

January 21, 2011

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VIA E-MAIL

File 00387.00034

Mayor and Members of Council
City of Mississauga
300 City Centre Drive
Mississauga, ON L5B 3C1

Dear Madam Mayor and Members of Council:

Re: Response to Request for Integrity Commissioner Inquiry

Introduction

On January 12, 2011, I received a communication from Councillor Saito requesting me, in my capacity as Interim Integrity Commissioner for the City of Mississauga, to conduct an inquiry under Part V.1 of the *Municipal Act, 2001* as to whether a member of Council has contravened the City's Code of Conduct for Members of Council.

The Request for an Inquiry

The subject-matter of the request involves certain correspondence arising from receipt by the City Manager of notice of "Mayor Hazel McCallion's 90th Birthday Celebration", a reception and dinner to be held on February 12, 2011, presented by BMO Financial Group, with tickets costing \$350.00 each, and that: "Proceeds will support the new Sheraton College Mississauga Campus through the Hazel McCallion Foundation for Arts, Culture and Heritage".

In summary, the request for an inquiry arises out of two e-mail communications provided by the City Manager to each of the members of City Council, a copy of which communications quickly came into the possession of a journalist with the National Post, and the subject of publication and commentary in that newspaper, without the consent or permission of the City Manager, and, in the case of the second e-mail, in the face of clear and specific notice describing the correspondence as "Confidential", and that "this e-mail may not be forwarded to anyone for any purpose without express written permission of the author".

The sequence of events to date is as follows:

Date	Event
Pre-January 7, 2011	<p>The City Manager received a brochure from or on behalf of the BMO Financial Group, announcing its presentation of "Mayor Hazel McCallion's 90th Birthday Celebration", a black tie reception and dinner to be held February 12, 2011 at the Mississauga Convention Centre. Tickets are priced at \$350.00 each. "Proceeds will support the new Sheraton College Mississauga Campus through the Hazel McCallion Foundation for Arts, Culture and Heritage".</p>
January 7, 2011, 9:57 a.m.	<p>The City Manager forwarded an e-mail dated January 7, 2011, attaching the notice, to each of the 12 members of City Council and the City's 5-person Leadership Team ("LT").</p> <p>In the e-mail, the City Manager, after giving notice and particulars of the event, went on to state as follows:</p> <p style="padding-left: 40px;">"As a significant City presence at this event would be expected, I thought in this case it would be appropriate for the City to purchase an appropriate number of tables to accommodate members of Council, LT and their spouses/guests. If you are interested in attending and having tickets provided, I would appreciate it if you could advise [my assistant] by the end of next week. Once we have the final numbers, our office will make the arrangements."</p> <p>The e-mail does not on its face state that it or its contents are to be treated as "confidential" or that the City Manager intended or expected that it would be treated as a confidential communication.</p> <p>Although the City Manager stated that she thought that "it would be appropriate" for the City to purchase the tickets, it is clear that she had not purchased any tickets at that time, nor did she know whether or not, or how many, tickets would be purchased.</p> <p>If all 17 of the officials in question, together with their spouses or guests, obtained tickets, the total cost to the City would be</p>

Date	Event
	<p>\$11,900.00.</p> <p>It is clear from the City's Manager's e-mail that, while presumably the Mayor's birthday celebration would be an enjoyable social event, it was anticipated that members of Council would also be considered to be attending as representatives of the City and its residents, as demonstrated by her comment that "a significant City presence at this event would be expected".</p>
<p>January 10, 2011, 10:03 p.m.</p>	<p>Article, National Post: "Mississauga offers \$10,000 to send councillors to Hazel McCallion's birthday", Byline: Megan O'Toole.</p> <p>In the article it is also mentioned that "councillors each have a \$20,000.00 expense budget that can be used to fund events such as the Mayor's birthday gala".</p>

Date	Event
<p>January 11, 2011, 9:31 a.m.</p>	<p>The City Manager sent an e-mail, dated January 11, 2011, to each of the members of City Council, Subject: "Forwarding of emails".</p> <p>This e-mail communication is marked: "Sensitivity: Confidential" at the outset, At the end of the e-mail it is stated:</p> <p style="padding-left: 40px;">"This e-mail may not be forwarded to anyone for any reason without express written permission of the author."</p> <p>In this e-mail, the City Manager states that, on January 10, 2011, she was contacted by Megan O'Toole, a reporter with the National Post who had a copy of the previous e-mail in her possession.</p> <p>The City Manager advises that she had checked with members of LT [the City's administration, Leadership Team] included in the distribution list for the first e-mail and "none of them forwarded the email to Ms. O'Toole".</p> <p>Consequently, the City Manager concludes that "the e-mail was forwarded by a member of Council".</p> <p>She goes on to state: "Today there are a series of news articles in which Members of Council are quoted criticizing the offer to purchase tickets."</p> <p>The City Manager then expresses her concern</p> <p style="padding-left: 40px;">"As a matter of professional courtesy, it is reasonable to expect that if a Member of Council is concerned in any way with a communication or recommendation sent from me or any member of staff, that concern will be communicated back either by return email, by phone or in person. In this case, I was not given any warning that the press might be contacting me on this issue. In fact, other than normal acceptances or regrets, I have not received any feedback from Council</p>

Date	Event
	<p>objecting to what I was suggesting, so I was certainly surprised to find myself defending an internal email to the media.</p> <p>Actions such as these serve to undermine the trust between staff and Council. Certainly when the shoe has been on the other foot, and Council has been out of the loop, staff have been vigorously and justifiably criticized.”</p> <p>The City Manager then advises that, in light of what has happened, she would be adding the following statement to all of her internal and external e-mails: “This e-mail may not be forwarded to anyone for any reason without express written permission of the author.”</p> <p>She continues: “To close the book on this issue, I have advised the organizers that the City will not be purchasing any tickets or tables for the event.”</p> <p>The City Manager concludes with an expression of apology to the Mayor, followed by the statement of required confidentiality quoted above.</p>
<p>January 11, 2011, 4:37 p.m.</p>	<p>In an e-mail to each member of Council, under the heading “Subject: Additional Information”, the City Manager advises the members of Council that she had been contacted again that afternoon by Ms. O’Toole of the National Post who had received a copy of the above e-mail, concluding:</p> <p>“I truly do not know how to respond without being critical of the behaviour of Council in public and so I do not plan to provide any comment to Ms. O’Toole. To say that this has been one of the most disappointing days I have spent as City Manager would be an understatement.”</p>

Date	Event
	The statement of required confidentiality quoted above is set out both at the commencement of the e-mail and at the end.
January 11, 2011, 7:11 p.m.	Article, National Post: "Mississauga withdraws offer to send councillors to McCallion gala". Byline: Megan O'Toole
January 13, 2011	Article, National Post: "Council advocating 'Orwellian' measures; Probe launched into leaks of internal emails". Byline: Megan O'Toole

Copies of the three e-mails and the articles in the press are attached to this Report.

On Wednesday, January 12, 2011, I received a request from "Pat Saito, Councillor Ward 9", headed "**Request for Code of Conduct Inquiry**", attaching copies of the e-mails referred to above.

In the request, Councillor Saito, after referring to the creation and publication of the e-mails of January 7 and 11, 2011, states as follows:

"Council discussed the matter on January 12, 2011 in General Committee, and I volunteered to send this concern to the Integrity Commissioner for review. Council is also likely to request the Information Technology staff to undertake an audit of Councillors' emails to try to determine from which office the information was sent to the media.

Council is concerned that this is a breach of the code of conduct and I therefore ask the Integrity Commissioner to review and provide all Council with your findings."

This request was forwarded to me in my capacity as the City's Interim Integrity Commissioner.

My responsibilities in that role include reporting to Council and performing in an independent manner the functions assigned by the municipality with respect to the application of the Code of Council for Members of Council, and the application of any procedures, rules and policies of the City governing the ethical behaviour of members of Council.

As the Council has been advised and accepted, as well as performing advisory and education duties, it is my responsibility to conduct inquiries in respect of a request by a complainant as to whether a member of Council has contravened the Code of Conduct applicable to the member.

The Provisions of the Code of Conduct and other Applicable Legislation and Policies

The third paragraph of the preamble to the Code of Conduct refers to the Code's being "reflective of the City's core values of trust, quality and excellence in public service".

Among the key principles that underlie the Code of Conduct are:

- Rule No. 1 c. **"Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny."** [See also Rule No. 1 – h.]
- j. **"In fulfilling their roles as elected officials, Members of Council shall respect the role of staff in the administration of the business affairs of the City and in so doing will comply with the City's *Respectful Workplace Policy*."**

The commentary under that Rule states that: "... *individual Members of Council must also recognize that the information they receive in their capacity as elected officials, is subject to confidentiality and disclosure rules contained in federal and provincial legislation and City policies.*"

Rule No. 4, dealing with confidential information, provides as follows:

- "1. As elected officials, Members of Council will receive highly sensitive and confidential information concerning residents who need their assistance. This is consistent with the nature of the Members' duties. In accordance with the City's *Elected Officials' Records* policy, Councillor constituency records are at all times under the control of the Member and are not subject to any municipal disclosure requirements.**
- 2. The following are examples of the types of information that a Member of Council must keep confidential:**

- **items under litigation, negotiation, or personnel matters;**
 - **information that infringes on the rights of others (e.g. sources of complaints where the identity of a complainant is given in confidence);**
 - **information deemed to be ‘personal information’ under the *Municipal Conflict of Interest Act*.**
3. **Where it is clear that a communication was not made in a confidential manner (i.e. copied to others, or made in the presence of others) or the manner of communication undermines the validity of labelling it ‘Confidential’, such communication will not be given any higher level of confidentiality than any other communication. The words ‘Privilege’, ‘Confidential’ or ‘Private’ will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.**
4. b. **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 where required by law or authorized by Council to do so.”**

Rule No. 5, Use of City Staff, Property, Services and Other Resources, states as follows:

- “1. **No Member shall use for personal purposes any City staff services, property, equipment, services, supplies, websites, webboards, or other City-owned materials, other than for purposes connected with the discharge of City duties.**
3. **No Member shall use information gained in the execution of his or her duties that is not available to the general public, for any purposes other than his or her official duties.”**

Rule No. 10, dealing with media communications, states as follows:

- “2. **Members of Council will keep confidential information confidential, until such time as the matter can properly be made public.”**

The Commentary under Rule 10 provides as follows:

"While openness in government is critical, governments also must respect confidentiality when a matter must remain, at least for a period of time, confidential. Breaches of confidentiality by Members erodes public confidence."

Rule No. 12, Respectful Workplace Policy, states as follows:

"1. Members are governed by the City's *Respectful Workplace* policy. All Members have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

Commentary

The City of Mississauga's *Respectful Workplace* policy ensures a safe and respectful workplace environment and provides for the appropriate management of any occurrences of harassment and discrimination as those terms are defined in the policy.

The City of Mississauga's *Respectful Workplace* policy applies equally to members of staff and Members of Council. It will provide guidance to an independent investigator when a complaint is received involving a Member."

Rule No. 15, Failure to Adhere to Council Policies and Procedures, states as follows:

"1. Members shall adhere to such by-laws, policies and procedures adopted by Council that are applicable to them.

Commentary

Members of Council are required to observe the policies and procedures established by City Council at all times, and are directed to pay special attention to, and comply strictly with, the *Council Procedure By-law* and the *Elected Officials' Expenses* policy. In exceptional circumstances, a Member may request Council grant an exemption from any policy."

The City's *Respectful Workplace* policy (effective June 9, 2010) provides as follows:

"Employees, elected officials, citizen members of committees and volunteers acting on behalf of the City of Mississauga are entitled to, and are expected to contribute to, a Respectful Workplace ...

Employees will not suffer reprisals for making legitimate complaints, either informally or formally."

The City's *Elected Officials' Expenses* policy (effective May 27, 2009) provides as follows:

"Expenses incurred by elected officials, while acting as members of Council, are paid by the City.

Elected officials are accountable to the public, and are responsible for ensuring that their expenses are reasonable, appropriate, and within budgeted amounts.

Current budget expense accounts are intended to cover all expenses incurred by each elected official, while conducting City business or promoting the City, including: expenses related to the management of the elected official's office, communication with constituents, sponsorships of a nominal value, business entertainment and staff recognition, promotion, local travel, and attendance at functions on City business.

A spouse or companion may be included as a guest when claiming business entertainment expenses, at the discretion of the election official."

The Power of the City to Purchase Tickets and Make Grants to Charitable Organizations

Municipal Act, 2001, s. 283(2)

283. (2) Despite any Act, a municipality may only pay the expenses of the members of its council or of a local board of the municipality and of the officers and employees of the municipality or local board if the expenses are of those persons in their capacity as members, officers or employees and if,

(a) the expenses are actually incurred; or

- (b) the expenses are, in lieu of the expenses actually incurred, a reasonable estimate, in the opinion of the council or local board, of the actual expenses that would be incurred.

Municipal Act, 2001, s. 107(1)

107. (1) Despite any provision of this or any other Act relating to the giving of grants or aid by a municipality, subject to section 106, a municipality may make grants, on such terms as to security and otherwise as the council considers appropriate, to any person, group or body, including a fund, within or outside the boundaries of the municipality for any purpose that council considers to be in the interests of the municipality.

Under Rule No. 2 of the City's Code of Conduct, prohibiting a member from accepting personal gifts and benefits connected with the performance of their duties of office, are the following exceptions:

- "b. such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation";**
- e. a suitable memento of a function honouring the Member;**
- f. food, lodging, transportation and entertainment provided by ... local governments ... where the Member is ... attending in an official capacity at an official event;**
- g. food and beverages consumed at banquets, receptions or similar events, if:**
 - i. attendance serves a legitimate business purpose;**
 - ii. the person extending the invitation or a representative of the organization is in attendance; and**
 - iii. the value is reasonable and the invitations infrequent."**

In the commentary under that Rule, there is a requirement in respect of exceptions claimed under categories 1(b), (e), (f) and (g) that, where the value of the gift or benefit exceeds \$500.00, the member shall within 30 days of receipt of the gift or benefit, list it on a Councillor Information Statement and file it with the Integrity Commissioner. The requirement does not apply to the receipt of up to two tickets to a dinner or fundraising, as long as the member is attending only one such event with the same individual or corporation within any calendar year.

The Integrity Commissioner may call upon the member to justify receipt of the gift or benefit, where the gift or benefit might create a conflict between a private interest and the public duty of the member, and may direct the member to return the gift or reimburse the donor for the value of the gift or benefit received.

Beginning April 30, 2011, and quarterly thereafter, each member is required to file a Councillor Information Statement with the Integrity Commissioner. Examples of gifts that are required to be listed on the Councillor Information Statement may include an invitation to attend a gala or fundraising event at a reduced rate or at no cost. The Code goes on to provide as follows:

"An invitation to attend a function where the invitation is directly or indirectly [connected] with the Member's duties of office is not considered to be a gift but is the fulfillment of an official function or duty."

Rule No. 3 of the Code of Conduct deals with councillor expenses. The first paragraph of that Rule states as follows:

"Subject to the *Elected Officials' Expenses* policy, this section of the Council Code of Conduct deals with community expense-events, will indicate allowable expenses for reimbursement and provide guidelines for Members of Council respecting community expenses related to a Member's role in community development, and reflecting which expenses are eligible for reimbursement from a Member's office expense budget."

Rule No. 3 - 4 states as follows:

"... It is legitimate for Members to incur hospitality expenses for meetings that include:

- c. honouring persons from the City of Mississauga in recognition of exceptional public service"**

The Confidential E-mail Communication of January 11, 2011

On Tuesday, January 11, 2011, the City Manager sent an e-mail to each of the members of Council, advising that she had been contacted by Ms. O'Toole, who had a copy of the previous e-mail in her possession and that she (the City Manager) had checked with members of the Leadership Team and "*none of them forwarded the e-mail to Ms. O'Toole. I can only conclude, therefore, that the email was forwarded by a Member of Council.*"

Discussion

At the outset, it seems clear that this is the type of event, honouring a long-term member of a city council and leader in the community, that is frequently attended by members of municipal councils, in both their personal capacities and also as representatives of the municipality and its residents.

I do not address the personal or political considerations relating to this particular case, nor the reasonableness or otherwise of the price to be charged per ticket.

At the same time, as mentioned above, I believe it to be within the power of the City to participate with respect to such events generally, and to decide to pay expenses of members of Council, as well as members of staff, who attend such events in the course of their performance of their public duties. This authority would also extend to cover costs of their accompanying spouses or guests. To the extent that the cost of tickets involves, in effect, a charitable donation, it is also within the jurisdiction of the City to make a grant for such purpose.

In my opinion, there was nothing unusual or inappropriate in the actions of the City Manager in drawing to the attention of the members of Council the invitation she had received in the way that she did. It was, of course, open to any member of Council to request that any decision by individual councillors as whether or not to attend, should await a decision by the Council as a whole as to whether or not funds should be expended for the purpose sought. No member saw fit to ask the Council as a collective body to exercise its discretion in this regard.

The fact that the City provides authority for a specific amount to be allotted for expenses for municipal councillors, does not preclude the City Manager from making a specific suggestion that City funds be available to purchase tickets to a particular event on behalf of members of Council and staff, subject, of course, to reporting requirements where applicable.

This latter requirement underlines the fact that decisions with respect to the payment of expenses of members of Council and senior staff are matters of public interest and importance. None of the applicable legislation specifically provides for such decision-making to be made at an *in camera* meeting, and, accordingly, I see no objection to the fact that one or more members of Council may have provided information to the press with respect to the first e-mail from the City Manager.

As at least one member of Council has pointed out to me, the first e-mail was not marked "Confidential", unlike the second.

I conclude that the provision of the information in the first e-mail to the press did not constitute a breach of the Code of Conduct directly, although the importance of issues of trust between councillors and staff, referred to in the preamble to the Code of Conduct, as perceived by the City Manager, was not served by a member's unilateral action without recourse to the Council as a whole, and without any notice to her .

I would emphasize that the second e-mail to each of the members of the City Council is of an entirely different nature from the one sent on January 7th.

Whereas the first e-mail was not marked "Confidential", the second e-mail was clearly marked "Confidential" as well as "this e-mail may not forwarded to anyone for any reason without express written permission of the author."

The second e-mail had as its purpose the expression of the concerns of the City Manager with respect to the publication of her first e-mail to a member of the press. The key thrust of this communication from the City Manager to Council members was expressed in her first paragraph:

"Actions such as these serve to undermine the trust between staff and Council."

In functional terms, the communication involved a complaint by a senior staff member concerning the conduct of a member of executive management of the City. In terms of the provision of the *Municipal Act, 2001* authorizing the holding of *in camera* meetings, the subject-matter could be said to have involved "personal matters about an identifiable individual".

While the e-mail was never placed on the agenda for a meeting, and legal advice was not sought or obtained with respect to whether or not it could be or should be dealt with *in camera*, nevertheless, the City Manager, the author of the communication to the members of Council, exercised her discretion to seek confidentiality in the handling of her complaint with respect to what she saw as a breach of confidentiality with respect to the first e-mail, and had the reasonable expectation that her wishes would be respected, having given notice of same to all of the Councillors.

If it should be adopted as a general principle that, whether or not a staff/council communication is marked "Confidential", any Member of Council may be considered to have the right to publish unilaterally the full document to the press, without notice to the employee and without recourse to any decision of the Council or any committee, or the Mayor, there will be a serious lack of confidence and trust by staff, and the public generally, in the ability of the Council as a whole to manage the affairs of the City.

At the very least, the member of Council in question could have requested that the matter be set down before an *in camera* meeting of the Council to enable it to make a decision as a collective body as to whether or not the matter would be dealt with at an *in camera* meeting. Issues such as these are ultimately within the jurisdiction of Council to decide.

Under the Code of Conduct, Rule No. 4, "confidential Information" is defined to include "*information in the possession, or received in confidence by, the City of Mississauga that the City is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act ("MFIPPA"), or any other legislation*".

Among the examples of types of information that a member of Council must keep confidential, under Rule No. 4 of the Code, is "*information that infringes on the rights of others (e.g. sources of complaints where the identity of a complainant is given in confidence)*", and "*information deemed to be 'personal information' under the Municipal Conflict of Interest Act*".

Under the Rule, the fact that a document is labelled "Confidential" would not preclude the appropriate sharing of the communication with other members of Council for the limited purpose of reviewing, responding or looking into the subject-matter of the communication, but I would conclude that publication of this second e-mail from the City Manager in the manner in which it was done, constituted a clear breach of confidentiality and breach of trust owed by the City to members of its staff, bordering on contempt.

In view of this conclusion, in the circumstances of this case, I conclude that the second e-mail was in fact a confidential communication, subject to the specific and clear requirement of Rule No. 4.4(b), that:

"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 where required by law or authorized by Council to do so."

In this case, disclosure of the e-mail in question was not required by law or authorized by the Council.

Report on the Progress of my Inquiry to Date

I have not yet completed my inquiry in this matter, in that I have not yet determined the identity of the person who "leaked" the confidential document, the e-mail of January 11, 2011, to the press.

In the context of my inquiry, and the circumstances leading to it, I decided to:

- (1) **contact each member of City Council requesting him or her to advise as to whether or not he or she provided either or both of the City Manager's e-mails to the press; and**
- (2) **assess the sequence of events outlined above, in the context of the requirements and provisions of the Code of Conduct and City policies and by-laws, in order to decide whether or not to proceed with a full-scale investigation, and in order to provide useful assistance to members of Council and information to the public, with respect to the above events.**

Accordingly, with the intent to expedite the resolution of the complaint and to minimize the costs to the City of my investigation, I requested each member of Council to respond to the following questions:

- (1) **Did you, directly or indirectly, provide or communicate to any non-member of the City Council either of the communications from the City Manager referred to above?**
- (2) **Do you have any information as to how those two communications, or the information contained in them, or either of them, was communicated or provided to any member of the press? If so, please provide that information to me forthwith.**

The text of my letter to each of the Councillors requesting their responses to these questions is attached.

In response to my first letter, eight of the members of Council, Mayor McCallion and Councillors Saito, Mahoney, Starr, Dale, Fonseca, Mullin and Tovey responded "No" to both questions.

Councillor McFadden responded "No comment" to both questions, noting that the first communication was not a "confidential" one.

I received no response whatever from Councillor Iannicca, in response to my letter of January 14th.

Councillors Carlson and Adams requested me to "rule on the validity on the complaint", with respect to whether or not the "sharing of two emails" constituted a breach of the Code of Conduct and whether "this is a matter of your office to investigate".

I responded to Councillor Carlson, copied to Councillor Adams, advising that I had not yet formed conclusions as to the exact nature of the two e-mails in question, or whether or not the communication of one or both of them may have involved contravention of the City's Code of Conduct, or any other policy or law.

Aside from the request for clarification from Councillor Carlson and Councillor Adams, no member of Council questioned or commented upon the statement contained in my letter to each of them that "*I am currently conducting an investigation pursuant to [the request for an inquiry under the City's Code of Conduct]*" which I had received.

On January 20, 2011 I forwarded letters to Councillors Iannicca, Adams and Carlson, requesting immediate responses to my questions.

Councillor Iannicca has responded to my follow-up letter saying that he was "taken aback" by it, and would need clarification of certain concerns before complying with any lawful request.

Councillor Adams has now responded by answering "No" to both questions.

I have not sought to interview Megan O'Toole of the National Post, or any other reporter, in connection with this matter, and would not anticipate that a member of the press would reveal his or her source in any event. At a public hearing, questions could be posed both to members of Council and staff as to whether or not they "leaked" the document to the press.

The Current Status of my Inquiry

In the absence of further information which I may receive from any members of Council concerning this matter, this would appear to conclude my attempt to complete my investigation through requests for voluntary co-operation from all of the members of Council.

I am aware that issues were raised on the floor of Council at its meeting held on January 19, 2011 as to whether or not I even have the authority to conduct an inquiry, or whether the request for an inquiry which I received was intended simply to provide answers to the "hypothetical" question of whether or not the "leak" of either or both of the e-mails in question could involve contravention of the Councillor Code of Conduct.

I wish to confirm to the Council that I believe I did receive a request for the inquiry which I am conducting. The authority for my inquiry includes decisions of the Council in adopting the Code of Conduct, and approving "the mandate of the Integrity Commissioner to include an advisory, educational and complaints investigation function", substantially as detailed in the report of the City Solicitor dated May 5, 2010, entitled "Code of Conduct for Mayor and Members of Council and Appointment of an Integrity Commissioner", all as adopted by the Council.

The ultimate authority for my inquiry is contained in Part V.1 of the *Municipal Act, 2001*, particularly sections 223.2 to 223.8. Specifically, provisions of the Act referring to an inquiry by an Integrity Commissioner include section 223.4, which refers to the conduct of an inquiry by a Commissioner "under this Part":

- "(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of local board has contravened the code of conduct applicable to the member".

The particular request in question which I received from Councillor Saito, headed "**Request for Code of Conduct Inquiry**", referred to the e-mails sent by the City Manager to members of Council on January 7, 2011 and January 11, 2011, and their receipt by the National Post soon after they had been sent, and concluded as follows:

"Council discussed this matter on January 12, 2011 in General Committee, and I volunteered to send this concern to the Integrity Commissioner for review. Council is also likely to request the Information Technology staff to undertake an audit of Councillors' emails to try to determine from which office the information was sent to the media.

Council is concerned that this is a breach of the code of conduct and I therefore ask the Integrity Commissioner to review and provide all Council with your findings."

I am conducting my inquiry in response to that request.

Section 223.4(2) of the *Municipal Act, 2001* authorizes me, in the conduct of an inquiry, to elect to exercise the powers available to a commission under the *Public Inquiries Act*, involving a hearing, and the examination and cross-examination of witnesses under oath.

I had hoped to minimize the costs to the City of the inquiry, and to conduct a quick and useful preliminary investigation, by proceeding at the outset simply to request members of Council to provide me with information relevant to the disclosure of the two e-mails in question, attempting to avoid the time and expense involved in conducting a full-scale inquiry, which could also involve my attending at City Hall to interview a large number of individuals, and possibly conducting a full-scale public hearing.

At this point, I have not made any final conclusions of fact, and cannot even confirm that disclosure of either of the documents was made by any member of Council. For instance, I do not know who, other than the members, may have had access to the e-mails in question, or, for that matter, whether or not there may be some means by which a third party could have "hacked" into the City's technology, to obtain access to them.

Matters such as these, and the need for possible action by the City to take remedial action, are beyond the scope of my investigation as Integrity Commissioner.

Whatever the source of the "leak" of the second e-mail, it may represent a serious systemic problem for the City, which could prejudice the free and candid flow of information from staff to members of Council.

Accordingly, I am not in a position to make hypothetical speculations based on the information which I have received to date. Forming any conclusions as to whether or not the "leak" of one or both of the e-mails contravenes a breach of the Code of Conduct would involve my ascertaining whether, in fact, a member of Council was responsible for such "leak", and I would also have to enquire into the circumstances of the "leak", to question that member as to the circumstances of his or her actions, and to inquire into any justification or colour of right put forward by such member for doing so.

I believe it important to the conduct of an inquiry of this kind that members of the Council be given the benefit of the doubt, and that all steps should be taken to avoid the casting of a shadow on the character of all councillors by reason of a possible transgression by one of them.

Conclusion

In view of the circumstances leading to the request having been made, and the more recent discussions at Council, I thought it appropriate that, prior to making any further decision with respect to the continuation of the inquiry, I advise the Council of my actions taken to date, and the information which I have received.

In view of the foregoing, and in view of the discussion which took place at Council on January 19, 2011, including the fact that apparently the proposal for electronic searches of councillors' computers was withdrawn, I have suspended my work on the inquiry, pending my delivery of this interim report to the Council.

I am, at the present time, giving consideration to whether or not it would be of use to the City, and to the public, for me to continue my investigation into this matter.

I would greatly appreciate receiving any position or suggestions of the Council which it may have for me at this time.

George H. Rust-D'Eye
Interim Integrity Commissioner
City of Mississauga

cc. Mary Ellen Bench, City Solicitor

3180585.5

George Rust-D'Eye

From: Janice Baker [Janice.Baker@mississauga.ca]
Sent: Friday, January 07, 2011 9:57 AM
To: Chris Fonseca; Eve Adams; Frank Dale; George Carlson; Jim Tovey; Katie Mahoney; Nando Iannicca; Pat Mullin; Pat Saito; Ron Starr; Sue McFadden; Brenda Breault; Ed Sajecki; Gary Kent; Janice Baker; Martin Powell; Paul Mitcham
Cc: Nancy Pitt
Subject: FW: Mayor Hazel McCallion Celebrates 90th Birthday

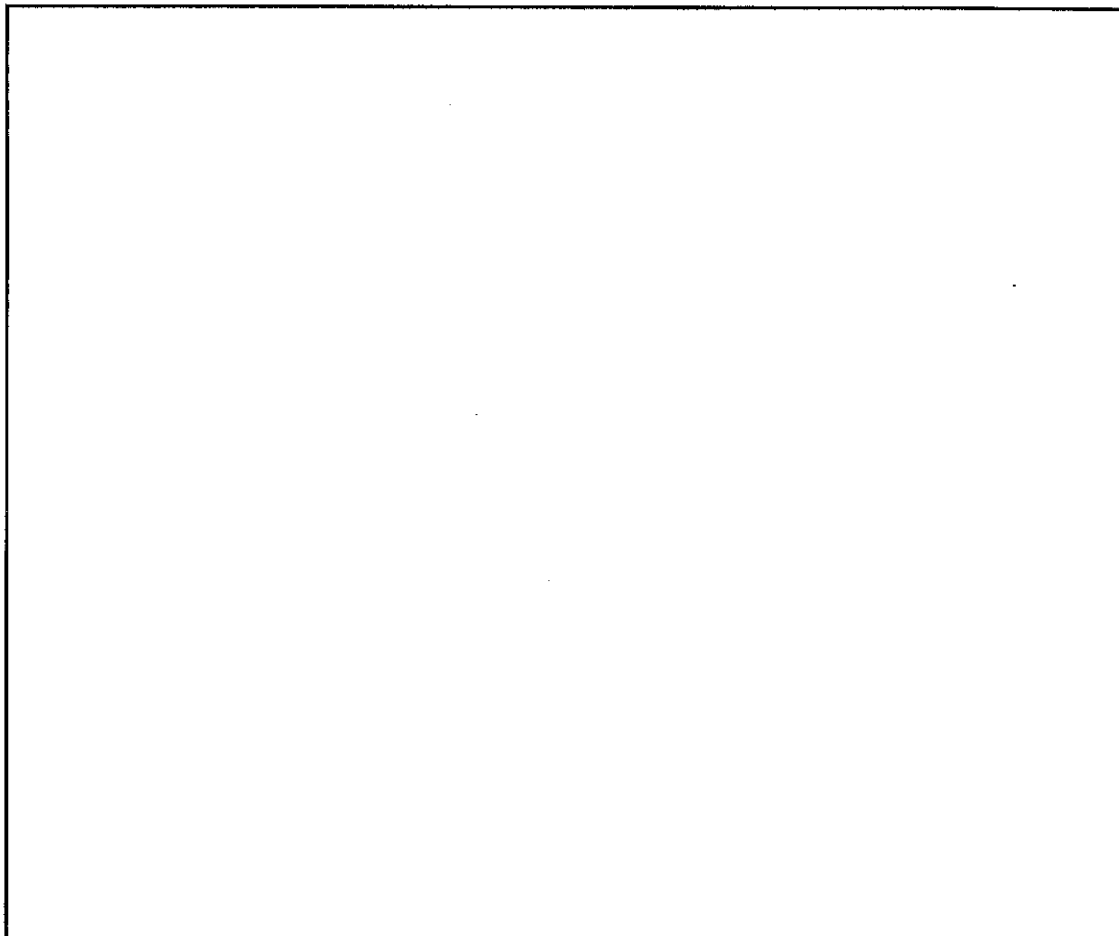
Good morning and Happy New Year! I am forwarding for your information (below) a brochure for an upcoming gala celebrating the Mayor's 90th birthday. The event is scheduled for Saturday, February 12th at the Mississauga Convention Centre. Funds raised from the event will support the Sheridan College Capital campaign.

As a significant City presence at this event would be expected, I thought in this case it would be appropriate for the City to purchase an appropriate number of tables to accommodate members of Council, LT and their spouses/guests. If you are interested in attending and having tickets provided, I would appreciate it if you could advise Nancy by the end of next week. Once we have the final numbers, our office will make the arrangements.


Regards
Janice

From: Jill MacInnes [mailto:jill.macinnes@sheridaninstitute.ca]
Sent: 2010/12/20 1:31 PM
To: Janice Baker
Subject: Mayor Hazel McCallion Celebrates 90th Birthday

Cannot see any images ? [click here](#)





BMO  Financial Group
presents

Mayor Hazel McCallion's
90th
Birthday Celebration

February 12, 2011
Reception 6:00 pm + Dinner 7:00pm
Mississauga Convention Centre
75 Derry Road West
Black Tie

The honour of your presence is requested at the celebration of beloved Mississauga Mayor Hazel McCallion's 90th birthday as we pay tribute to Her Worship's unparalleled achievements.


Enjoy an outstanding evening of dancing and celebrations; succulent meal specially selected for the occasion; plus first-rate live entertainment by Sheridan College Music Theatre Performance Students.

Tickets \$350 each Tables of 10 \$3,500
Sponsorship opportunities also available

To reserve your table, contact:
jill.macinnes@sheridaninstitute.ca 905-845-9430, ext 2525
www.hazelcelebrates90.com

Proceeds will support the new Sheridan College Mississauga campus through the Hazel McCallion Foundation for Arts, Culture and Heritage

This message was sent to janice.baker@mississauga.ca
If you want to be taken off our mailing list [Click Here](#).
If you were unable to click through on the link provided, please reply to this e-mail
using the word "unsubscribe" in the subject line.

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National Post

Posted TorontoCity Hall

Mississauga offers \$10,000 to send councillors to Hazel McCallion's birthday

Megan O'Toole January 10, 2011 – 10:03 pm

The City of Mississauga has offered to shell out more than \$10,000 to send all councillors and members of the city's leadership team to a massive birthday party for Mayor Hazel McCallion next month.

The move, coming as the city faces increasing budget pressures, has incensed taxpayers' groups and baffled some members of council — but the city is defending its outpouring of generosity as a “gesture of goodwill” for the Mayor's 90th year.

Tickets to the lavish event, slated for Feb. 12 at the Mississauga Convention Centre, cost \$350 apiece and each councillor and staffer who received the city's invitation is allowed to bring a guest. In a memo offering tickets to all councillors, a copy of which was obtained by the National Post, city manager Janice Baker noted that “a significant city presence” would be expected at the event.

“Obviously spending tax dollars on tickets to a birthday party is a mistake,” Councillor Eve Adams responded Monday. “Everybody wishes the Mayor well on her 90th birthday [but] that's an unacceptable use of tax dollars. If you'd like to go, pay for it out of your own pocket.”

An advertisement for the event promises “an outstanding evening of dancing and celebrations” along with a “succulent meal specially selected for the occasion.” Funds raised will support the city's new Sheridan College campus.

Ms. McCallion did not respond to a request for comment, but Ms. Baker defended the city's decision to offer tickets to the city's leadership team and to councillors — many of whom have already indicated they will not attend, or will get tickets through another source.

“To me, this is a one-time event. She's only going to be 90 once,” Ms. Baker said. “It's a tribute to her. It's also in support of the city's strategic objective around Sheridan College.”

A full table at the event goes for \$3,500, and Ms. Baker believes the city will ultimately need no more than two.

The city's newly inked code of conduct has stringent rules for documenting gifts over \$500 — a pair of tickets to the Mayor's birthday event would total \$700 — but it does not prohibit councillors from accepting tickets to banquets or fundraisers.

Councillor George Carlson, however, called the city's offer “a bit of an eyebrow-raiser,” suggesting the city was likely attempting to ensure a full house at the February event.

“I don't know where the generosity is coming from or the largesse, but it's not necessary. We all have expense accounts and we can all buy our own tickets,” he said.

In fact, councillors each have a \$20,000 expense budget that can be used to fund events such as the Mayor's birthday gala.



Mississauga mayor Hazel McCallion Aaron Lynett / National Post speaks at a Mississauga City Council meeting, Wednesday evening, December 1, 2010

Taxpayer groups were outraged by the city's offer, with Kevin Gaudet, Ontario director of the Canadian Taxpayers Federation, calling it a "ridiculous expenditure."

"We often use the trite line that [politicians] are partying at taxpayers' expense," he noted. "It's not often that we can use it in a non-metaphorical manner."

John Walmark, president of a local Mississauga ratepayers' association, called the city's offer "a slap in the face to taxpayers," particularly as residents face substantial property-tax increases in the coming years.

"I can't believe they can't find that out of their own pocket," Mr. Walmark said. "If it's an official function that's one thing, but this is to celebrate someone's birthday."

National Post
motoole@nationalpost.com

Posted in: City Hall, Mississauga & GTA, Posted Toronto Tags: Hazel McCallion, Mississauga

MORE FROM MEGAN O'TOOLE



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Mississauga withdraws offer to send councillors to McCallion gala

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Daycare operator charged with second-degree murder

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George Rust-D'Eye

From: Janice Baker [Janice.Baker@mississauga.ca]
Sent: Tuesday, January 11, 2011 9:31 AM
To: Chris Fonseca; Eve Adams; Frank Dale; George Carlson; Hazel McCallion; Jim Tovey; Katie Mahoney; Nando Iannicca; Pat Mullin; Pat Saito; Ron Starr; Sue McFadden
Subject: Forwarding of emails
Sensitivity: Confidential

Good morning. On Friday, I sent an email asking Members of Council if there was interest in acquiring tickets for the Mayor's Birthday Gala on February 12. Yesterday, I was contacted by Megan O'Toole, a reporter with the National Post who had a copy of this email in her possession. I have checked with members of LT who were also included in the distribution list, and none of them forwarded the email to Ms. O'Toole. I can only conclude, therefore, that the email was forwarded by a Member of Council. Today there are a series of news articles in which Members of Council are quoted criticizing the offer to purchase tickets. Unfortunately, none of that feedback was provided to me personally.

As a matter of professional courtesy, it is reasonable to expect that if a Member of Council is concerned in any way with a communication or recommendation sent from me or any member of staff, that concern will be communicated back either by return email, by phone or in person. In this case, I was not given any warning that the press might be contacting me on this issue. In fact, other than normal acceptances or regrets, I have not received any feedback from Council objecting to what I was suggesting, so I was certainly surprised to find myself defending an internal email to the media.

Actions such as these serve to undermine the trust between staff and Council. Certainly when the shoe has been on the other foot, and Council has been out of the loop, staff have been vigorously and justifiably criticized.

In light of this, I will be adding the following statement to all of my internal and external emails:

"This e-mail may not be forwarded to anyone for any reason without express written permission of the author."

To close the book on this issue, I have advised the organizers that the City will not be purchasing any tickets or tables for the event.

Lastly Madam Mayor, let me extend a sincere apology to you. I could not have foreseen that my gesture of goodwill towards you and Council would have been used to so publicly embarrass you, me and the City on what should be a wonderful occasion. I am truly sorry.

Janice M. Baker
City Manager and CAO
City of Mississauga
905-896-5550
janice.baker@mississauga.ca

"This e-mail may not be forwarded to anyone for any reason without express written permission of the author."

George Rust-D'Eye

From: Janice Baker [Janice.Baker@mississauga.ca]
Sent: Tuesday, January 11, 2011 4:37 PM
To: Chris Fonseca; Eve Adams; Frank Dale; George Carlson; Hazel McCallion; Jim Tovey; Katie Mahoney; Nando Iannicca; Pat Mullin; Pat Saito; Ron Starr; Sue McFadden
Subject: Additional information

This email is strictly confidential and cannot be forwarded without my permission as noted below.

Members of Council, I have been contacted again this afternoon by Ms. O'Toole of the National Post. She has received a copy of my email sent to Council earlier today regarding the forwarding of emails and is now asking for my comments. Given that email was marked as confidential, and contained an explicit request that it not be forwarded, I truly do not know how to respond without being critical of the behaviour of Council in public and so I do not plan to provide any comment to Ms. O'Toole.

To say that this has been one of the most disappointing days I have spent as City Manager would be an understatement.

Janice

Janice M. Baker
City Manager & CAO
City of Mississauga
300 City Centre Drive
Mississauga, ON
L5B 3C1

phone: 905-896-5550
email: janice.baker@mississauga.ca



"This e-mail may not be forwarded to anyone for any reason without express written permission of the author."

National Post

Posted Toronto Mississauga & GTA

Mississauga withdraws offer to send councillors to McCallion gala

Megan O'Toole January 11, 2011 – 7:11 pm

The City of Mississauga has rescinded its offer to send all councillors to a lavish birthday gala for Mayor Hazel McCallion on the city's dime, after the National Post revealed details of the offer this week.

The reversal from city manager Janice Baker came a day after she said she would stand firm in the city's defence, "even under the criticism that I'm sure is going to come." Had all councillors and members of the city's leadership team accepted the city's invitation, taxpayers would have been on the hook for more than \$10,000 in gala tickets, though Ms. Baker speculated the cost would max out at \$7,000 based on expected attendance.

On Tuesday, she was singing a different tune.

"Because there have been no requests for tickets, and in view of the feedback received, the offer of ticket purchase has been withdrawn by the City," Ms. Baker said in an interview, after suggesting a day earlier that multiple members of the city's leadership team and at least one councillor would take advantage of city-funded tickets.



Baker NP

RELATED

Mississauga offers \$10,000 to send councillors to Hazel McCallion's birthday

An email memo from Ms. Baker to all of council, a copy of which was obtained by the Post, sheds more light on why the offer was cancelled, expressing frustration at the media firestorm that has erupted over the tickets issue.

"I was not given any warning that the press might be contacting me on this issue. In fact, other than normal acceptances or regrets, I have not received any feedback from Council objecting to what I was suggesting, so I was certainly surprised to find myself defending an internal email to the media," Ms. Baker wrote, noting she will henceforth add a caveat to memos sent to council asking that such messages not be distributed externally.

"Actions such as these serve to undermine the trust between staff and Council," Ms. Baker wrote. She added the city will no longer purchase any tickets or tables for the Mayor's birthday gala, in order "to close the book on this issue."

Councillor Pat Saito, a close ally of Ms. McCallion, denied there was anything unusual about Ms. Baker's request to keep internal memos out of the public eye, and hinted that firmer action may be needed in the future to keep such messages private.

"Not distributing internal email to the media is simply professional courtesy... Hopefully members of council can conduct themselves in such a way as to not require a new policy," Ms. Saito said.

Councillor George Carlson says he had been dealing with calls and emails on the gala tickets issue all day.

"Apparently the public does not support freebies for councillors. No surprise there," Mr. Carlson said, noting Ms. Baker made the right decision to rescind the tickets offer, "especially given our tough financial times."

For a second straight day, Ms. McCallion did not respond to enquiries from the Post. But in a brief interview on Newstalk 1010 earlier Tuesday morning, the Mayor sounded off about the media's interference in political affairs, highlighting the recent shooting of Arizona congresswoman Gabrielle Giffords.

"Often the press is out to cause controversy, and I think what's happened in the United States is a good example of the press building animosity against politicians and government. I hope that there'll be some good come out of what has happened," Ms. McCallion said.

National Post
motoole@nationalpost.com

Posted in: Mississauga & GTA, Posted Toronto Tags: Hazel McCallion, Mississauga, Mississauga City Council

MORE FROM MEGAN O'TOOLE



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National Post

Council advocating 'Orwellian' measures; Probe launched into leaks of internal emails

Thu Jan 13 2011
Page: A9
Section: Toronto
Byline: Megan O'Toole
Source: National Post
Illustrations: Color Photo: / Mayor Hazel McCallion;

Mississauga councillors allied with Mayor Hazel McCallion are calling for a full investigation into the source of leaked internal memos, which fuelled public outrage about the city's use of taxpayer dollars after the National Post exclusively revealed their contents this week.

The hyperbole was cranked into full gear at Wednesday's meeting of general committee, where Councillor Katie Mahoney drew a parallel to the high-profile WikiLeaks scandal and urged all members to submit to electronic searches of their home and office computers -- a concept one councillor decried as "Orwellian."

The city's integrity commissioner, George Rust D'Eye, has been tasked with investigating.

"The harm that has been done in my view is incredible, and it is enough, so let's get to the bottom of it," Councillor Pat Mullin said.

Councillor Ron Starr called for a "draconian" response, including firing those involved.

"I find it very distressing that we're finding within minutes the media has copies of our internal documents.... This is not a joke anymore," Mr. Starr said, suggesting a possible ban on media communications to combat the "toxic environment."

The first memo, sent Friday, detailed the city's offer to spend upwards of \$10,000 to send councillors and select city staffers to a lavish birthday gala for the Mayor in February; in a follow-up this week, city manager Janice Baker retracted the offer, citing the media furor that had ensued.

Councillors allied with the Mayor moved to stifle debate on the tickets issue during Wednesday's meeting, instead speaking at length about how to root out and censure those responsible for passing information to the media.

While there is no legal recourse for the leaks, city solicitor Mary Ellen Bench said, Mr. Rust D'Eye's probe may determine whether there has been a violation of code of conduct confidentiality provisions.

"This has been a very sad occurrence and it shows great disrespect for [city staff]," Councillor Pat Saito noted.

Ms. McCallion pleaded for a restoration of council

unity, launching into a series of thinly veiled criticisms of former councillor Carolyn Parrish and her five allies who remain on council. This rebel faction, which has challenged the Mayor on vital votes in recent years, was the driving force behind the city's judicial inquiry into suspect business dealings.

"We went through a number of years of this mistrust, et cetera, and staff have experienced things that I never dreamed that would ever have occurred in this city," Ms. McCallion lamented. "I had hoped that after this last election that things would change, but this even got worse... Folks, we never had this prior to the last four years. We never had that in the city. There was trust of the staff. Let's restore it."

Ms. McCallion, saying Mississauga's reputation is getting "as bad as Toronto," called on those responsible for leaking the documents to consider resigning.

Though several councillors invited searches of their home and office computers to help pinpoint the leak source, members of the opposition faction bristled at the prospect of such an intrusion, with Councillor Nando Iannicca citing poor optics.

David Fraser, a Halifax-based lawyer with expertise in privacy issues, says there appears little justification for such a sweeping search, considering the memos were a matter of public interest.

"Any sort of security backlash or heavy-handed investigation really does appear to be, at least on its face, an overreaction that could perhaps... be motivated simply by a desire to chill these sorts of things," Mr. Fraser said.

Councillor Eve Adams suggested the lengthy discussion on rooting out the leak source was merely a diversion from more substantial matters, such as the contents of Ms. Baker's memos.

"I heard comment after comment [from residents] saying that spending tax dollars on a birthday party is unacceptable. When do we actually talk about the meat of the issue?" she asked.

Ms. McCallion, meanwhile, attempted to extricate her birthday celebration from the gala's fund-raising goal, noting "this is not a party bash for the Mayor." Indeed, funds raised at the February event will support Sheridan College, but an online invitation puts the focus squarely on the Mayor's 90th birthday,

citing a chance to "pay tribute to Her Worship's unparalleled achievements."

motoole@nationalpost.com

January 14, 2011

George H. Rust-D'Eye
T: 416-947-5080
grustdeye@weirfoulds.com

PRIVILEGED AND CONFIDENTIAL

File 00387.00034

Dear

**Re: Investigation into Alleged Breach of the City's Code of Conduct
and Elected Officials' Records Policy**

In my capacity as the City's Interim Integrity Commissioner, I have received a request for an inquiry under the City's Code of Conduct with respect to the alleged publication of two confidential communications originally provided by the City Manager to Members of City Council, dated January 7, 2011, Subject: "FW: Mayor Hazel McCallion Celebrates 90th Birthday" and January 11, 2011, Subject: "Forwarding of emails".

I am currently conducting an investigation pursuant to this request.

In particular, I am reviewing the provisions of the Code of Conduct under Rule No. 4, "Confidential Information", which, among other things, prohibits disclosure or release by any means to any member of the public of any confidential information acquired by virtue of a Member's office, except where required by law or authorized by Council.

I am also reviewing other potential applicable policies and by-laws of the City Council, including the Elected Officials' Records Policy and the Procedure By-law, as well as the *Municipal Freedom of Information and Protection of Privacy Act*, and other applicable policies and laws.

In order to expedite the resolution of the complaint which I am investigating, and to minimize the costs to the City of doing so, I have decided, at the outset, to request each member of Council to respond, and I do hereby so request that you respond, to the following:

- (1) **Did you, directly or indirectly, provide or communicate to any non-member of the City Council either of the communications from the City Manager referred to above?**

- (2) **Do you have any information as to how those two communications, or the information contained in them, or either of them, was communicated or provided to any member of the press? If so, please provide that information to me forthwith.**

I request that you respond to the foregoing at the earliest possible time, thus facilitating and hopefully allowing me to conclude my investigation.

You may respond by e-mail, otherwise in writing, or directly by telephone or personal attendance at my office.

The following particulars are provided for your assistance in this regard:

George H. Rust-D'Eye
Integrity Commissioner for the City of Mississauga
The Exchange Tower, Suite 1600
P.O. Box 480, 130 King Street West
Toronto, Ontario M5X 1J5

Phone: 416-947-5080
Fax: 416-365-1876
E-mail: grustdye@weirfoulds.com

If you did not release or disclose either communication, and/or you have no information concerning how either of the communications was disclosed, please advise me immediately of that fact, and provide any information which you believe might be useful for me in the conduct of my investigation into this matter.

Please respond to this request by no later than Tuesday, January 18, 2011, at 4:30 p.m.

Yours truly,

WeirFoulds LLP


George H. Rust-D'Eye

GHR/jpb

3172709.1