidders may have acted inappropriately, the resources of the Auditor General's or Integrity Commissioner's office are available to Council to conduct an investigation.

The underlying premise of the obligation of Members of Council to avoid inserting themselves into the City procurement process is to ensure the integrity of the bidding process and fairness in business practices. Commissioner Bellamy expressed this concern as follows, and I agree with the concern in this case:¹²

The reason for prohibiting councillors from participating in specific procurement processes is both simple and powerful. If a politician can control the procurement process, success in public tenders risks becoming a form of political leverage. A politician may offer to help a bidder in return for a political or financial favour. Taxpayer money then goes not to the bidder who offers the best value but to the bidder who offers the most strategic advantage to the politician in control.

The Code provisions contained in rules 1 and 7 are in place with a view to ensuring that municipal elected officials do not act in a manner that would cause a reasonable person to think that she/he would show favor toward someone or that she/he can be improperly influenced. A Member of Vaughan Council is required to consider whether her or his relationships and affiliations could prevent her or him from acting fairly and objectively when performing their duties for the City. If she or he cannot be fair and objective because of a relationship or affiliation with a group, the Member should refrain from participating in the discussion and decision-making, not insofar as any potential financial gain, but rather in relation to a real or perceived granting of favor towards the group.

In October 2011, the Honourable Justice Douglas Cunningham released his report on the Mississauga Judicial Inquiry. Entitled Updating the Ethical Infrastructure, the Commissioner provided several recommendations to ensure ethical decision-making and behaviour for

¹² Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry Report, The Honourable Madam Justice Denise E. Bellamy ("Bellamy Report"), Vol. 2, Good Government, p. 101, City of Toronto, 2005

municipal elected officials. Commissioner Cunningham notes in his report that “...those who are fortunate enough to enjoy friendships with the [elected Members of Council] have derived benefits from those relationships”.¹³

In Commissioner Cunningham’s report, he speaks about “friendships with the [Members of Council]” and how those businesses with this status have “derived benefits from” the friendships.

It is clear from the information that I have received throughout this investigation that the Respondent showed preferential treatment towards Company A and expected and continues to expect staff to go along with his direction regarding favoritism.

The Code recognizes 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. 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. 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 and this is a legitimate role of Council, the Board of Directors of the municipality. However, this does not mean broad stroke access by an individual Member of Council to any information they feel is necessary for them to make decisions, especially not in the area of procurement where there are rules around the Blackout Period, rules that the former City Solicitor went to great lengths to explain to the Respondent in painstaking detail.

Where information is needed, the Procedural by-law identifies in what way the information can be provided to Council as a whole. Individual Members of Council also recognize that the information that they receive as members of the decision-making body of Council is subject to the confidentiality and disclosure rules of Provincial and Federal statutes and City of Vaughan by-laws, which means confidential information, including discussions at closed meetings of Council and legal matters, is not to be shared with constituents or third parties, or script writers until the information becomes public.

7. Summary and Analysis: Respondent’s Conduct

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. When making decisions on acceptable conduct, Members of Council are to follow the rules of the Code which *provide* them with *a reference guide and a supplement to the legislative parameters within which they must operate*.

I find that the purpose of the Code has been seriously undermined by the actions of the

¹³ Mississauga Judicial Inquiry Report, Updating the Ethical Infrastructure, The Honourable J. Douglas Cunningham, p.187, City of Mississauga, 2011

Respondent in relation to the procurement matters, the perception of influence, and the improper conduct with respect to staff, all of which are discussed above. In respect of the procurement matters set out above, the Respondent has breached Rule 1(c), 3, 7 and 18. The Respondent has contravened the City's procurement rules by inquiring with City staff and third parties about particular tenders, pre-qualification results and scores during the Blackout period. The Respondent was told by senior officials of the City, in particular, the City Solicitor who is no longer with the City, the serious risk posed to the City by a Member of Council inserting or attempting to insert him or herself inappropriately into the procurement process at any time but in particular, during the Blackout period. After the pre-qualification process ended, the Respondent exchanged e-mails with a private citizen, and used information contained in e-mails drafted by the private citizen to directly criticize two competitors of Company A, his preferred company, to the Mayor, Councillors and City Staff.

Each Member of Council forms part of the decision-making body recognized by the *Municipal Act* as the representative of the public elected to collectively consider the well-being and interests of the municipality. Further, some businesses and individuals doing business with the City have found themselves caught in a way of doing business that requires more attention to who you know than to how you complete your tender documents. The actions of the Respondent have left the City open to public criticism and questioning of ethics in procurement on the one end of the spectrum and financial liability on the other.

In respect of his conduct with City staff, I also find that the Respondent has breached Rule 1(i), 15 and 16, and has created a "culture of fear" for City staff. When City staff responded to the Respondent's requests for information during the Blackout period and during the subsequent stages of the procurement process, by advising him that there is a process that must be followed, they were met with defiance, abusive language and intimidating actions. Individuals that I interviewed have expressed feelings that span from outrage to hopeless resignation. Some City staff felt intimidated by being told by a veteran City Member of Council to provide them with confidential information that was in direct contravention of City procurement rules and City staff's professional obligations.

When City staff were asked to provide the Respondent with information that was to be kept confidential during the procurement Blackout period, the Respondent became in their view, aggressive and intimidating.

After City staff told the Respondent of the inappropriate nature of his inquiries and were told by him to "just do it", they took their concerns to the Commissioner of Strategic and Corporate Services and the City Solicitor, both of whom have recently departed the City.

I find that the Respondent has also breached Rule 19(1) and (2), reprisals and obstruction. During the course of this investigation, the Respondent has made inquiries about individuals who have cooperated with my office in providing information as part of this investigation. These individuals have told me that since they have come to speak with me, they have noticed a heightened scrutiny by the Respondent of their actions and a disproportionate calling into question of their professional decision-making.

Members of Council are representatives of the public and have a right and an obligation to ask the hard questions, especially at budget time. However, when the preponderance of questions come from the Respondent and are probing into decisions of particular staff who have cooperated with my Office during a complaint investigation, are when the questions turn to seeking out the basis upon which target staff were hired for the City of Vaughan in the first place, I deem these cumulative actions to be acts of reprisal against individuals who have provided information to me under this Code investigation and therefore a breach of Rule 19, reprisals and obstruction.

I cannot stress strongly enough the sentiments of worry and concern voiced by the City staff that I interviewed during the course of this investigation. Many implored me to not disclose their identity though I confirmed my obligation to ensure secrecy was enshrined in both the *Municipal Act* and the Code Protocol. In addition, many of the individual City staff with whom I have spoken during the course of this investigation have confirmed that questions regarding their performance have been raised by the Respondent causing them to have serious concerns about the security of their employment with the City.

Notwithstanding this deep-seated worry of reprisal, no individual City staff person or individual outside of the City that I have asked to speak with me as part of this investigation has refused or has required me to invoke my summons powers to obtain information. The comments I received were that they knew that they were taking a risk in cooperating with my investigation but they felt strongly about the City in which they lived and worked as a place that values the work and ethical reputation of staff and their professional abilities.

In fairness to a City staff that has worked tremendously hard to create a professional ethical workforce and a Council under the leadership of a Mayor of the highest integrity, I must state what I have found as a result of my investigation is in relation to one Member of Council only: the Respondent. I do not want to paint all of Council with the brush of unethical behavior evidenced by the statements and information that I received during my investigation in relation to the Respondent. It is for this reason that in my opinion, I should not only tender to Council my recommendations based on the findings of my investigation, but also my recommendations of what Council should seriously consider in order to fulfil its obligations under the *Municipal Act* and the Code. Members of Council are obligated to respect the public they serve by following the rules set by their oath of office. However, without strong governance and accountability rules in place, Members operate within a grey area that may leave too much room for individual discretion and about imperatives in ethical decision-making.

F. Recommendations

I find the conduct which is the subject of this report is serious. Moreover, this is not the first time I have had cause to investigate the Respondent. One of the previous issues raised against the Respondent was made through the Informal Complaint Process. In that instance, I found that while the Respondent should have known that his actions subject of the complaint triggered Code obligations and while he had acknowledged that prior to carrying out the actions subject of the complaint, he was unaware of the seriousness of the actions, in discussion with me, he

acknowledged that his actions were, in fact, inappropriate and contrary to the Code Rules raised in the complaint and that he should not have made the comments. At that time, I had strongly recommended to the Respondent that he make full use of the expert and qualified staff at the City, in particular in the person of the Commissioner of Legal Service and City Solicitor, who could fully explain what is required of an elected official in relation to his obligations of confidentiality. It is my understanding that, subsequent to my closing the complaint file, and being satisfied that the Respondent acknowledged the seriousness of his actions, he complied with my recommendations and attended an individual training session on confidentiality, delivered by the former City Solicitor. However, during the course of this investigation, I have received information that strongly indicates that the Respondent attempted to gain access to confidential information during the Blackout Period and permitted persons other than those entitled thereto to have access to confidential procurement information.

In the decision *Ford v. Magder*, Justice Hackland considered the complete factual background and the respondent's contravention in making his determination as to whether the contravention was committed by an error in judgment. His determination states in para. 53 of the decision:

The case law confirms that an error in judgment...must have occurred honestly and in good faith. In this context, good faith involves such considerations as whether a reasonable explanation is offered for the respondent's conduct ... There must be some diligence on the respondent's part; that is, some effort to understand and appreciate his obligations. Outright ignorance of the law will not suffice, nor will wilful blindness as to one's obligations.

Clearly, the above-cited decision relates to a MCIA case in relation to a pecuniary interest. However, I have chosen to include an excerpt here to underscore the meaning of “error of judgment made in good faith” as this language is used in the City of Vaughan Code Complaint Protocol in section 13. (see Appendix 3) . Justice Hackland goes on to say that where there is a “stubborn sense of entitlement and a dismissive and confrontational attitude to the Integrity Commissioner and the *Code of Conduct* ...and the respondent’s actions [are] characterized by ignorance of the law and lack of diligence in securing professional advice...[the actions amount to] wilful blindness and as such...are incompatible with an error in judgment.”

I emphasize here that the term “good faith” that has been chosen in drafting the Vaughan Code of Conduct, is the language used by the drafters of the *Municipal Act* and does not mean that a finding of contravention in “good faith” means that the actions of a Respondent under investigation have been appropriate or the result of an innocent mistake. It is my position that the actions of Regional Councillor Di Biase have serious implications and were made in contravention of his ethical obligations as an elected official.

I have delivered training to Members of Council on the Code rules and their obligations. While attendance at Code training sessions is not a compulsory element of the Member’s Oath of Office, attendance at these training sessions does demonstrate the Members’ commitment to gain an understanding of an important by-law of the City. The Respondent has not attended any training sessions that I have conducted, however, he did attend a one-on-one overview of confidentiality rules with the former City Solicitor which was required of him as part of the

resolution of an informal Code complaint. I have conducted training on the Code provisions and rules, attended meetings of the Code of Conduct working group, and sat before Council to explain both the meaning of Code rules in relation to a complaint investigation and Code amendments. In short, while any Member could have claimed a lack of understanding of the meaning of the Code rules and the respective Councillor obligations at the beginning of their term in 2010, should such a statement be made in 2015, it would be a disingenuous and unacceptable position to be held by a Member of Council for the City of Vaughan.

I had provided a copy of my proposed recommendation to the Respondent's legal counsel. Included in my reasons for this preliminary conclusion was the fact that I had had an opportunity to speak with the Respondent in the past in relation to his understanding of his Code obligations in relation to confidentiality. The Respondent's legal counsel references on page 5 of his letter dated April 13, 2015 (see Appendix 6) "The proposed recommendation itself is seriously flawed and demonstrates a further breach of natural justice in that you improperly:

- a. Reference issues finally determined in and Informal Complaint process. In that process, which you publicly stated was thoroughly investigated and closed:
 - i. It was not Councillor DiBiase's intent to insert himself into the procurement process;
 - ii. Mr. DiBiase has a deep concern for people and for the City of Vaughan;
 - iii. The City Manager indicated that she did not have a problem with a member of council having questions regarding procurement issues;
 - iv. Mr. DiBiase's words may have been misinterpreted;
 - v. There is no reason to believe that Mr. DiBiase acted in bad faith;
 - vi. You referred to Mr. DiBiase as "highly professional".
- b. Seek to buttress your recommendation in the present matter by your self-serving references to your purported prior interaction with the Regional Councillor.
- c. Reference once again, as you did in your report, the allegation concerning access to information without providing detailed evidence to enable a refuting of that evidence prior to your recommendation;
- d. Despite your own recognition of the unavailability of any actual proof of such wrongdoing ("information that strongly indicates") base your recommendation on suggestion rather than proof."

Of note, the informal complaint that I reference in my proposed recommendations provided to the Respondent's legal counsel on April 9, 2015 and my recommendation in this report, is not relevant to my preliminary or final findings, but only to the recommended sanction. My proposed recommendation is based in part on an informal complaint, and the one-on-one overview of confidentiality rules with the former City Solicitor which was required of the Respondent as part of the resolution of that informal Code complaint. The informal complaint to which the Respondent's legal counsel references in his April 13, 2015 letter and his April 17, 2015 letter as a basis for his claim of any bias or prejudgement on my part **is not** the informal complaint that I relied upon in considering a recommended sanction in conclusion of the investigation. As the Complainant and the Respondent both spoke publicly about the informal complaint concluded in in July 2011, and as the Respondent submitted a public statement in which he stated that "I have spoken with the Integrity Commissioner who has made

recommendations to me and I will comply fully with them” this instance provided an example that I could reference in my public report of the Respondent’s prior interaction with my office.

I would not reference an informal complaint that was thoroughly investigated and closed, the subject of which was not within the public domain. However, both the Complainant and Mr. Di Biase spoke publicly to the media about the July 2011 conclusion of the informal complaint and Mr. Di Biase stated publicly that he had spoken with me, I had made recommendations to him regarding his obligations under the Code and that he would comply fully with those recommendations.

In respect of subpoint a(iii) of the letter referenced as Appendix 6, in which the Respondent’s legal counsel makes reference to comments by the Interim City Manager, I found it interesting that only a portion of Ms. Cribbett’s comments were quoted by the Respondent’s legal counsel. It has never been my practice to discuss a closed informal complaint publicly, however, given that the Interim City Manager comments to me were quoted in the Respondent counsel’s letter of April 13, 2015 as having been her position in relation to a member of council having questions regarding procurement issues, it should be noted that the full statement I made in the informal complaint report in relation to Ms. Cribbett’s comments, was that:

Ms. Cribbett indicated to me that she does not have a problem with a Member of Council having questions regarding procurement issues, **however, given the various investigations of the past number of years into procurement issues (Bellamy and Gomery), it is concerning to her when an individual member of Council inserts himself into the administrative aspects of a procurement process.**

Further, in relation to subpoint a(vi) above, the Respondent’s legal counsel states that “[I] referred to Mr. DiBiase as “highly professional”. The actual statements that I made in the informal complaint report that the Respondent’s counsel has raised in his April 13th and 17th letters, was that:

Ms. Cribbett is the Interim City Manager of the City of Vaughan and a highly respected professional with years of administrative and professional financial experience

.....

I have had the pleasure to speak to two highly *regarded* professionals in Ms. Cribbett and Mr. Di Biase and I am confident that this matter will be resolved ...

I shall not go into further detail in relation to the substance of my comments in the informal complaint to which the Respondent’s legal counsel has referenced in his letters of April 13, 2015 and April 17, 2015. Suffice it to say that the Respondent has clearly shared with his legal counsel that he was subject of an informal complaint in which I provided a report. It is sufficient that I

have clarified some of the most glaring inconsistencies in reference to my statements and that I have clarified that the informal complaint to which I made reference in my proposed recommendation on sanction provided to the Respondent's legal counsel on April 9, 2015, **was not** the informal complaint referenced in the letter appended to this report as Appendix 6. The informal complaint concluded in July 2011, that was discussed publicly by both the Complainant and the Respondent, is the matter to which I have referred in my reasons for the recommended sanction in this report.

The Respondent was given an opportunity to respond to the complaint and to my findings. Pursuant to the rules of the Code Protocol, I provided the Respondent with a copy of the original complaint and gave him 10 days within which to provide me with a written response. When I received notification that the Respondent had engaged legal counsel and that his legal counsel required a time extension to provide a written response to this office, I granted the 45-day adjournment requested by the Respondent's legal counsel. It should be noted that section 9 of the Code Protocol contains a provision that contemplates opportunities for resolution for the parties.

Section 9 states:

Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be pursued to achieve an informal resolution

In response to the letter of the Respondent's legal counsel dated April 13, 2015 (Appendix 6), I responded with clarification regarding my legal authority to obtain information relevant to the complaint. In fact, in response to the comment from the Respondent's legal counsel, stating that I refer to "e-mails taken illegally from Councillor Di Biase", the questions that ask "what authority or law" I rely on to obtain copies of a Regional Councillor's e-mails and "the City's written policy, adopted by Council, dealing with your ability to rummage through Councillor's email, I stated (see Appendix 7) that the legal authority is section 10 of the Code Protocol, which has been approved by Council and which, states:

- (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

The above-noted approved City of Vaughan policy mirrors section subsection 223.4(4) of the *Municipal Act*, which, states:

- (4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging

to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.

Questions regarding the Integrity Commissioner's obligation to preserve secrecy, being statute barred from providing the Respondent with the names of witnesses, and the statutory authority to conduct an investigation have been answered throughout this report. While rights are affected by a recommendation of sanction by an Integrity Commissioner, the inquiry and process for the investigation conducted by an Integrity Commissioner, prescribe by Part V.1 of the *Municipal Act*, is not intended to function as a legal exercise. The Province of Ontario applied amendments to the *Municipal Act*, with a view to enhanced accountability and transparency at the municipal level of government. The drafters of Part V.1. of the *Municipal Act*, embedded the requisite guarantees into the wording of the provisions, especially insofar as the requirement to preserve secrecy.

Taking into account the particular circumstances of this investigation, including the confidential requirements of the Integrity Commissioner, the Respondent has received the original complaint, the opportunity to respond, the opportunity to speak with me, the preliminary findings, the proposed recommendation, the scripted e-mails, the anonymized comments from staff, afforded reasonable time extensions. The Respondent was provided a copy of the original complaint and invited to contact me directly. I have been advised by the Respondent's legal counsel to communicate only with him and not with the Respondent Member with Counsel. This is the right of the Respondent. Member of Council.

In my opinion, the duty of procedural fairness in the specific circumstances of this complaint investigation does not require the disclosure of the names of City staff that came forward as part of this investigation. I have provided the Respondent with anonymized comments and scripted emails. The in-camera minutes, confidential City reports and identification of the author of the scripted emails upon which I relied, have not been withheld from the Respondent. In fact, the name of the outside individual who drafted the Member's Resolution referenced in my findings, is clearly within the knowledge of the Respondent's legal counsel. The individual was corresponding with the Respondent. The Respondent forwarded City e-mails to the outside individual.

The content of common law procedural fairness is generally divided into two separate categories. The first finds its origin in the Latin term *audi alteram partem*, meaning "hear the other side" or more commonly, "the right to be heard". The second is derived from the Latin term *nemo iudex in sua propria causa debet esse*, essentially meaning that no one should be a judge in their own case". (David J. Mullan. *Essential of Canadian Law: Administrative Law* (Toronto: Irwin Law, 2001) 232.). What is a breach of procedural fairness in one context may be a fair and acceptable practice in another.

I am of the view that the procedure that I have adopted throughout this investigation is that which has been prescribed by the provisions of Part V.1 of the *Municipal Act* and those contained in the Code Protocol adopted by City Council. The decision that I have made is within the statutory and institutional authority of the Integrity Commissioner and the Respondent has been provided with reasonable opportunity to put forward his views and evidence fully and have

them considered by me. This is an investigative process, in a municipality where Staff have expressed concerns to me regarding a Member of Council inappropriately inserting himself into administrative process against the advice of City legal counsel and the procurement rules. I consider that the Respondent has received adequate notice of the case to be met in this investigation, which results in a recommendation to Council which Council may accept or reject. The only information that has been withheld from the Respondent is the names of the City staff that I interviewed during the investigation. The comments made by these individuals have been provided to the Respondent's legal counsel.

Some of the authorities that I have relied upon in reaching a decision have been included in my preliminary findings to the Respondent's legal counsel. I must provide my reasons for reaching a decision. I do not have to provide copies of my legal research to the Respondent. The Code of Conduct complaint investigation process is not a legal process.

"The courts, using the language of "natural justice" and more recently and more dramatically, "fairness", have brought about a situation in which a broad range of statutory authorities are subject to the observance of at least a modicum of procedural decency. It is no longer necessary for the implication of such a duty that the function in question be classified as judicial or quasi-judicial. These overblunt and unduly narrow criteria have been rejected in favour of a far greater flexibility, the result of judicial recognition that certain procedures may be useful in the performance of at least some statutory functions which bear little or no resemblance to the adversarial context which typically earned the epithet "judicial" or "quasi-judicial".

(David J. Mullan, *Natural Justice and Fairness – Substantive as well as Procedural Standards for the Review of Administrative Decision-Making?*)

Duty of confidentiality

223.5(1) The Commissioner and every person acting under the instruction of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

.....

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*

Based on the cumulative evidence of the witnesses interviewed, my review of the documents and all other information received during the course of this investigation, I find that the Respondent has contravened Rules 1 (c), 1 (i), 3, 7, 15, 16(2), (3), 18 and 19 (1), (2).

I tender this complaint investigation to the Council of the City of Vaughan for their consideration and acceptance of the following recommendations.

The Office of the Integrity Commissioner respectfully recommends the following:

That Council: impose the following sanction

- a) a suspension of remuneration paid to the member in respect of his services as a member of council for a period of 90 days

G. Mitigating Risk to the City

This complaint investigation was about reviewing the actions of one Member of Council in relation to the rules of the Code of Conduct. However, it is clear from all those with whom I have spoken that the integrity of a Member Council should not rest solely on their decision to follow the rules. In the absence of ethical compliance, the City legal and reputational risk is high.

As explained by experts in the field, in general, lobbying consists of activities that can influence the opinions or actions of a public office holder. Under the definition of "lobby" in one city By-law "lobbying is communicating with a public office holder on a range of subjects including decisions on by-laws, policies and programs, grants, purchasing, and applications for services, permits, licenses or other permission."¹⁴ Lobbying typically involves communicating outside of a public forum such as a council meeting or a public hearing. It is often, but not always, done by people who are paid or compensated in other ways for their efforts.

What we see throughout Canada, at the Federal, Provincial and Municipal level is that lobbying is one way stakeholders can help public office holders make informed decisions. When transparent to the public and in accordance with the By-law, lobbying public office holders of a city is a legitimate and potentially helpful activity. At the municipal level Council is supreme. Further, individual Members of Council often have relationships, knowledge and receive information, that when received in a transparent way and when part of a rule-based process (i.e. a detailed purchasing policy that outlines the role of Councillors in the fact-finding, pre-qualification, RFQ and RFP stages of tenders), allows opportunities to come forward without the perception of self-interest or bias.

Lobbying is a common and *legitimate* activity. Registering lobbying activities allows both public office holders and the public to know who is attempting to influence municipal government. That is why, in 2006, the drafters of the amendments to the *Municipal Act*, included provisions for the establishment of a lobbyist registry and registrar. Granted, not all municipalities are required to enact such elaborate rules and systems. However, at the foundation of the 2006 amendments was the desire of the Ontario legislature to recognize the general trend in municipal government to develop rules around ethical conduct for elected officials so that they may carry out their duties with impartiality and equality of service for all.

Going forward, the questions that need to be addressed are: 1. how to attract and retain a vibrant and diverse business community and professional workforce at the City; and 2. what is the role of an individual Member of Council before and during a municipal government procurement process? In some Ontario municipalities that have experienced serious governance breaches

¹⁴ (14) City of Toronto, Lobbying By-law, section 140-1

through Councillor insertion into the procurement process in contravention of City policies, Council has approved the creation of a Registry which allows the public to see who is communicating with public office holders about governmental decisions. Going forward, in an effort to mitigate risk of harm to the City, there should be serious consideration given to the implementation of a governance and accountability structure that establishes an independent mechanism to provide transparency and assurance to the citizens of Vaughan that Council decisions are made without undue influence by any members of Council on staff.

H. Concluding Remarks:

The Introduction of the Code of Ethical Conduct for Members of Council states that there has been a general trend at the municipal level of government in Ontario, to develop rules around ethical conduct for elected officials so that they may carry out their duties with impartiality and equality of service to all, recognizing that as leaders of the community, they are held to a higher standard.

I recognize that elected officials do not come to a position on Council without interests, personal perspectives or political support from business. In fact, it is this spectrum of knowledge and viewpoints that make the coming together of individual Members of Council as one decision-making body, a strength for the community. However, when a Member of Council acts in such a way as to afford preferential treatment to one group over another, makes harsh comments, attempts to use their authority for the purpose of commanding, influencing and intimidating staff with the intent of interfering in staff's duties, including the duty to disclose improper activity and not disclose confidential information, a Member of Council risks creating a poisoned work environment in which the professional or ethical reputation of City staff or the prospects of future advancement or continuation with the City is severely impeded.

The Code's purpose is to establish rules to guide Members of Council in representing their communities and acting with integrity in managing the City's valuable resources allocated to them.

I take the role of Integrity Commissioner for the City of Vaughan very seriously and abide by the rules set by the City of Vaughan's Council, the Province of Ontario and the Federal statutes, as applicable. I take no pleasure in submitting any of this report to Council nor is it my intention to harm any individual Member's reputation. However, any harms that arise as a result of this investigation fall squarely on the author of the actions: the Respondent.

I am humbled by the remarkable demonstration of honesty and integrity of the staff of the City of Vaughan who have cooperated with me during the course of this investigation. It was not easy to come forward in the way that many did. However, all to whom I have spoken have said that they believe in doing the right thing, they do not regret having acted as witnesses in this investigation and that they remain committed to maintaining a City that is built on public trust, integrity in service delivery and respect for the staff that serve with dedication each and every day.

Respectfully submitted by:

Suzanne Craig
Integrity Commissioner

DELIVERED BY FACSIMILE AND COURIER

January 30, 2015

Ms. Suzanne Craig
Integrity Commissioner
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Dear Ms. Craig:

Re: Code of Conduct Complaint #0114

Overview

The formal complaint does not comply with the proper procedure set out in the Code of Conduct. The complainant has failed to set out "reasonable grounds" for his belief that Regional Councillor Michael DiBiase has contravened the Code of Conduct in that:

- a. In Appendix 1 he has merely listed sections of the Code of Conduct without stating any grounds for belief that any of these sections have been contravened, and
- b. In Appendix 2 he has failed to set out what public records he is referring to and relies on his own statements of self-interest and conjecture to bootstrap up an argument for his unfounded allegations. His "findings" are nowhere set out in support of an allegation of inappropriate relationship. His claim to belief regarding contraventions is, in itself, inappropriately and illegally founded.

Notwithstanding the failure of [redacted] to comply with the proper procedure by setting out a proper affidavit which in turn swears to the facts he relies on and the fact that he is asking you to invoke your powers to conduct what is clearly a fishing expedition, Regional Councillor Michael DiBiase respects and follows the Code of Conduct and accordingly, will respond to this specious and unfounded complaint.

Appendix 1

With respect to the shopping list set out in Appendix 1, the response is as follows:

Rule 1 (a) and (b) is not applicable as they apply to requests for information or inquiries from members of the public. Further no one is required to provide a response to an inquiry such as this

as it is frivolous, unreasonable and harassing. Having failed to persuade the voters in the last election campaign that there was any substance to the complaint made to the media, seeks to now have the Integrity Commissioner carry out an investigation into his improperly and clearly politically motivated complaint.

The inquiry is not an inquiry but a complaint. Rule 1 (c) is not applicable as it deals with the *Municipal Conflict of Interest Act* (hereinafter "MCI"). The Integrity Commissioner has no authority to receive or investigate complaints regarding alleged contraventions under the MCI.

The remainder of the list alleging breaches of certain provisions of the Rules are not applicable nor are these allegations supported by any alleged facts. merely paraded these sections and made a bald allegation of alleged contraventions without any supporting facts. Regional Councillor DiBiase complies with all of the Rules.

Appendix 2: Issue 1

General

With respect to issue 1 set out in Appendix 2 the general response is as follows:

relies on a media report which merely contains his own bald allegations. Notwithstanding the denial made by Regional Councillor DiBiase the complainant considers it to be a lie without offering any factual basis for that allegation. Again, a bald statement backed by no facts.

The statement concerning "reason to believe" that the Regional Councillor has been the vocal proponent of once again is bereft of any factual basis in support. The complainant also fails to list any factual basis to support his bald allegations concerning his "reason to believe" that members of the Vaughan Public Library Board were influenced by Regional Councillor DiBiase or that he may have tried to interfere in the tendering process in the matter of the Civic Center Resource Library. encourages the Integrity Commissioner to conduct a fishing expedition in hopes of finding some support for his baseless allegations.

The speculative nature of his request and his desire to cast aspersions on the Regional Councillor is seen in the statements that the investigation is to proceed to interview persons who "would have" or "ought to have" direct knowledge of the matters. The failure to set out the facts those persons had or even ought to have had demonstrates a desire to cause an investigation to be made without any proper factual foundation and reveals improper motivation.

Specific

More specifically in respect of Appendix 2 Issue 1, the following is submitted:

alleges that the information gathered was from his "research of public records and my activities". His production of copies of Regional Councillor DiBiase's personal emails is unexplained. Clearly, actions in obtaining access to personal e-mails are illegal.

Further, [redacted] misrepresented himself by posing as a potential client to elicit information about the cottage construction. The information he seeks to rely on was obtained illegally and under false pretenses. It would be contrary to the establishment of an Integrity office to have that same office condone such activities by founding an investigation on illegally obtained materials and misrepresentations. Indeed, to do so would compromise the integrity of the Integrity Commissioner.

[redacted] suggests that the Integrity Commissioner use the CBC article as the basis for her investigation. Again, to do so in this case would compromise the integrity of that office.

[redacted] was registered as a rival candidate in the 2014 municipal election and, as the opponent of Regional Councillor DiBiase, was the source of the article he seeks to have the Commissioner rely on. The CBC article was founded on the information provided by [redacted]. Further, the CBC could not get confirmation of the alleged claims by [redacted] when they interviewed the personnel from the companies. The reported findings of the article were those of [redacted] and not the CBC, as claimed in [redacted] affidavit. In fact, when interviewed by the CBC, the representative of the supplier stated that [redacted] was not the general contractor. The CBC article goes on to state that "in all the cases involving [redacted] referenced, Mr. DiBiase casts his votes in accordance with the advice and recommendation of municipal staff".

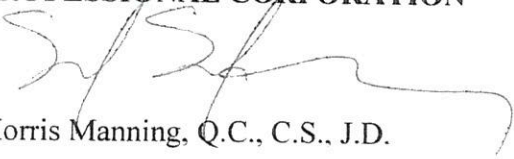
If the Integrity Commissioner feels it appropriate to use the illegally obtained personal e-mails, a careful review of those emails evidences the fact that [redacted] is not the general contractor. All of the correspondence from Regional Councillor DiBiase was sent directly to the contractors/suppliers and all correspondence from the contractors/suppliers was sent directly to him. There was no indication that [redacted] was the general contractor.

Appendix 2: Issue 2

[redacted] recognizes that this complaint is statute barred. Nonetheless, he would like the Integrity Commissioner to ignore the limitation period and speculate and provide her comments on what violations could or would have been breached.

This request that the rule of law be ignored is further evidence of the impropriety and improper motive of [redacted]. Given the nature and purpose of the office of the Integrity Commissioner, it would be again a compromise of the integrity of that office for the rule of law to be disregarded as requested by [redacted].

Yours very truly,
MORRIS MANNING, Q.C.
PROFESSIONAL CORPORATION


 Morris Manning, Q.C., C.S., J.D.

Issue 2

I have analyzed Councillor DiBiase's voting record on land planning matters regarding Block 27. Councillor DiBiase has consistently declared a conflict of interest in matters regarding Block 27 however he failed to declare an interest on a planning matter regarding Block 27 at the June 7, 2011 Committee of the Whole meeting. Minutes of the meeting reveal that Councillor DiBiase did not declare an interest on Report 30, item 21 however he did declare an interest on Report 30, item 26. I have provided the matrix below to show Councillor DiBiase's voting record on matters regarding Block 27

Council Meeting Minutes Report #1	15	January 25, 2011	Disclosure of Interest - Yes
Council Meeting Minutes Report #39	1	September 27, 2011	Disclosure of Interest - Yes
Council Meeting Minutes Report #29	3	June 26, 2012	Disclosure of Interest - Yes
Council Meeting Minutes Report #39	7,8	October 30, 2012	Disclosure of Interest - Yes
Council Meeting Minutes Report #26	1	June 24, 2014	Disclosure of Interest - Yes
Committee of Whole Report #30	21	June 7,2011	Disclosure of Interest - No
Committee of Whole Report #30	26	June 7,2011	Disclosure of Interest - Yes

Craig, Suzanne

From: <[redacted]@yahoo.com>
Sent: Monday, June 09, 2014 1:13 AM
To: Di Biase Michael;
Cc: Di Biase, Michael
Subject: Resolution

Member's Resolution

Submitted by Regional Councillor Michael Di Biase

Whereas, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,

Whereas, the City of Vaughan in June of 2013 developed "NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and FEBCC projects; and,

Whereas, the City have received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and

Whereas, at least two members of council have raised concerns regarding the pre-qualification process involving these two projects; and,

Whereas, a project audit or bid process review is not an uncommon practice; and,

Whereas, The internal auditor has audited other capital projects as part of his departmental audit program; and,

It is therefore recommended that a review of the pre-qualification process involving these two projects be done by the City Auditor, beginning with but not limited to the reviewing the bid submissions to determine;

1. The information submitted fully complied with the strict criteria listed in the bid documents.
2. Review the scoring to ensure consistent application of the scoring principles as set out in the bid documents, and awarding of points to each bidder
3. Ensure the collection of references was done as per the city's procedures and the awarding of points done in a consistent manner

This will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our business practices and procedures.

W.G



MEMBER'S RESOLUTION

Meeting/Date: COMMITTEE OF THE WHOLE - JUNE 17, 2014
Title: PRE-QUALIFICATION PROCESS
Submitted by: Regional Councillor Michael Di Biase
<p><i>Whereas</i>, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,</p> <p><i>Whereas</i>, the City of Vaughan in June of 2013 developed "NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and Father Ermanno Bulfon Community Centre projects; and,</p> <p><i>Whereas</i>, the City has received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and</p> <p><i>Whereas</i>, at least two members of Council have raised concerns regarding the pre-qualification process involving these two projects; and,</p> <p><i>Whereas</i>, a project audit or bid process review is not an uncommon practice; and,</p> <p><i>Whereas</i>, the internal auditor has audited other capital projects as part of his departmental audit program; and,</p> <p><i>Whereas</i>, an audit or review of processes is not an uncommon practice; and</p> <p><i>Whereas</i> the City's auditor has audited other processes and capital projects as part of his departmental audit program; and,</p> <p><i>It is therefore recommended</i> in keeping with the City's commitment to continuous improvement, that a review of the pre-qualification process involving these two projects be done immediately by the City Auditor. The review of the submissions should include but not limited to the following:</p> <p><i>That</i> the information submitted fully complied with the strict criteria listed in the bid documents; and,</p> <p><i>That</i> the scoring be reviewed to ensure consistent application of the scoring principles and awarding of points to each bidder as set out in the bid documents; and,</p> <p><i>That</i> the request and collection of references was done as per the City's procedures and the awarding of points for each category was done in a consistent manner; and</p> <p><i>That</i> this will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to the City's business practices and procedures.</p>

Respectfully submitted,

Attachments

n/a

Craig, Suzanne

From: @yahoo.com>
Sent: Tuesday, May 06, 2014 12:25 PM
To: Di Biase, Michael;
Subject: Re: copy of the communication submitted to Clerks

Okay. Thank you. Make your comments, ask your questions and move the item.
W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>
Sender:
Date: Tue, 6 May 2014 11:47:01 -0400
To: @yahoo.com @yahoo.com>
Subject: FW: copy of the communication submitted to Clerks

From: Singleton, Margie
Sent: Tuesday, May 06, 2014 11:39 AM
To: Di Biase, Michael
Subject: RE: copy of the communication submitted to Clerks

Good Morning Michael,

Yes I am in agreement with the contents and proposed direction identified in the Memo.

Do you have concerns or queries? I hope you will be comfortable supporting the Motion as recommended.

Thank you

*Margie Singleton, BA, MLS
Chief Executive Officer
Vaughan Public Libraries
905.653.READ (7323) X 4101
margie.singleton@vaughan.ca*

Enrich Inspire Transform

Our Mission: Vaughan Public Libraries offers welcoming destinations that educate, excite and empower our community

From: On Behalf Of Di Biase, Michael
Sent: Tuesday, May 06, 2014 10:42 AM
To: Singleton, Margie
Subject: RE: copy of the communication submitted to Clerks

Good Morning Margie,

Thank you for the email, have you had an opportunity to review the communication to Council contained in this email? If so, are you in agreement with it, or do you have any concerns that should be noted?

Craig, Suzanne

From: @yahoo.com>
Sent: Monday, May 26, 2014 3:09 AM
To: Di Biase, Michael
Cc:
Subject: RESPONSE to Barb.

Hello Barb, thank you for responding to my memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that I could get the answers to my simple questions, and that the information provided would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent process.

While I do understand that the information submitted by the contractors "is understood to be confidential" all submissions and and documentation are the property of the owner (City) and would be governed by MFIPPA. That would mean that the owner may be required to disclose the information, however, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Father Ermano Bulfon Community Centre:

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting LTD using the link you provided (thank you). In reviewing the projects listed, only one was found under Muncipal, which was a \$600K concrete job for the City of Brampton Brampton. Under Educational, 4 schools were listed, One currently under construction for \$1.5 million. (not completed). Two (Klienberg PS, and Robert Munsch PS) REMO Construction WAS NOT the contractor. The last one listed was Mount

Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years. I'm also not clear who did the reference check for this prequalification? Who sent out the template, and who totaled the reference scores?

Civic Centre Resource Library:

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the city that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, majority of the projects listed were done by Construction management, and I could not determine from the information listed if any of their projects received LEED accreditation.

Barb, I do not wish to hold up the projects, but as you can appreciate there are some serious concerns regarding the process. I would suggest that the Auditor and the Commissioner of Finance (with responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. I trust that you will act on my suggestion as it will provide transparency for the review, and avoid any perception of cover up.

Craig, Suzanne

From: Di Biase, Michael
Sent: Wednesday, May 28, 2014 11:42 AM
To: Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Hello Barb,

Thank you for responding to the memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that the answers to my basic questions would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent pre-qualification process.

I do understand that the information submitted by the contractors "is understood to be confidential". However, all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. I would expect that would mean that the owner may be required to disclose the information. However, in this situation, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Below are some comments and observations that raises concerns regarding the pre-qualification process.

Father Ermano Bulfon Community Centre:

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million(not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

Civic Centre Resource Library:

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were

done by Construction Management, and I could not determine from the information listed on the web site if any of their projects received LEED accreditation.

Barb, I do not wish to hold up these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the City's Auditor and the Commissioner of Finance (who has the responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third part reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly.

I trust that you will act on my suggestions as it will provide a fair and transparent review of the pre-qualification process, and avoid any perception of a cover up.

Michael DiBiase
Regional Councillor

From: Cribbett, Barbara
Sent: Friday, May 23, 2014 4:27 PM
To: Di Biase, Michael
Cc: Mayor and Members of Council
Subject: Pre-Quaification

Regional Councillor Di Biase:

The attached memos from you are related to two Request for Pre-qualification (RFPQ) processes for general contractors recently completed by staff teams with the process facilitated by the Purchasing Services Department (RFPQ14-007 – Civic Centre Resource Library and RFPQ14-051 – Father Ermanno Bulfon Community Centre Fitness Expansion)

The evaluation processes resulted in a list of successful prequalified bidders for each project. The successful bidders have been notified.

Civic Centre Resource Library

In the case of the Civic Centre Resource Library, the tender documents have already been released to the prequalified bidders, with a closing date of June 10, 2014. Pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the CEO of Vaughan Public Libraries, the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, Director of Planning and Communications, VPL and a representative from Zaz Architects, with facilitation provided by Purchasing Services.

Father Ermanno Bulfon Community Centre

In the case of the Father Ermanno Bulfon Community Centre, the tender documents have already been released to the prequalified bidders, with a closing date of June 9, 2014. Again, pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, and the Manager of Buildings, with facilitation provided by Purchasing Services.

General

When third party reference checks are conducted, the references are asked to self-complete a template form and rate/score the performance of the bidder. The forms completed by the references are returned to City staff and the scores provided by the references are simply totaled and combined with the overall score.

The bid documents state that all information, or information prepared and submitted by the Contractors is understood to be confidential, therefore any further information from the proposals is not being provided to you. However, as you have specifically asked about Graham Construction & Engineering, information regarding some of their projects can be seen on their website: www.graham.ca. under Projects – Commercial. In addition, information regarding Remo General Contracting Ltd. can be seen on their website: www.remogc.ca.

Barb Cribbett
Interim City Manager
City of Vaughan
905-832-8585 Ext. 8475
Barbara.Cribbett@vaughan.ca

Issue 2

I have analyzed Councillor DiBiase's voting record on land planning matters regarding Block 27. Councillor DiBiase has consistently declared a conflict of interest in matters regarding Block 27 however he failed to declare an interest on a planning matter regarding Block 27 at the June 7, 2011 Committee of the Whole meeting. Minutes of the meeting reveal that Councillor DiBiase did not declare an interest on Report 30, item 21 however he did declare an interest on Report 30, item 26. I have provided the matrix below to show Councillor DiBiase's voting record on matters regarding Block 27

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Council Meeting Minutes Report #39	7,8	October 30, 2012	Disclosure of Interest - Yes
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Committee of Whole Report #30	21	June 7,2011	Disclosure of Interest - No
Committee of Whole Report #30	26	June 7,2011	Disclosure of Interest - Yes

Craig, Suzanne

From: <[redacted]@yahoo.com>
Sent: Monday, June 09, 2014 1:13 AM
To: Di Biase Michael;
Cc: Di Biase, Michael
Subject: Resolution

Member's Resolution

Submitted by Regional Councillor Michael Di Biase

Whereas, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,

Whereas, the City of Vaughan in June of 2013 developed "NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and FEBCC projects; and,

Whereas, the City have received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and

Whereas, at least two members of council have raised concerns regarding the pre-qualification process involving these two projects; and,

Whereas, a project audit or bid process review is not an uncommon practice; and,

Whereas, The internal auditor has audited other capital projects as part of his departmental audit program; and,

It is therefore recommended that a review of the pre-qualification process involving these two projects be done by the City Auditor, beginning with but not limited to the reviewing the bid submissions to determine;

1. The information submitted fully complied with the strict criteria listed in the bid documents.
2. Review the scoring to ensure consistent application of the scoring principles as set out in the bid documents, and awarding of points to each bidder
3. Ensure the collection of references was done as per the city's procedures and the awarding of points done in a consistent manner

This will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to our business practices and procedures.

W.G



MEMBER'S RESOLUTION

Meeting/Date: COMMITTEE OF THE WHOLE - JUNE 17, 2014

Title: PRE-QUALIFICATION PROCESS

Submitted by: Regional Councillor Michael Di Biase

Whereas, the City of Vaughan is committed to a transparent and fair tendering/bid process; and,

Whereas, the City of Vaughan in June of 2013 developed "NEW PROCESSES AND PROCEDURES" that was immediately implemented into major projects which included the Civic Centre Resource Library and Father Ermanno Bulfon Community Centre projects; and,

Whereas, the City has received complaints and inquiries from at least two bidders regarding the pre-qualification process for these two projects; and

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Whereas, a project audit or bid process review is not an uncommon practice; and,

Whereas, the internal auditor has audited other capital projects as part of his departmental audit program; and,

Whereas, an audit or review of processes is not an uncommon practice; and

Whereas the City's auditor has audited other processes and capital projects as part of his departmental audit program; and,

It is therefore recommended in keeping with the City's commitment to continuous improvement, that a review of the pre-qualification process involving these two projects be done immediately by the City Auditor. The review of the submissions should include but not limited to the following:

That the information submitted fully complied with the strict criteria listed in the bid documents; and,

That the scoring be reviewed to ensure consistent application of the scoring principles and awarding of points to each bidder as set out in the bid documents; and,

That the request and collection of references was done as per the City's procedures and the awarding of points for each category was done in a consistent manner; and

That this will allow the City to evaluate the process in greater detail and potentially identify opportunities to make continuing improvements to the City's business practices and procedures.

Respectfully submitted,

Attachments

n/a

Craig, Suzanne

From: @yahoo.com>
Sent: Tuesday, May 06, 2014 12:25 PM
To: Di Biase, Michael;
Subject: Re: copy of the communication submitted to Clerks

Okay. Thank you. Make your comments, ask your questions and move the item.
W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>
Sender:
Date: Tue, 6 May 2014 11:47:01 -0400
To: @yahoo.com @yahoo.com>
Subject: FW: copy of the communication submitted to Clerks

From: Singleton, Margie
Sent: Tuesday, May 06, 2014 11:39 AM
To: Di Biase, Michael
Subject: RE: copy of the communication submitted to Clerks

Good Morning Michael,

Yes I am in agreement with the contents and proposed direction identified in the Memo.

Do you have concerns or queries? I hope you will be comfortable supporting the Motion as recommended.

Thank you

*Margie Singleton, BA, MLS
Chief Executive Officer
Vaughan Public Libraries
905.653.READ (7323) X 4101
margie.singleton@vaughan.ca*

Enrich Inspire Transform

Our Mission: Vaughan Public Libraries offers welcoming destinations that educate, excite and empower our community

From: On Behalf Of Di Biase, Michael
Sent: Tuesday, May 06, 2014 10:42 AM
To: Singleton, Margie
Subject: RE: copy of the communication submitted to Clerks

Good Morning Margie,

Thank you for the email, have you had an opportunity to review the communication to Council contained in this email? If so, are you in agreement with it, or do you have any concerns that should be noted?

Craig, Suzanne

From: @yahoo.com>
Sent: Monday, May 26, 2014 3:09 AM
To: Di Biase Michael
Cc:
Subject: RESPONSE to Barb.

Hello Barb, thank you for responding to my memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that I could get the answers to my simple questions, and that the information provided would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent process.

While I do understand that the information submitted by the contractors "is understood to be confidential" all submissions and and documentation are the property of the owner (City) and would be governed by MFIPPA. That would mean that the owner may be required to disclose the information, however, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Father Ermano Bulfon Community Centre:

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Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

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Civic Centre Resource Library:

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I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, majority of the projects listed were done by Construction management, and I could not determine from the information listed if any of their projects received LEED accreditation.

Barb, I do not wish to hold up the projects, but as you can appreciate there are some serious concerns regarding the process. I would suggest that the Auditor and the Commissioner of Finance (with responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. I trust that you will act on my suggestion as it will provide transparency for the review, and avoid any perception of cover up.

Craig, Suzanne

From: Di Biase, Michael
Sent: Wednesday, May 28, 2014 11:42 AM
To: Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Hello Barb,

Thank you for responding to the memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that the answers to my basic questions would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent pre-qualification process.

I do understand that the information submitted by the contractors "is understood to be confidential". However, all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. I would expect that would mean that the owner may be required to disclose the information. However, in this situation, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

Below are some comments and observations that raises concerns regarding the pre-qualification process.

Father Ermano Bulfon Community Centre:

The information you provided indicated that the Evaluation committee did NOT include the Architect, however, the RFPQ document I reviewed did indicate that the Architect would be on the Committee. Can we simply make this change after the bid closed? And why would we not want the Architect involved in the process?

I also took the Liberty to look up Remo General contracting Ltd. using the link you provided in your response. In reviewing the projects listed on the web site, only one project was found under Municipal, which was a \$600K concrete job for the City of Brampton. Under Educational, 4 schools were listed, one currently under construction for \$1.5 million(not completed). Two (Kleinburg PS, and Robert Munsch PS) Remo Construction WAS NOT the General Contractor. The last one listed was Mount Pleasant PS, and the info on the site indicated that there were over 200 change orders associated with this project.

Based on my brief review of this one company who made the list, I'm confused as to how they were able to meet the strict criteria listed in the RFPQ document. I did not see 3 completed projects of similar scope with a value of minimum \$3M in the past 5 years.

Civic Centre Resource Library:

The information you provided for this project indicated that a representative from ZAS Architect was part of the evaluation committee. This is somewhat puzzling as a letter received from Jasper Construction indicates that the Architect recommended them and that they were on the approved list and later told by the City that they did not pre-qualify.

I also reviewed the link you provide for Graham Construction under commercial and noted that they only built one project in Ontario, Sobeys, which was completed in 2008. As noted in my memo, a majority of the projects listed were

done by Construction Management, and I could not determine from the information listed on the web site if any of their projects received LEED accreditation.

Barb, I do not wish to hold up these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the City's Auditor and the Commissioner of Finance (who has the responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third part reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

I am aware that we have a bid review committee, however 2 of the 4 members who would sit on this committee was directly involved in the pre-qualification process. Therefore, I don't believe it is fair to ask them to evaluate a process they administered to determine if it was done fairly.

I trust that you will act on my suggestions as it will provide a fair and transparent review of the pre-qualification process, and avoid any perception of a cover up.

Michael DiBiase
Regional Councillor

From: Cribbett, Barbara
Sent: Friday, May 23, 2014 4:27 PM
To: Di Biase, Michael
Cc: Mayor and Members of Council
Subject: Pre-Quaification

Regional Councillor Di Biase:

The attached memos from you are related to two Request for Pre-qualification (RFPQ) processes for general contractors recently completed by staff teams with the process facilitated by the Purchasing Services Department (RFPQ14-007 – Civic Centre Resource Library and RFPQ14-051 – Father Ermanno Bulfon Community Centre Fitness Expansion)

The evaluation processes resulted in a list of successful prequalified bidders for each project. The successful bidders have been notified.

Civic Centre Resource Library

In the case of the Civic Centre Resource Library, the tender documents have already been released to the prequalified bidders, with a closing date of June 10, 2014. Pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the CEO of Vaughan Public Libraries, the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, Director of Planning and Communications, VPL and a representative from Zaz Architects, with facilitation provided by Purchasing Services.

Father Ermanno Bulfon Community Centre

In the case of the Father Ermanno Bulfon Community Centre, the tender documents have already been released to the prequalified bidders, with a closing date of June 9, 2014. Again, pre-qualification results do not require Council approval.

Council's role in the process will be to approve the lowest compliant bid, which is scheduled to come to Council on June 24th.

The evaluation team for this project was comprised of the Commissioner of Strategic and Corporate Services, the Director of Building and Facilities, and the Manager of Buildings, with facilitation provided by Purchasing Services.

General

When third party reference checks are conducted, the references are asked to self-complete a template form and rate/score the performance of the bidder. The forms completed by the references are returned to City staff and the scores provided by the references are simply totaled and combined with the overall score.

The bid documents state that all information, or information prepared and submitted by the Contractors is understood to be confidential, therefore any further information from the proposals is not being provided to you. However, as you have specifically asked about Graham Construction & Engineering, information regarding some of their projects can be seen on their website: www.graham.ca. under Projects – Commercial. In addition, information regarding Remo General Contracting Ltd. can be seen on their website: www.remogc.ca.

Barb Cribbett
Interim City Manager
City of Vaughan
905-832-8585 Ext. 8475
Barbara.Cribbett@vaughan.ca

Craig, Suzanne

From: .@yahoo.com>
Sent: Thursday, May 29, 2014 11:53 AM
To: Di Biase, Michael
Subject: Response.

Alan, thank you for your response. However, how can we determine "if there are significant findings of unfairness" without a review? And as noted in my e-mail, I'm aware of at least one formal complaint.

I did review the information that the city manager provided and noted some concerns on my own that require further review.

I simply asking the city manager to perform a further review to address the concerns noted. Just so that everyone is aware, the city does have a "bid review process" to address complaints. I'm simply pointing out that we should NOT be asking individuals involved in the process to perform a review of themselves.
W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>
Sender:
Date: Thu. 29 May 2014 11:29:02 -0400
To: yahoo.com @yahoo.com>
Subject: FW: Pre-Qualification

From: Shefman, Alan
Sent: Thursday, May 29, 2014 10:56 AM
To: Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Michael

My primary concern is that you are directing your focus on a specific pre-qualification process. I do not believe that is our role. If you have concerns about the fairness or efficiency of the pre-qualification process in general I would support a motion asking the City Manager to conduct a review and prepare a report.

I will not support a review of any specific process unless there are significant findings of unfairness or we receive a formal complaint. I do not think it is appropriate to act for a developer who wants to challenge our procedures but is not willing to come forward through proper channels to make that challenge.

Please consider preparing a recommendation that allows us to consider the larger issues so that we can determine whether the procedures we use are fair, efficient and effective.

Alan

Alan Shefman, Councillor

Ward 5 - Thornhill
City of Vaughan
alan.shefman@vaughan.ca
905-832-8585 x8349

2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

-- We are what we do, not what we say --

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Ward5.vaughan.ca

From: Di Biase, Michael
Sent: May 29, 2014 10:30
To: Shefman, Alan; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Dear Alan,

I offered a suggestion to the City Manager to address the questions being raised by contractors. In my brief review of the information Barb provided, it did raise some concerns as I noted in my e-mail.

I believe a review of the process by the auditor will send a message that we are serious about a fair and equitable process.

Alan, if you want this address as a motion, I will have to draft a resolution and include the information noted in my e-mail. I would prefer that the city manager perform a review and report back to council.

I would like to hear from my colleagues on how best to proceed giving the information noted in my e-mail.

Michael DiBiase
Regional Councillor

From: Shefman, Alan
Sent: Wednesday, May 28, 2014 4:16 PM
To: Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Mike

I am very concerned about this email and what an individual member of Council is asking for. I just don't think it's appropriate since this issue has been generated by one contractor.

If you have a GENERAL concern about our purchasing/prequalification/tendering process it would be appropriate to bring this up at a committee meeting and ask the City Manager to prepare a report on the process to Committee. If you got support from other members of Council then a report would, in due course, be presented to Council.

Alan

Alan Shefman, Councillor

Ward 5 - Thornhill
City of Vaughan
alan.shefman@vaughan.ca
905-832-8585 x8349

2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

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Ward5.vaughan.ca

From: Di Biase, Michael
Sent: May 28, 2014 11:42
To: Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Hello Barb,

Thank you for responding to the memos dated May 21, 2014. While I can appreciate that the successful prequalified bidders have been notified and documents released, I still have some concerns regarding the process.

I was hoping that the answers to my basic questions would resolve my concerns. However, the limited information provided raises more questions instead of providing reassurance of a fair and transparent pre-qualification process. I do understand that the information submitted by the contractors "is understood to be confidential". However, all submissions and documentation are the property of the owner (City) and would be governed by MFIPPA. I would expect that would mean that the owner may be required to disclose the information. However, in this situation, you could have provided the information to Council in closed session or in a confidential memo to maintain the confidentiality.

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Barb, I do not wish to hold up these projects, but as you can appreciate there are some serious concerns regarding the process. I also understand that we are receiving questions and inquiries from contractors regarding the pre-qualification process. I would suggest that the City's Auditor and the Commissioner of Finance (who has the responsibility for Purchasing) review the submissions of the bidders who prequalified against the criteria listed in the RFPQ documents. That they also review the scoring, and the process for third part reference checks to ensure standards were followed and provided a report to Council prior to the award of tenders.

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I trust that you will act on my suggestions as it will provide a fair and transparent review of the pre-qualification process, and avoid any perception of a cover up.

Michael DiBiase
Regional Councillor

From: Cribbett, Barbara
Sent: Friday, May 23, 2014 4:27 PM
To: Di Biase, Michael

Cc: Mayor and Members of Council

Subject: Pre-Quaification

Regional Councillor Di Biase:

The attached memos from you are related to two Request for Pre-qualification (RFPQ) processes for general contractors recently completed by staff teams with the process facilitated by the Purchasing Services Department (RFPQ14-007 – Civic Centre Resource Library and RFPQ14-051 – Father Ermanno Bulfon Community Centre Fitness Expansion)

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Barb Cribbett
Interim City Manager
City of Vaughan
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Barbara.Cribbett@vaughan.ca

This e-mail, including any attachment(s), may be confidential and is intended solely for the attention and information of the named addressee(s). If you are not the intended recipient or have received this message in error, please notify me immediately by return e-mail and permanently delete the original transmission from your computer, including any attachment(s). Any unauthorized distribution, disclosure or copying of this message and attachment(s) by anyone other than the recipient is strictly prohibited.

Craig, Suzanne

From: @yahoo.com>
Sent: Thursday, May 29, 2014 12:24 PM
To: Di Biase, Michael
Subject: Response: Deb

Deb, Thanks for weighing in on this issue.

I trust that you have read the concerns I raised after reviewing the information provided by the city manager. I would also hope that after reviewing my concerns, you would agree that at a minimum those questions raised deserved answers.

As you're also aware that the city has a bid review process to address bid concerns.

I trust that you would also agree that we cannot ask individuals directly involved to perform a review on themselves.

I made that observation to Barb and suggested we ask the auditor and the commissioner in charge of purchasing to perform the review of the process.

W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>

Sender:

Date: Thu, 29 May 2014 11:37:31 -0400

To: @yahoo.com< @yahoo.com>

Subject: FW: Pre-Qualification

From: Schulte, Deb
Sent: Thursday, May 29, 2014 11:35 AM
To: Shefman, Alan; Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

I agree one hundred percent with Alan.

Deb Schulte
Local & Regional Councillor
City of Vaughan

For information on meetings and events, please sign up for my e-newsletter.
[Click here.](#)

From: Shefman, Alan
Sent: Thursday, May 29, 2014 10:56 AM
To: Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Michael

Craig, Suzanne

From: Di Biase, Michael
Sent: Thursday, May 29, 2014 2:14 PM
To: Schulte, Deb; Shefman, Alan; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Dear Deb,

Thanks for weighing in on this issue.

I trust that you have read the concerns I raised after reviewing the information provided by the City Manager. I would also hope that after reviewing my concerns, you would agree that at a minimum those questions raised deserved answers.

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I trust that you would also agree that we cannot ask individuals directly involved to perform a review on themselves.

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Michael DiBiase
Regional Councillor

From: Schulte, Deb
Sent: Thursday, May 29, 2014 11:35 AM
To: Shefman, Alan; Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

I agree one hundred percent with Alan.

Deb Schulte
Local & Regional Councillor
City of Vaughan

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From: Shefman, Alan
Sent: Thursday, May 29, 2014 10:56 AM
To: Di Biase, Michael; Cribbett, Barbara

Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Michael

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Alan

Alan Shefman, Councillor

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Vaughan, ON L6A 1T1

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From: Di Biase, Michael
Sent: May 29, 2014 10:30
To: Shefman, Alan; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Dear Alan,

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Craig, Suzanne

From: @yahoo.com>
Sent: Thursday, May 29, 2014 1:28 PM
To: Di Biase, Michael
Subject: Response.

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. Its as simply as that, I was making a point as to why I suggested the auditor be involved.

I do agree with you that this is getting blow up into a major issue. I received the list of the pre qualified bidders last week. After a reviewing it. I was surprised by some names on the list. I sent a memo to John Henry and Barb asking some basic questions regarding my observations. I'm sure you (and others have done the same) in asking questions when you have a concern.

To my surprise, I received limited information, and was given two web links and basically told to look up the information.

On Sunday night, I looked up the information via the links and it raised some serious concerns (as noted in my e-mail). I received some additional from Asad on Monday, and after a brief review, I sent my findings and concerns to the city manager.

During that time frame, I learned that at least one company sent in a letter of objection. (Also noted in my e-mail). And from my limited knowledge of the procedures, this should trigger a bid review. I suggested to Barb that review should not have the same individuals who were directly involved in the pre qualification process.

I have provide the City manager and council with the information I gathered, along with my comments. The fact that is getting the attention it has would lead me to believe you that "something does not add up"

W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>
Sender:
Date: Thu, 29 May 2014 12:44:37 -0400
To: @yahoo.com @yahoo.com>
Subject: FW: Pre-Qualification

From: Iafrate, Marilyn
Sent: Thursday, May 29, 2014 12:12 PM
To: Di Biase, Michael; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

I'm being quite frank now when I say that all this doesn't sound right and we are being dragged into a matter that we as councilors should not be involved in. I don't understand why you would use the term "cover up" unless someone out there is feeding this to you and therefore they not councillors should be dealing directly with city staff.

Craig, Suzanne

From: Di Biase, Michael
Sent: Thursday, May 29, 2014 2:20 PM
To: Iafrate, Marilyn; Cribbett, Barbara
Cc: Mayor and Members of Council
Subject: RE: Pre-Qualification

Thanks for the response Marilyn. I believe the perception of a cover could be raised incorrectly if we have the same individuals involved in the process, review the process. It's as simple as that, I was making a point as to why I suggested the auditor be involved.

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Regional Councillor

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Craig, Suzanne

From:
Sent: Tuesday, June 24, 2014 12:20 PM
To: Di Biase, Michael
Subject: Fw: New City Hall Resource Library

From: Di Biase, Michael <Michael.DiBiase@vaughan.ca>
Sent: Tuesday, June 24, 2014 10:33 AM
To: Singleton, Margie; Di Biase, Michael
Cc: Mayor and Members of Council; ; DeFrancesca, Rosanna;
'Pradeep Puri'; Rosati, Gino; 'Devender Sandhu'; Cribbett, Barbara; Henry, John; Pittari, Joe; Noronha, Lloyd; Shatil,
Subject: RE: New City Hall Resource Library

Hi Margie,

According to the capital program, (and the capital budget forecast approved in 2014), it has Vellore being designed in 2017 and construction in 2018. No mentioned of blocks 40/41/42 ??

But more importantly the library reserve balance in 2018 is only \$1.8 million. So when is the expected realistic construct dates based on the next DC Revision.

And are the values included in the capital forecast accurate as the land value and construction estimates appears to be low based on current market values.

Michael Di Biase
Regional Councillor

From: Singleton, Margie
Sent: Tuesday, June 24, 2014 9:44 AM
To: Di Biase, Michael
Cc: Mayor and Members of Council; 'rtcapone@yahoo.com'; ; DeFrancesca, Rosanna;
'Rosati, Gino; 'Devender Sandhu'; Cribbett, Barbara; Henry, John; Pittari, Joe; Noronha, Lloyd; Shatil, Singleton, Margie
Subject: RE: New City Hall Resource Library

Hello Michael,

I apologize for the delay in responding, but wanted to ensure accuracy of information. Please find initial responses to your queries below. Please let me know if you require additional information.

Thank You

Margie Singleton, BA, MLS

Craig, Suzanne

From: @yahoo.com>
Sent: Tuesday, June 24, 2014 10:12 AM
To: Di Biase, Michael
Subject: Re: New City Hall Resource Library

Thanks. The REVISED response is::

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W.G

From: @yahoo.com>
Date: Tue, 24 Jun 2014 14:09:22 +0000
To: Di Biase, Michael<Michael.DiBiase@vaughan.ca>
ReplyTo:
Subject: Re: New City Hall Resource Library

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W.G

From: "Di Biase, Michael" <Michael.DiBiase@vaughan.ca>
Sender:
Date: Tue, 24 Jun 2014 09:44:52 -0400
To:
Subject: FW: New City Hall Resource Library

fyi

**COMPLAINT PROTOCOL
FOR COUNCIL CODE OF CONDUCT**

Authority: *Municipal Act*, 2001 S.O. 2001, (as amended) CHAPTER 25 Ss. 223.3 to 223.8 and as adopted by Council at its meeting held on June 23, 2008.

1. Until such time as a new/revised Council Code of Conduct is adopted, only complaints relating to behaviour or activity occurring subsequent to April 23, 2007 will be addressed by this procedure. From the date of adoption of a new/revised Code of Conduct forward, only complaints relating to behaviour or activity occurring subsequent to that date of adoption will be addressed by this procedure.
2. 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.

PART A: INFORMAL COMPLAINT PROCEDURE

3. Individuals (including City employees, members of the public, members of Council or local boards) who identify or witness behaviour 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 behaviour or activity themselves as follows:
 - (1) Advise the member that the behaviour or activity appears to contravene the Code of Conduct;
 - (2) Encourage the member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behavior or activity.
 - (3) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
 - (4) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the member in an attempt to resolve the issue. If applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and

At the earliest possible juncture, the member whose behaviour is complained of will be advised of an inquiry to the Integrity Commissioner under the Informal and Complaint Procedure, and any complainant will be so advised;
 - (5) Pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.
4. Individuals are encouraged to pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the member, the Integrity Commissioner may participate in any informal

process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint. However, it is not a precondition or a prerequisite that those complaining to pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

PART B: FORMAL COMPLAINT PROCEDURE

Formal Complaints

5. Individuals (including City employees, members of public or members of Council or local boards) who identify or witness behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for members of Council, may file a formal complaint with the required information on the proscribed affidavit (see page 6 of this procedure):
 - (1) All complaints must be made on the Complaints Form/Affidavit and shall be dated and signed by an identifiable individual.
 - (2) The complaint must include an explanation for why the issue raised may be a contravention of Code of Conduct. Evidence in support of the allegation must also be included.
 - (3) Witnesses in support of the allegation must be named on the complaint form.
 - (4) The complaint form will be disclosed to the respondent and to others who may be involved in carrying out this procedure.
 - (5) The complaint form/affidavit must include the name of the alleged violator, the provision of the Code of Conduct allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information for the complainant during normal business hours.
 - (6) Receipt of formal complaints will be acknowledged in writing.

Filing of Complaint and Classification by Integrity Commissioner

6.
 - (1) The complaint shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection 3.
 - (2) If the complaint is not in the prescribed form, the Integrity Commissioner may defer the classification until a Complaint Form/Affidavit is received.

NOT A CODE OF CONDUCT VIOLATION

- (3) If 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, the Integrity Commissioner shall advise the complainant in writing as follows:

CRIMINAL MATTER

- (a) If the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate Police Service.

MUNICIPAL CONFLICT OF INTEREST ACT

- (b) If the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel.

MFIPPA

- (c) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk for Access and Privacy review.

OTHER POLICY APPLIES

- (d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

LACK OF JURISDICTION

- (e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

MATTER ALREADY PENDING

- (f) If the complaint is 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.

Periodic Reports to Council

7. The Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her report to Council, he/she shall report on all complaints received and on their disposition.

Refusal to Conduct Investigation

8. 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.

Opportunities for Resolution

9. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the member agree, efforts may be pursued to achieve an informal resolution.

Investigation

10. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
 - (a) give the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
 - (b) give a copy of the response provided to the complainant with a request for a written reply within ten days.
- (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.
- (3) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction, delay or retaliation encountered during the investigation.

No Complaint Prior to Election

11. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after June 30 in any year in which a regular municipal election will be held. The time elapsed between June 30 in a regular municipal election year and the inaugural meeting shall not be included in calculation of the six (6) months referred to in section 2.

Recommendation Report

12. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties the date the report will be available.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement, or recommended corrective action. Where the complaint is not sustained, the Integrity Commissioner shall report to Council the result of the investigation.

- (3) Pursuant to the *Municipal Act* the municipality may impose either of the following penalties on a member of council if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:
 - (a) A reprimand;
 - (b) Suspension of the remuneration paid to the member in respect of his or her services as a member of council for a period of up to 90 days.
13. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act*.
14. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.

Report to Council

15. Upon receipt of a report, the Clerk shall process the report for the next meeting of Councils' Committee of the Whole.

No Reports Prior to Election

16. Notwithstanding section 12 or any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last Committee of the Whole meeting of June in any year in which a regular municipal election is to be held, until following the date of the inaugural meeting.

Duty of Council

17. Council shall consider and respond to the report within 45 days after the day the report is presented to it {except longer in summer hiatus}.

Public Disclosure

18.
 - (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.
 - (2) At the time of the Integrity Commissioner's report to Council, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.
 - (3) All reports from the Integrity Commissioner to Council will be made available to the public.

Please see Complaint Form/Affidavit below.

Complaint Protocol for the Code of Ethical Conduct for Members of Council

New Section 19

Reimbursement of Legal Expenses

19. (1) A Member of Council who is subject of an Integrity Commissioner complaint under Part A (Informal Complaint Procedure) or Part B (Formal Complaint Procedure) under this Protocol may charge against the Member's office budget the actual legal expense incurred for consultation with a lawyer of up to \$500.00.

(2) A Member of Council who is the subject of an Integrity Commissioner complaint investigation * under this Protocol may be reimbursed for actual and reasonable expenses incurred for consultation with a lawyer of up to \$5000.00, where it is determined that there has been no contravention of the Code of Ethical Conduct by the Member.

* An Integrity Commissioner complaint investigation begins when the Integrity Commissioner opens a case file and gives notice of the same to the Member of Council subject of the formal complaint.

Integrity Commissioner's statutory powers pursuant to s. 223.4 *Municipal Act* may recommend:

- (1) a reprimand;**
- (2) a suspension of the remuneration paid to the member in respect of his or her services as a member of Council for a period of up to 90 days.**

COMPLAINT FORM/AFFIDAVIT

AFFIDAVIT OF _____ [Full Name]

I, _____ [Full Name], of the [City, Town, etc] of _____ [Municipality of residence] in the Province of Ontario

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because:

_____ [insert reasons e.g. I work for... I attended the meeting at which ... etc]

2. I have reasonable and probable grounds to believe that a member of Vaughan City Council, _____ [specify name of Member], has contravened section(s)

_____ [specify section(s)] of the Code of Conduct for Members of Council (the "Code of Conduct"). The particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule A form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, 5, etc. and attach them to this affidavit.]

3. I acknowledge that at the time of the Integrity Commissioner's report to Council in this matter, and as between the parties, the identity of a complainant and the identity of the person who is the subject of the complaint shall not be treated as confidential information.

Please see the attached Schedule A.

1. This Affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at the [City, Town, etc of]

In the Province of Ontario on:

_____ [Day] of _____ [Month] _____ [Year]

[Signature of Commissioner]
A Commissioner for taking Affidavits, etc.

[Please Print Commissioner's Name]

Code of Conduct Complaint Protocol s. 2(3) Formal Complaint Procedure. Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46, and also to civil liability for defamation.

DELIVERED BY E-MAIL

April 13, 2015

Ms. Suzanne Craig
Integrity Commissioner
City of Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1

Dear Ms. Craig:

Re: Code of Conduct Complaint #0114

You had no jurisdiction to place your report before the Committee of the Whole as your mandate was ended. Accordingly, for that reason alone, your report cannot be considered by the Committee of the Whole or by the Council.

Your actions as set out herein demonstrate why your report and recommendation should be rejected by the Committee of the Whole and by the Council. Your actions further demonstrate why you should not be allowed to continue to act in this matter.

While I sought to obtain from you evidence and a reasonable period of time in order to respond to that evidence on behalf of Deputy Mayor and Regional Councillor DiBiase, you denied both and imposed a time limit to receive my response. Despite stating that I had until Tuesday, April 14, 2015 to respond before the matter would become public, you released your report and the reasons for your recommendation to the media on Friday evening, April 10, 2015. This act, by itself, breaches the very confidentiality provisions you raised to prevent my access to information and documentation which would have enabled Councillor DiBiase to defend these false allegations.

This is in response to your report dated March 27, 2015 concerning Deputy Mayor and Regional Councillor Michael DiBiase, a man who has devoted himself to public service for 25 years.

On April 7, 2015 I advised that I would deliver my response to your findings within two weeks. You sought my response on or before April 14, 2015 thereby giving me less than the time required. Although Rule 12 of the Complaint Protocol allows you to file an interim report, which would allow for the requested extension, you have not seen fit to do so. It would appear that your desire to have the report made public had and has overtaken your duty of fairness to my

client. This is seen by the fact that you did not wait to receive my response before putting the matter on the agenda of the Committee of the Whole, thereby making public the fact of the investigation.

I have your letter of April 9, 2015 in response to my letter of April 9, 2015 requesting full disclosure of the evidence you relied on, purporting to give my client "an opportunity to respond" to your findings and recommendations. You have not given him a meaningful opportunity to respond.

I did not request appendices to the report. I requested copies of all of the evidence you relied on. Nonetheless, I am pleased to receive material which you not only failed to previously disclose but intended to attach to your report without so disclosing. It is noted that you kept secret from my client the fact that you were going to include appendices with the result that had he responded previous to this letter, he would have been blindsided by you. If he had responded, he would not have known the context of the e-mails because you did not give them to him. Nor would he have known the rationale that you applied for your recommendation for the penalty. He would not have been aware that you were improperly relying on an informal complaint which was closed and therefore was to remain confidential. Again, it reveals a continuous pattern of denial of natural justice and abuse of process by denying information and documents.

Given your unfair and unreasonable timetable, which does not take into consideration the fact that there is no proper time to investigate or test the limited material provided, let alone see and test the evidence not provided, there is no urgency to this matter. Further, given your unfair refusal to provide the full evidence concerning the allegations, my response is necessarily limited.

Despite my letter to you dated January 30, 2015 pointing out the deficiencies in the complaint process, which you chose to ignore in your report, on the eve of making the report public you now reveal that you are putting my letter as an Appendix to your report. Notwithstanding its inclusion, you still have not responded to the improprieties of the complaint.

You have reached a conclusion with which Deputy Mayor and Regional Councillor DiBiase strongly disagrees. Additionally, you have done so by breaching the principles of fundamental fairness. Had my client been given a proper amount of information and documentation concerning the allegations, he would not only be able to answer those allegations but would be able to demonstrate why your conclusion was wrong in fact and law.

Your report states the Respondent was given an opportunity to respond to the complaint. This creates the false impression to the public and his colleagues that Deputy Mayor and Regional Councillor DiBiase was given an opportunity to respond to all of the allegations set out in your report. You know that is not the case.

The Councillor was asked to respond to his political opponent Lorello. He did so by my letter dated January 30, 2015. That letter pointed out that the complaint was not well founded as it failed to comply with the City's approved complaint protocol and was driven by improper political motives.

You did not see fit to address those legal issues in your report. Instead, you dealt with allegations; information and documentation obtained through your expanded investigation and reached your erroneous conclusion based on evidence which you have decided to withhold from Councillor DiBiase.

You condemned him without first giving him an opportunity to know the evidence against him. This is a breach of fundamental fairness; a denial of natural justice.

As you are more than well aware, the principles of natural justice guarantees a right to know the evidence against you and to be given an ample opportunity to respond to it before a decision is made.

Further, the manner in which you gathered the “evidence” you relied on and viewed as “pivotal” also breaches the rules of natural justice.

Your breach of the rules of natural justice and the manifest unfairness of your report is seen as follows:

1. As pointed out in the initial response by Councillor DiBiase, the complaint by his political opponent R. Lorello did not contain the names of any witnesses, specific facts to support the general complaint or any documents;
2. Your report of March 27, 2015 references interviews with 32 individuals and documents provided by 6 of them in an investigation going well beyond the scope of the initial complaint. None of the information or documents referred to was provided to Councillor DiBiase to enable him to respond prior to you reaching your conclusion;
3. You reviewed e-mails taken illegally from Councillor DiBiase and not only used them but failed to provide copies to him to enable him to respond prior to you reaching your conclusion.
4. Regarding Section 10 of the complaint protocol, you did not provide copies of the submitted materials you reviewed at the beginning of your investigation that prompted you to interview 32 individuals and access the Regional Councillor’s server.

If you had informed Councillor DiBiase of the case you say was made against him and provided the information, evidence and documentation you relied on, Councillor DiBiase would have been able to address and defend himself against the comments made by his accusers, rebut their allegations, have you come to a different conclusion and provide a balanced report on your findings. In addition, if you had requested e-mails or documentation from the Regional Councillor from his server, he would have had an opportunity to determine whether you had a right to that material and if so, would have gladly complied. Instead, he is left to ask the following questions, the answers to which he should have been given, along with an opportunity to respond, before you judged him:

- a. Who are the 32 individuals and what information did they give you as to time, dates and places concerning the allegations?
- b. How did these 32 individuals suddenly come forward “voluntarily”?
- c. What documents did 6 of those individuals provide?
- d. Where are the copies of the public and confidential City documents; the City’s past and current procurement by-law, e-mails, video surveillance, audio recordings of Committee and Council meetings and minutes in camera?
- e. On what authority or law did you rely to obtain copies of a Regional Councillor’s e-mails?
- f. Where is the City’s written policy, adopted by Council, dealing with your ability to rummage through Councillors’ e-mails?
- g. Where is the policy or by-law which enables the hiding behind a claim of confidentiality to keep secret from the accused all of the accusers, their accusations and their documents?
- h. What evidence did you rely on to make the scandalous allegation that there was any breach of Rule 19(1) and (2) including who were the accusers and what proof did they offer?
- i. Who was the member of City staff you refer to in relation to procurement investigation findings and what information/documentation did he/she provide?
- j. Who was the “staff” allegedly approached by Councillor DiBiase who you relied on regarding findings with respect to black out period and what information/documentation did he/she provide?
- k. On what legal basis do you seek to justify refusal to identify the accusers City Staff persons A - J and Board members 1-4 and the full information/documentation they provided?
- l. Who is the individual not employed by the City from whom you claim a verbatim text was responded to by Councillor DiBiase and what statement did you receive from him/her?
- m. Why were actual and complete copies of the alleged scripted e-mails not provided to the Regional Councillor?
- n. Who is the outside individual who drafted the Members Resolution and what information did he/she provide?

- o. Where is the full statement of the City Solicitor who is no longer with the City, when was it given and what documents were provided by the Solicitor?
- p. Who are the City “staff” who alleged what you call a “culture of fear” and why have copies of their allegations not been given to the Regional Councillor?

If the above information, documents and evidence had been provided, in addition to other evidence flowing from that, the Regional Councillor would have been able to respond. Unfortunately, you withheld all of the information and documents he needed to defend himself and to rebut these false allegations that you relied on to find that he was in contravention of the Rules.

The Committee of the Whole and the public should be entitled to a balanced report of your findings, including Regional Councillor DiBiase’s rebuttal of the allegations made against him. Unfortunately, as a result of your denying him the opportunity to review all the evidence you viewed as “pivotal” and denying him reasonable time to respond, he is precluded from putting before the Committee his defence of the allegations.

Further, without being given full information concerning alleged meetings wherein he acted in the manner you allege, a full opportunity to test the credibility or reliability of the accusers is denied. There are indications in your report of individuals being concerned about the calling into question of their professional decision making. When issues of personal interests or work relationship may be a factor in the complaints, credibility issues arise. In order to fairly deal with those issues, the duty of procedural fairness and natural justice in this case required the identification of the accusers and the details of the evidence provided by those individuals prior to any decision being made, not after.

The proposed recommendation itself is seriously flawed and demonstrates a further breach of natural justice in that you improperly:

- a. Reference issues finally determined in an Informal Complaint process. In that process, which you publicly stated was thoroughly investigated and closed;
 - i. It was not Councillor DiBiase’s intent to insert himself into the procurement process;
 - ii. Mr. DiBiase has a deep concern for people and for the City of Vaughan;
 - iii. The City Manager indicated that she did not have a problem with a member of council having questions regarding procurement issues;
 - iv. Mr. DiBiase’s words may have been misinterpreted;
 - v. There is no reason to believe that Mr. DiBiase acted in bad faith;
 - vi. You referred to Mr. DiBiase as “highly professional”.

- b. Seek to buttress your recommendation in the present matter by your self-serving references to your purported prior interaction with the Regional Councillor;
- c. Reference once again, as you did in your report, the allegation concerning access to information without providing detailed evidence to enable a refuting of that evidence prior to your recommendation;
- d. Despite your own recognition of the unavailability of any actual proof of such wrongdoing (“information that strongly indicates”) base your recommendation on suggestion rather than proof.

It is also worth noting that the informal complaint and this formal complaint dealt with the same procurement issues. It is curious as to why the informal complaint is being referenced in the recommendations and treated as a separate incident. Even more puzzling is why the formal complaint dealing with the issues have a different conclusion. You do not detail what evidence was relied on to support this change and why that evidence not provided.

Your actions insofar as your alleged prior dealings with my client give rise to a reasonable apprehension of bias. You have clearly used your prior dealings and private conversations with my client to somehow support allegations which you recognize are not provable, in order to justify your recommendation. In that regard, I ask that you not file your report and remove yourself from this matter. The entire matter should be turned over to an independent and unbiased person who has not had dealings with my client and who will follow the rules of natural justice.

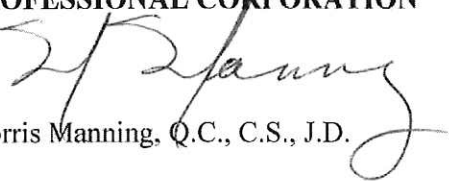
The lack of complete disclosure of all of the information and documentation resulted in a non-transparent investigation process that significantly prejudiced my client by finding that he had committed serious wrongdoings. Complete disclosure was necessary to allow Councillor DiBiase to be fully informed of all the details regarding the manner in which the investigation was conducted in order to fully answer the allegations and to demonstrate your decision was wrong. Without having all of the evidence, he simply cannot respond.

The secrecy provisions you rely on are in place to keep information about the status and merits of a complaint or comments received from witnesses from the general public and/or staff. They are not in place for a Commissioner to use as a sword against a Councillor. Further, they are not in place to prevent Councillor DiBiase from being able to defend himself. Your interpretation and application of these provisions denies him the ability to defend himself and is therefore wrong in law.

Canadian law is based on the principles of fairness. Indeed, the Courts have long held as a fundamental principle that in investigations and hearings into serious allegations which affect rights and privileges, the person carrying out the investigation and judging actions must act fairly. Commissioners have an obligation to give the person accused all of the evidence alleged against them and a proper opportunity to refute that evidence. Natural justice requires this as an absolute minimum. Natural justice was denied in this case.

Yours very truly,

MORRIS MANNING, Q.C.
PROFESSIONAL CORPORATION


Morris Manning, Q.C., C.S., J.D.



Mr. Morris Manning, Q.C., C.S., J.D.
Professional Corporation
337 Spadina Road
Toronto, ON M5P 2V5

April 13, 2015

Sent by
Email Transmission to: mmqc@morrismanning.com
Email Transmission to: Admin2@morrismanning.com

Re: Code of Conduct Complaint #0114

Dear Mr. Manning:

I have received your letter of April 13, 2015. In the interests of responding in a timely manner before the report is finalized, I will not respond to all the issues you have raised but will address those that are most important.

I delivered an interim report to the City Clerk on April 10, 2015. The report contains my preliminary findings. I have not made findings, nor any recommendation on penalty. I am waiting for the response of your client to the substantive matters provided in the interim findings (first provided to you on March 27, 2015), and my proposed recommendation (first provided to you on April 9, 2015). As I informed you in my letter of April 9: "Subject to your client providing input into the **preliminary findings and proposed recommendation by April 14, 2015**, these draft materials represent the basis for my proposing findings and recommendations." (emphasis added).

I again request that your client respond to the preliminary findings and recommendations. I have not made my final decision, and I am awaiting your client's response to the preliminary findings and proposed recommendation. If your client has no further response, then I will finalize my report, taking into account your letter of April 13, 2015 as your client's response to the preliminary findings and proposed recommendations.

On April 9th, I provided you with all the appendices, including relevant e-mails, and my proposed recommendations. It was never my intention to not disclose the appendices or proposed recommendation to you, and I am waiting for your client's response before finalizing my report. In respect of your letter dated January 30, 2015, you state that I failed to consider two issues (alleged failure to comply with the Complaint Protocol, and alleged improper political motives.) These are not preliminary findings of fact to which your client has a right to respond. Rather, you raised these issues yourself, including providing legal arguments on these issues, on January 30,

2015. I have considered your representations, and I have addressed these issues at pp. 6-11 of my Preliminary Report.

You refer to “e-mails taken illegally from Councillor Di Biase”, ask “what authority or law” I rely on to obtain copies of a Regional Councillor’s e-mails, and ask for “the City’s written policy, adopted by Council, dealing with your ability to rummage through Councillor’s e-mails.” The legal authority is Section 10 of the Code Protocol, which has been approved by Council and which, states:

(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.

I obtained copies of emails sent from the Respondent’s City e-mail account from the City’s Information and Technology Department, in accordance with an IRR request approved by the Interim City Manager pursuant to section 10(2) of the Code Protocol. This process was established to implement section 10(2) of the Code Protocol. The request was for e-mails to and from the Respondent from January 1, 2013 to October 31, 2014, including the key words: Father Ermanno Bulfon Community Centre, FEBCC, Vaughan Public Library, VPL, bocce, bocce court, CCRL, VCCRL, and Civic Centre Resource Library.

You ask for the name of the outside individual who drafted the Member’s Resolution. The name is clearly within your client’s knowledge, since the individual sent the resolution to your client’s e-mail on June 9, 2014 at 1:13 AM. The private individual’s e-mail is at Appendix #3(a), page 1, and your client clearly knows the identity, given that your client was the one corresponding with the individual and receiving information from the individual. The individual’s e-mail address is XXXX@XXXX.com, as taken from your client’s e-mail.

You again request the names of 32 individuals who have provided information to me, in the course of interviews I initiated, and information as to time, dates and places. In each instance, the statements were made to City Staff, and the statements are all alleged to be made by the Councillor himself. Some are clearly alleged to be in relation to the RFPQ for Father Ermano Bulfon Community Centre and other are in relation to the RFPQ for the Civic Centre Resource Library. That is sufficient detail for your client to respond.

I have provided the relevant documents in sufficient detail for a response. Your client has copies of most of those materials (e.g., past and current procurement by-law, minutes of Council meetings, minutes of in camera library meetings). The video surveillance would reveal the identity of some of those I have interviewed. I am of the view that I have afforded the requisite level of procedural fairness to your client, given the strong confidentiality provision contained in the *Municipal Act* (the statutory and institutional context).

As Supreme Court wrote in *Dunsmuir*, at paragraph 79:

[79] Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many

times, “the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case” (*Knight*, at p. 682; *Baker*, at para. 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11 (CanLII), at paras. 74-75).

I have considered the duty of procedural fairness as set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817. All of the circumstances must be considered in order to determine the content of the duty of procedural fairness. I am of the view that the procedure is appropriate to the decision being made and its statutory, institutional, and social context, and that your client has been provided an opportunity to put forward his views and evidence fully and have them considered by me. This is an investigative process, in a municipality where Staff have expressed concerns to me, and where statutory confidentiality is critical. I consider that your client has received adequate notice of the case to be met in the case of this investigation, which results in a recommendation to Council, which Council may accept or reject. In this regard, I adopt the statement of Lord Denning, M.R., in *Selvarajan v. Race Relations Board*, [1976] 1 All E.R. 12 (C.A.), where he states at page 19:

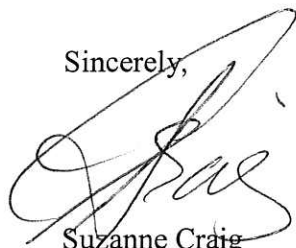
The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report, then he should be told the case made against him and be afforded a fair opportunity of answering it. **The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad grounds are given. It need not name its informants. It can give the substance only.** Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report.

Taking into account the particular circumstances of this proceeding, including the confidential elements of the investigation, your client has received sufficient information to allow him to respond to the preliminary findings. In my opinion, the duty of procedural fairness in the specific circumstances of the instant case does not require the disclosure of the details of the investigation you have requested. You have been advised of the essential information and of the elements upon which I will base my decision. The Respondent could not reasonably expect to be informed of all the details, given the elements of confidentiality surrounding the information collected during the investigation, but has been provided the essential preliminary findings of the investigation, in a manner that was adequate for him to be able to respond.

You also raise issues regarding the informal complaint. Please note that the informal complaint is not relevant to the preliminary findings, but only to the recommended sanction. My proposed recommendation is based in part on the informal complaint, and the one-on-one overview of confidentiality rules with the former City Solicitor which was required of him as part of the resolution of that informal Code complaint. It goes to the good faith issue/knowledge with respect to the proposed sanction.

In closing, I am requesting that your client respond to my preliminary findings and proposed recommendation on a substantive level. These are important issues, and as set out in my letter of April 9, I have granted your client until April 14, 2015 to provide his response. After that time, I will finalize my report and deliver it to the Clerk on April 17, 2015. I understand that the final deliberation of Council on this item will likely take place at the April 21, 2015 Council meeting, although Council controls its own agenda.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Craig', written over a large, light-colored circular scribble.

Suzanne Craig
Integrity Commissioner