



Integrity Commissioner Investigation Report (No. 2023-02)

Date	May 10, 2023
To	City Council
From	City Clerk's Office
Service Area	Office of the City Clerk
Item No.	CM23-14

RECOMMENDATION

The Alternate Integrity Commissioner recommends that City Council:

1. Censure or reprimand Councillor Andrew Stevens for disclosing the Confidential Report attached as Appendix A;
2. Request Councillor Andrew Stevens to provide a written apology to Councillor Terina Nelson with respect to the matter under investigation.

ISSUE

Section 25(1) of *The Code of Ethics Bylaw, Bylaw No.2017-4* requires Council to consider and respond to an investigation report within 90 days after the report is provided to the Executive Committee by the Integrity Commissioner.

IMPACTS

Financial Impact

The investigation into the complaint made pursuant to *The Code of Ethics Bylaw*, incurred expenses related to:

- Correspondence and meetings with: the Complainant; Respondent; City Administration; Executive Committee; and any other witnesses as required;
- the review of relevant bylaws, policies and applicable laws;

- the gathering, review, analysis of evidence and drafting of the investigation report.

The number of hours and cost it took to investigate the complaint will be reported verbally at the meeting.

OTHER OPTIONS

Option 1: Impose another censure, sanctions or corrective actions allowed by law, in accordance with section 24(4) and 25(3) of *The Code of Ethics Bylaw*. Possible sanctions may include but are not limited to:

- (a) a reprimand;
- (b) requiring that the member apologize to those impacted;
- (c) requiring educational training;
- (d) removing the member from Council Committees or other bodies; or
- (e) dismissing the member from a position of chairperson of a Council committee.

Option 2: Impose no sanctions, censure or corrective actions.

COMMUNICATIONS

The report is being released as part of the agenda for City Council's meeting on Wednesday, May 10th.

Any delegations wishing to address City Council on this matter have until Monday, May 8th at 12 p.m. to register and provide a written submission.

DISCUSSION

A complaint was made under *The Code of Ethics Bylaw* by Councillor Terina Nelson against Councillor Andrew Stevens.

The Code of Ethics Bylaw for members of Council outlines the process on what happens next (Sections 24 to 27). The Integrity Commissioner is tasked with investigating and determining the validity of the complaint(s). Substantiated complaints are presented to Council, and complaints found not to be substantiated for any reason remain confidential. A report of the Integrity Commissioner on substantiated complaints is first presented in-camera at Executive Committee, followed by public consideration by City Council within 90 days.

Due to the unavailability of Integrity Commissioner Angela Kruk, an Alternate Integrity Commissioner was assigned to review the complaint in accordance with the bylaw provisions. Former Integrity Commissioner Randy Langgard undertook the investigation.

Section 24(2) of *The Code of Ethics Bylaw* requires the Integrity Commissioner to report to Executive Committee where a violation of the Bylaw has been determined:

- The Alternate Integrity Commissioner filed the attached final investigation report (Appendix A) with the Office of the City Clerk on March 30, 2023 for consideration by Executive Committee.
- Executive Committee considered the report at a special meeting in-camera on May 2, 2023 in accordance with the provisions of the bylaw.

City Council's response to the investigation report must be done in a public meeting and the report must be made available to the public.

The Integrity Commissioner has made an independent ruling based on review of information, and City Council is only responsible for disciplinary action. Council may impose a censure, sanctions and corrective actions recommended by the Integrity Commissioner or any other censure sanctions and corrective actions allowed by law (as outlined in Option 1).

City Council has no legal authority to remove or suspend a member of Council from office arising from a substantiated ethics bylaw complaint.

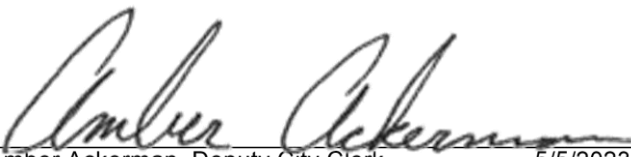
DECISION HISTORY

On May 2, 2023, Executive Committee considered item *E23-18 - Integrity Commissioner Report* in private session.

Section 25(1) of *The Code of Ethics Bylaw, Bylaw No.2017-4* requires Council to consider an investigation report within 90 days after the report is provided to Executive Committee.

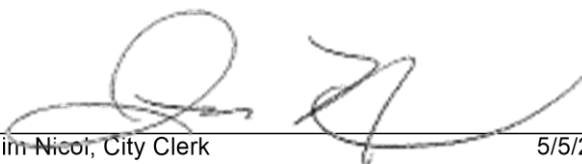
Respectfully Submitted,

Respectfully Submitted,



Amber Ackerman, Deputy City Clerk

5/5/2023



Jim Nicol, City Clerk

5/5/2023

Prepared by: Jim Nicol, City Clerk

ATTACHMENTS

Appendix A - Alternate Integrity Commissioner Investigation Report

DATE: March 30, 2023

**RE: CITY OF REGINA CODE OF ETHICS BYLAW NO. 2017-4
INTEGRITY COMMISSIONER INVESTIGATION REPORT
CODE OF ETHICS COMPLAINT REG23-02**

THE COMPLAINT:

1. A complaint was submitted by Councillor Terena Nelson (the “Complainant”) to the Integrity Commissioner on January 17, 2023 (the “Complaint”). The Complaint alleged that Councillor Andrew Stevens (the “Respondent”) contravened the confidentiality provisions of the City of Regina (the “City”) Code of Ethics Bylaw No. 2017-4 (“Code”).
2. The substance of the Complaint is that on July 4, 2022, the Respondent breached the Code by using his email to circulate a confidential report received from the Integrity Commissioner. The Complainant alleges the confidential report was only intended to be seen by the Complainant and the Respondent. The Complaint further alleges the Respondent violated this confidence when he improperly circulated it to all other members of City Council and to the Acting City Clerk, Acting City Manager, and the City Solicitor.
3. Upon receipt of the Complaint, the Integrity Commissioner determined that she was unable to act on it, thus invoking an alternate process for dealing with complaints pursuant to Section 16 of the Code. Under this section, the City Solicitor and the City Clerk are required to determine whether there is a basis for investigating the Complaint. If they determine there is such a basis, they have administrative power under Section 16(2)(c) to appoint an ‘alternate’ Integrity Commissioner to investigate the Complaint in accordance with the Bylaw.
4. After reviewing the Complaint and related materials, on or about February 1, 2023, the City Solicitor and the City Clerk determined that there was a basis to investigate the Complaint. In their decision to investigate they appointed me, as the alternate Integrity Commissioner, to pursue the matter. The appointment is for the purposes of this complaint only. A copy of their written decision is attached as Appendix “A” hereto.

FACTS:

5. The confidential report forming the subject matter of the Complaint is dated June 13, 2022 (the “Confidential Report”). Each and every page is clearly marked as “CONFIDENTIAL”. It summarizes a variety of allegations under the Code that were made against Councillor Nelson by Councillor Stevens earlier in 2022. The allegations covered in the report were all dismissed by the Integrity Commissioner, either because they were found to be unsubstantiated or because there was an insufficient basis to investigate them.

6. The Integrity Commissioner sent the Confidential Report to the Respondent via email on June 13, 2022. That email states, in part: "This report is provided to yourself and the respondent [referring Councillor Nelson] only and is still considered confidential."
7. Councillor Stevens had concerns with the Confidential Report.
8. On July 4, 2022, the Acting City Clerk sent an email to all members of City Council and to the Acting City Manager and the City Solicitor. This email alluded to a different report to be considered by the Executive Committee at its next meeting. The subject matter to be dealt with related to other allegations against Councillor Nelson by Councillor Stevens that the Integrity Commissioner determined were substantiated. That report was dealt with by the Executive Committee and later by City Council, with the result that it became part of the public record, as required by the Code.
9. Within minutes after receiving the email from the Acting City Clerk, in paragraph 8, above, the Respondent used the "Reply to All" function to send his own email, in response. In so doing, he was responding to all members of City Council, as well as the Acting City Clerk, Acting City Manager, and the City Solicitor. In his email, he questioned why the Confidential Report he had received from the Integrity Commissioner on June 13, 2022, was not included with the report that was to be considered by the Executive Committee. To further his point, he attached the Confidential Report as a PDF.
10. The Respondent admits sending the email in question, though he states it was only intended for the City Solicitor. He says it was "in error" that he sent it to the other parties and that he "regretted it immediately". He also refers to it as a "lapse in judgment" but one caused by the frustration he experienced with the complaint process. Lastly, but importantly, the Respondent does not deny that the Confidential Report that he disclosed to was, in fact, confidential.
11. As one of the recipients of the Respondent's email on July 4, 2022, the Complainant immediately emailed the Acting City Manager, indicating that the report the Respondent sent out was confidential. Later that afternoon, the Complainant also emailed the Integrity Commissioner, forwarding a copy of the email the Respondent sent out. However, the Complainant did not file a complaint with the Integrity Commissioner at that time. As noted at the outset of this report, the Complaint was not filed until January 17, 2023, being several months later.

ISSUES:

12. When the Respondent sent out the email on July 4, 2022, referring to and attaching a copy of the Confidential Report received from the Integrity Commissioner, did he violate any of the confidentiality provisions of the Code?

The relevant confidentiality sections of the Code appear to be as follows:

Confidentiality

12(1) Members shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by Council to do so.

Investigation Report

24(3) Where the complaint is dismissed, other than in exceptional circumstances the integrity commissioner shall not report to Executive Committee except a part of an annual or periodic report.

Confidential

27(2) The integrity commissioner and every person acting under the commissioner's instructions shall preserve secrecy with respect to all matters that come to the commissioner's knowledge in the course of any investigation or complaint except as required by law.

ANALYSIS:

13. In preparing the within report, I am guided by section 27(4) of the Code, which states that "the report shall only disclose such matters as in the integrity commissioner's opinion are necessary for the purposes of the report."
14. Section 12(1), cited above, is the general confidentiality provision of the Code, drawn directly from the provincial guidelines that were enacted several years ago. I do not think it is applicable to the present fact situation, as the Confidential Report in question was not "acquired" by the Respondent "by virtue of their [his] office". Rather, it was received by the Respondent the same way any complainant would normally receive it where allegations are dismissed. In my opinion, section 12(1) is meant to apply in situations where a member of council acquires confidential information in their official capacity.
15. The other provision of the Code that needs to be reviewed in present case is section 27(2), cited above. In her email to the Respondent on June 12, 2022, the Integrity Commissioner's instruction made it clear that the report was confidential (see section 6, above). The Integrity Commissioner's instruction to the Respondent is consistent with the requirements of the following sections of the Code:

27(1) The integrity commissioner or, in the case of section 16, the City Solicitor and City Clerk, will use all reasonable efforts to process complaints in confidence.

23(3) Where the complaint is dismissed, other than in exceptional circumstances, the integrity commissioner shall not report to Executive Committee except as part of an annual or periodic report.
16. The Code applies to members of City Council. As a member, the Respondent was bound by the Integrity Commissioner's instruction regarding the confidentiality of the matters covered by her investigation, in the Confidential Report.
17. I find that the Respondent violated Section 27(2) of the Code when he sent out the email on July 4, 2022. The Code does not require that the breach of confidentiality be intentional, though I believe it was intentional when sending it to the City Solicitor. The Respondent says it never occurred to him that sending it to the City Solicitor was inappropriate. That said, I can find no 'exemption' in the Code that would make such a disclosure permissible.

18. I can accept the Respondent's assertion that his disclosure may not have been intentional in relation to the other parties, though it was certainly careless. The Respondent has admitted to being frustrated at the time in question and has referred to a "lapse in judgment" on his part.

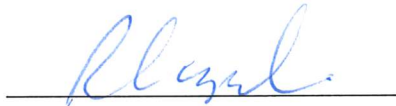
RECOMMENDED SANCTIONS:

19. Section 24(2) of the Code requires that where I have determined that a complaint is substantiated, I must report my findings to the Executive Committee, including the terms of settlement or recommended censure, sanctions or corrective action.
20. The possibility of having the parties come to terms of settlement was explored - unsuccessfully.
21. Also, the Respondent has advocated for an alternate dispute resolution process, such as third-party mediation, to resolve any differences between the two parties going forward. While I have some sympathy for this suggestion, it is not possible unless both parties are amenable to it. The Complainant does not feel such a process is necessary, as she feels the parties have demonstrated an ability to work together on City business, which is paramount. She feels the current issue is the breach of confidentiality itself, and that it needs to be addressed directly.
22. The Respondent maintains that he apologized to the Complainant for the disclosure he made, though the apology was not made until later-on, on the same day the report mentioned in paragraph 8 was being dealt with by the Executive Committee. The two parties had excluded themselves from consideration of that report at the Executive Committee meeting. It was while they were waiting outside of the committee room that the Respondent says the apology was made by him to the Complainant.
23. The Complainant, being Councillor Nelson, admits the meeting with the Respondent took place as stated. She admits the Respondent told her he made a mistake when he sent out the email with the Confidential Report attached, as he did, but she denies that he apologized for it. As such, there is a dispute over whether an apology was made or not. I am left with two different – both credible - recollections of what happened, with no way to determine which is accurate.
24. The Respondent admits he made an error in relation to his email. He says that he has increased his vigilance of the "Reply to All" function.
25. My recommendations are as follows:
 - a. That the Councillor Stevens be censured or reprimanded by City Council for disclosing the Confidential Report, as he did; and
 - b. That Councillor Stevens provide Councillor Nelson with a written apology, to settle the matter.

OTHER COMMENTS:

26. While not essential to my findings and recommendations in this report, what follows are a few comments I would like to make, which may be helpful, arising from my investigation:
- a. The Complainant, Councillor Nelson, says she did not file her complaint in relation to disclosure of the Confidential Report because she was uncertain whether doing so would somehow cause the Confidential Report to go public, possibly damaging her reputation. This is a valid concern, given that the report had already been inappropriately disclosed. Thankfully, no further disclosure of the report can be documented. I note there currently is no time limit on when a complaint must be made under the Code, though it is preferable that such be made on a timely basis, while memories are fresh and witnesses are still available. Some limitation on how long after an event occurs that a complaint can be made might be considered in any amendments to the Code in the future; and
 - b. I accept the Respondent, Councillor Stevens, had certain frustrations with the complaint process. In the future, where that or similar concerns exist, I recommend that, before acting, members consider seeking an advance ruling from the Integrity Commissioner, under section 18. This may help members decide how they can best make their concerns known, without triggering a violation of the Code.

ALL OF WHICH IS RESPECTFULLY SUBMITTED TO THE EXECUTIVE COMMITTEE OF
REGINA CITY COUNCIL, THIS 30th DAY OF MARCH, 2023.



Randy Langgard

Alternate Integrity Commissioner



Assessment of Complaint REG23-02 and Appointment of Alternate Integrity Commissioner

Pursuant to clause 16(1)(c) of *The Code of Ethics Bylaw*, Bylaw 2017-4, the Integrity Commissioner, Angela Kruk, has advised that she is unable to investigate Complaint REG23-02 that she received on January 16, 2023 with additional information received on January 17, 2023.

Pursuant to subsection 16(2) of *The Code of Ethics Bylaw*, where an integrity commissioner is unable to act, the complaint is forwarded jointly to the City Solicitor and City Clerk. On receipt of such a complaint, the City Clerk and City Solicitor are required to consider whether it should be investigated considering whether the complaint falls within the jurisdiction of the Bylaw, whether there are sufficient grounds for an investigation and whether it is frivolous or vexatious.

Where a determination is made that a complaint shall be investigated, the City Solicitor and the City Clerk shall appoint an integrity commissioner to carry out the duties in *The Code of Ethics Bylaw* including investigating and determining if the member has violated the Bylaw and reporting and making recommendations to Council on appropriate censure, sanctions or corrective actions, if applicable.

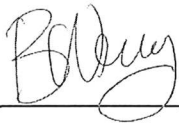
In accordance with these provisions, the City Solicitor and City Clerk have reviewed Complaint REG23-02 which consists of the attached documents: the complaint form provided by Councillor Shaw (nee Nelson) and the additional information which includes an e-mail from Councillor Stevens dated July 4, 2022 and attached Integrity Commissioner report dated June 13, 2022.

In terms of the considerations outlined in clause 16(2) of *The Code of Ethics Bylaw*, the City Solicitor and City Clerk have assessed the complaint and attachments and have made the following determinations:

- The complaint is within the jurisdiction of the integrity commissioner as it is a complaint of non-compliance with subsection 12(1) and possibly other provisions of *The Code of Ethics Bylaw* and it does not appear that it would be more appropriately addressed through another process.
- There appears to be sufficient grounds for an investigation as the complaint form has been filled out completely and the e-mail and attachment provided show that an integrity commissioner report on complaints that were dismissed (with such report being marked confidential) was provided by Councillor Stevens to all City Council members as well as Amber Ackerman, Byron Werry and Jim Nicol. Pursuant to subsection 24(3) of *The Code of Ethics Bylaw*, dismissed complaints are not to be provided to Executive Committee. Further, subsection 12(1) of *The Code of Ethics Bylaw* provides that council members are to refrain from disclosing or releasing confidential information acquired by virtue of their office except where required by law or authorized by Council. Further subsection 27(2) states that the integrity commissioner and every person acting under the commissioner's instructions shall preserve secrecy with respect to all matters that come to the commissioner's knowledge in the course of any investigation or complaint except as required by law. An investigation into this complaint would be able to determine if Councillor Stevens violated any of these sections of *The Code of Ethics Bylaw*.

- Finally, the complaint is not on its face frivolous or vexatious as violations of confidentiality are serious in nature.

Based on the above, it is the City Solicitor and City Clerk's view that this complaint should be investigated. To this end, the City Solicitor and City Clerk hereby appoint Mr. Randy Langgard, the City's former Integrity Commissioner, to undertake an investigation and determine if the member has violated *The Code of Ethics Bylaw* and to report and make recommendations to Executive Committee and Council on appropriate censure, sanctions and corrective action, if applicable. Details as to remuneration for this engagement are set out in a separate professional services agreement.



Byron Werry
City Solicitor



Jim Nicol
City Clerk