

Report On Investigation of Complaint Under Section 6 of the Township of East Zorra-Tavistock Code of Conduct Re Councillor Michael Routly

INTRODUCTION

This report arises from a complaint alleging that a member of the East Zorra-Tavistock Council released confidential information to an individual. The confidential information mentioned is either an email or the content of an email that was apparently delivered to Council at a meeting in August, 2018. This decision should have been delivered long before this. There have been, however, elements of the situation that have complicated and delayed the investigation.

The complaint itself concerns the details of two separate confidential proceedings. The information that is alleged to have been released concerned events related to a Workplace Investigation of a complaint by one employee against another employee of the Township. This investigation has significant elements of confidentiality attached to it. Secondly, the events surrounding the discussion related to the confidential information largely occurred in a closed meeting of Council which also has confidentiality requirements attached to it.

These elements of confidentiality have resulted in further problems. A number of the witnesses relevant to my investigation, were also involved in varying capacities in the Workplace Investigation as well as the closed council meeting. This led to concerns on their part as to how much they could reveal to me without running the risk of violating their obligations of confidentiality. In order to deal with this, I have agreed to attempt to preserve their confidentiality to the greatest degree possible. These concerns led to delays while various witnesses considered and consulted with respect to their position regarding their personal confidentiality obligations.

To address these concerns, I will attempt to preserve the specific anonymity and confidentiality of those witnesses to the extent possible. The complaint which is the subject of the Workplace Investigation and the subject of that complaint will be identified only as much as necessary to give this report any meaning.

A further delay resulted from a separate negotiation by the parties in an attempt to resolve the issues. I was not involved in those negotiations. Shortly after the complaint was forwarded by the complainant, the Respondent filed a separate complaint against the Complainant. That complaint will be dealt with in a separate report. The parties themselves took some time and had discussions in an effort to resolve both of these complaints. Unfortunately, those discussions were not successful.

JURISDICTION

I am appointed pursuant to Section 223.3 of the *Municipal Act of Ontario* to perform, in an independent manner, the functions assigned by the Municipality with respect to the application of

the Code of Conduct for Members of Council. Under the provisions of the Code, I am to review and investigate complaints received concerning adherence by Councillors to the Code of Conduct.

One of the initial concerns upon receipt of this complaint was the fact that it was received after the nomination date of the 2018 Municipal Elections but before Election day. Under the most recent amendments to *The Municipal Act*, an integrity commissioner is not to pursue an investigation received during that period. However, those amendments did not come into effect until March 1, 2019, and therefore do not apply to this complaint.

The Code of Conduct does address the question of complaints received during that period, in Section 23:

Section 23(10) "If the Integrity Commissioner receives a complaint between nomination day as defined in *The Municipal Elections Act, 1996*, and the date of the inaugural meeting of council in any year in which a regular municipal election will be held, respecting a Member who is seeking re-election and he is of the opinion that it is politically motivated, he may stay the investigation until after the inaugural meeting of the newly elected council."

Upon inquiry, I was advised that the respondent, Councillor Routly, in this complaint, was not seeking re-election. I was not in receipt of any evidence that would lead me to the conclusion that the complaint was politically motivated. In any event the investigation has gone beyond the period of the inaugural meeting, thereby rendering this concern moot.

The provisions of the Code permit me not to conduct an investigation if I am of the opinion that the complaint is "frivolous, vexatious, is not in good faith, or that there are not sufficient grounds for an investigation".

In this case, without pursuing an investigation, I have no information that would lead me to any of those conclusions.

THE COMPLAINT

This Complaint has been filed by the Mayor on behalf of the members of the Council. The complaint concerned an allegation that "a Member of Council" had provided an employee of the Township with information contained in an email dated January 15, 2018 that had been forwarded to council and had been considered in a closed meeting. The complaint did not identify a particular Councillor. Although, as will be discussed later in this report, no specific evidence was offered, it was suggested that the responsible Councillor was Michael Routly. Mr. Routly did not run for re-election in 2018 and is therefore at present not a member of Council for East Zorra-Tavistock. The complaint expressed a concern that there had been a breach of Section 6 of the East Zorra-Tavistock Council Code of Conduct.

The Council Code of Conduct for East Zorra-Tavistock is found as Item GP1.06 of the Township of East Zorra-Tavistock General Policy Manual. It was approved on September 21, 2016. Section

6 of the Code of Conduct deals with Confidentiality. The provisions of Section 6 relevant to this complaint are as follows:

"6. Confidentiality:

All information, documentation or deliberation, reviewed or taken in or in preparation for closed session of council and its committees, is confidential.

Members shall not disclose or release by any means to any member of the public either in verbal or written form any confidential information acquired by virtue of their office, except when required by law or authorized by council.

Under the Procedural By-law (authorized under section 239 of the Municipal Act, 2001), where a matter that has been discussed at a closed meeting remains confidential, no member shall disclose the content of the matter, or the substance of deliberation of the closed meeting.

Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential. Particular care should be exercised in ensuring confidentiality of the following types of information:

- Personnel matters about an identifiable individual, including municipal or local body employees.
- Items under litigation, negotiation or personal matters.
- Information that infringes on the rights of others (eg. sources of complaints where the identity of the complainant is given in confidence)."

As the complaint which forms the subject of this investigation originates with Council, it would appear to be clear that the release of the information was not authorized by Council. There has been no suggestion that the release of the information was required by law.

The circumstances that form the backdrop of this complaint relate to an earlier investigation of a Workplace complaint filed by one employee (the Workplace Complainant) against another employee (the Workplace Respondent). The suggestion is that during that investigation the Workplace Complainant received certain confidential information from a Member of Council, suspected to be Councillor Routly. The information is alleged to be either verbal information or a copy of an email provided to Council and considered in the closed session. There appears to be agreement that the information or email was at all times considered to be confidential information that was not to be released to the public. There is no consensus among the witnesses as to whether the actual email was released or only the information. All of the witnesses interviewed confirmed that they did not know the answer to that.

The suggestion being made is that during the period of investigation of the workplace complaint, the Workplace Complainant told the Workplace Investigator that certain information from a closed

meeting of Council was given to him by a member of Council. It is not certain that that information was a copy of an email or information contained in an email that was given to Council in the closed session. It is important to note that in the complaint which initiated my investigation, there is a statement that the information was provided by a Member of Council. The complaint does not name a particular Councillor.

The person to whom that statement by the Workplace Complainant is alleged to have been given was a party involved in investigating the Workplace Complaint. When interviewed, that person was very clear that the Workplace Complainant had told her that he had received the closed meeting information from a Member of Council. She stated that when he was pressed further, he may have named Councillor Routly, but she was not sure. Another party related to the Workplace Investigation, when interviewed, stated that the person to whom the statement was apparently made told her about the situation and had mentioned Councillor Routly. This second person, in her interview, stated that she was present when this information was provided to Council and that none of the councillors appeared to know to whom the allegation was directed.

The Mayor, who requested my investigation, was interviewed. He stated that when Council was told of the allegation that a councillor had released close meeting information there was no specific councillor named. The Mayor in his interview stated that he had no direct knowledge as to who may have passed the closed meeting information onto the Workplace Complainant. He also said that among the Members of Council, no one indicated that they had any knowledge as to who among them may have released the confidential information to the Workplace Complainant.

The individual who apparently has claimed that the confidential information was given to him, is no longer employed by the Township. A number of attempts were made to contact that individual using the contact information provided to me, but no response was received. There is therefore, unfortunately, no information available from this person.

The party who was the Respondent in the Workplace complaint was interviewed. In that interview, he outlined various timelines for events that he stated made him suspicious that Mr. Routly may have released the confidential information. Ultimately, he stated that his position on this was based on suspicion only.

In response to this complaint, Councillor Routly filed a sworn affidavit in which he firmly denied that he has ever shared confidential information of any type with the Workplace Complainant to whom it is alleged he has released such information. He maintained that position during his interview with me.

SUMMARY AND CONCLUSION

In summary, we have an allegation that a Member of Council released to another individual, either an email or information that was contained in an email that was delivered to and considered by Council in a closed meeting. This information would be considered confidential under the

provisions of the Code of Conduct. Although the formal complaint does not name a specific Councillor, the suggestion has been made that the Councillor in question was Councillor Routly.

Other than conjecture and suspicion, the only evidence pointing directly to Councillor Routly is the statement by one witness involved in the Workplace Investigation that when she interviewed the Workplace Complainant he had stated that he had been given this confidential information by a Councillor. That individual stated that she believed that the Workplace Complainant may have named Councillor Routly but she was not positive. The Mayor and one other witness who were present when Council was advised of this situation, both state that when told, the Members of Council appeared to have no idea who the individual Councillor might be. The Workplace Complainant who is alleged to have made this claim has not made himself available for an interview and therefore there is no information from him. Therefore, essentially, there is no corroboration of the suggestion that the Councillor who may have provided information to the Workplace Complainant was Councillor Routly.

In contrast, we have the denial of Councillor Routly and his statement under oath that he did not release this information as alleged.

Considering all of this, I do not feel that there is sufficient evidence to find that Mr. Routly contravened the Municipal Code of Conduct as alleged. Accordingly, this complaint is dismissed.

As a general comment, however, this complaint should emphasize to Members of Council the importance of adhering to the provisions of the Code of Conduct related to confidential information. If the evidence in this case did support a finding that the provisions of the Code had been contravened, as alleged, it is highly likely that I would have imposed one of the sanctions permitted under the Act.

Dated at Goderich, Ontario this 17th day of May, 2019.



Gregory F. Stewart
Integrity Commissioner Township of East
Zorra-Tavistock