

TOWN OF GRAVENHURST CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT #100724

Complaint:

On July 10, 2024, I received a complaint naming Councillor Jo Morphy as the Respondent (the “Respondent”). The Complaint alleged that the Respondent attended a public meeting and disclosed the substance of a deliberation at the June 18th closed meeting, in contravention of section 7 of the Council Code of Conduct (the “Code”).

The Respondent was first elected to Office in 2018 and in her 2nd term as Councillor for Ward 2.

The Complaint alleges that the Respondent contravened the Code, with respect to section 7 – Confidential Information.

Code 7.0 Confidential Information

7.1 Members receive confidential information from a number of sources as part of their work as elected officials. This includes information received in confidence by the Town that falls under the privacy provisions of the Municipal Freedom of Information and Protection of Privacy Act and other applicable privacy law and information received during closed meetings of Council.

7.2 A Member shall not disclose the content of any confidential information, or the substance of deliberations, of a closed meeting. A Member has a duty to hold any information received at closed meetings in strict confidence for as long and as broadly as the confidence applies. A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.

The Complaint alleges that:

The Respondent and another Member of Council attended a public meeting.

On June 18, Council held a closed session to discuss a confidential matter. [The Respondent] was not in attendance. The Councillor was circulated the Council Agenda...and Closed Session agenda. The Councillor was provided no other information than the limited information of the 2 agenda.

[The Respondent] ...discussed the closed session subject at [the public meeting].

It is unclear what she reported [...] as she had no first hand knowledge of the discussion and the description on the agenda was vague.

Aside from the “Sorry for the mess I have created” ..., the Councillor has made no attempt to apologize to Council or explain what consequences she implies with this statement. She has not divulged further what exactly she said making it impossible to know what potential damage or risk to the potential acquisition has been done by discussing this sensitive information publicly.

In a nut shell the Councillor was provided accurate information on a subject to present while representing the Town yet invented information about a closed session agenda item she had limited to no knowledge of.

Issues Raised in the Complaint:

The Complaint sets out:

1. that the CAO provided information in an email to the Respondent and the other Councillor who attended a public meeting as Council representatives. The email contained a chart with various topics of interest to residents of the Town. The chart was entitled *Key Messages*.

Each topic contained a brief summary that the Councillors could use as a resource to update on the matter. Each topic concluded with the name of a staff person contact to whom residents could refer to obtain further information.

2. In a May 17th email to Mayor and Members of Council, the CAO wrote and attached four documents, prepared by members of the Senior Leadership Team, to assist Members when attending public meetings.
3. At the June 18, 2024 Council meeting, Agenda Item B was entitled Closed Session. Items #1 and #2 dealt with Disposition of Land. One of these Closed Session items was the subject that the Respondent discussed at a public meeting.

In an email to the CAO and Mayor, the Respondent wrote:

Well I have made a real error today. I mentioned [a confidential matter that was discussed at the June 18th Closed Session of Council]. I had completely forgotten it was done in closed.

I have written to [the Integrity Commissioner] asking for her advice.

Sorry for the mess I have created.

Process:

I conducted an initial classification review of the Complaint to determine if it is, on its face, a complaint with respect to non-compliance with the Code or whether the Complaint is covered by other legislation or complaint procedure under another Council policy. I concluded that it was, on its face, a complaint pursuant to the Code triggering the confidential information rule and I proceeded to open an investigation.

I provided Notice of receipt of a Code complaint to the Respondent with a request that she provide a written response. Upon receipt of the Respondent's reply, I forwarded a copy to the Complainant advising that they could provide further written comments, if any.

I provided a copy of my findings to the Respondent. Upon receipt of my findings, the Respondent provided a written statement, which I attach to this report as Attachment 1

The Respondent's Reply:

In her reply, the Respondent stated that:

I had been on vacation from June 6-20, 2024. The Committee of the Whole Agenda was 274 pages long. Preceding [sic] the Committee of the Whole meeting to take place on June 18, 2024, there was a one page Closed agenda. I read both agendas concurrently although I did not attend either meeting in person or virtually. In the simplest of terms I did not compartmentalize the Closed report from the Open Committee reports. The Closed portion refers to [confidential information] On the agenda, there is no reference to [confidential information]. Nothing that would normally trigger my memory to align it as being part of a closed session. This might have been discussed at the physical meeting but I did not have that information. I only had what was in print form.

As I did not attend the closed session where some conversation and more detailed information may have been given, I only had the one sentence of confidential knowledge. [confidential information about land disposition].

To be clear, I did not mention anything else from the closed agenda. Nothing about Item 1.

I attended [a public meeting]. It was during the question period when asked about [a matter of interest] that I did state that the District was possibly looking into [confidential information] but nothing was firm. [...] I simply made a very honest mistake and I feel horrible for this.

After the [public] meeting [another Member of Council] was kind enough to send me a note:

“Hi Jo, the [matter you discussed] was in our closed session agenda, unless you saw a report somewhere else?”

I replied:

“ Holy ---I am so sorry.”

I immediately wrote Ms Craig and emailed the Mayor and CAO. I then responded to [another Councillor]:

“I have written to [the Integrity Commissioner] asking her what I should do. I have emailed [the CAO] and [the Mayor] with apologies about what I have done. Thanks for pointing this out for me ...”

On June 23rd in a private email from CAO Lucas he wrote to me:

“Thanks for the heads up Jo. If there’s anyone that I should be following up with to clarify the situation, let me know.”

I replied on June 23rd:

Thanks Scott,

[Another Member of Council] was there. [...] I wouldn’t have compartmentalized the confidentiality of the document as I should have. I read the reports while on vacation and didn’t separate open from closed in my head. Good lesson for me. Not being physically in the room makes a difference. No excuse. This is all on me but maybe we should make a closed session”

CAO Lucas did not respond to my suggestion of a closed session.

On Monday or Tuesday following the weekend, I had a long call with CAO Lucas. At the end of the call I apologized again with my explanation as to what had happened. I once again offered to come to a closed session, explain my error and apologize to my fellow councillors. Ms. Craig [provided me with her advice]. Mr Lucas told me he would not be escalating the issue and did not request that I do that.

Mayor Lorenz did not answer my email that is attached nor did she call me to inquire about what had happened and what steps we should take to resolve this if any. The CAO had been very clear with me of his intent as did [the other Councillor]. We are the only four that knew.

I felt I had taken responsibility for my actions and conveyed this in writing to the Head of Council, the CAO and the Integrity Commissioner. I did not know what else I could have done to rectify the situation as stated in the complaint against me.

The Respondent explained in her reply to the Complaint that on looking at the agenda, there was no reference to a dollar amount or a time frame, thus she believed the minutes were not confidential. She further stated that there was nothing in the agenda minutes that “would normally trigger an understanding that [the minutes were] part of a closed session”.

Analysis:

Section 7 of the Code sets out that:

A Member shall not, either directly or indirectly, release, make public or in any way divulge any such information or any confidential aspect of the closed deliberations to anyone, unless authorized by Council or as required by law.

At issue in this complaint is the conduct of the Respondent is disclosing information publicly regarding matters that were discussed in Closed Session at the June 18th in-Closed Session Council Meeting. The Respondent does not dispute that she discussed matters that were subject of Closed Session deliberations. However, she states in her reply that she “did not compartmentalize the Closed report from the Open Committee reports” because she did not attend the Council meeting either in person or virtually.

Section 239 of the *Municipal Act*, 2001, contains the open-meeting rules for municipalities.

Meetings open to public

239 (1) Except as provided in this section, all meetings shall be open to the public. 2001, c. 25, s. 239 (1).

Subsection (2) contains the exceptions to the rule that meetings shall be held in public. Of particular relevance to this complaint is the exception found in clause b) which states that a meeting or a part of a meeting may be closed to the public if the matter being considered is...

(See Section 239 of the *Municipal Act*, 2001, attached as Schedule B)

The *Municipal Act* requires public notice of meetings and that all meetings be open to the public, unless they fall within prescribed exceptions.

With respect to Confidentiality, as a general rule, a municipality should conduct its business in an open transparent way. However, there are occasions when Council agenda may be conducted confidentially. There are certain statutory and, therefore, mandatory requirements for confidential consideration of matters under certain statutes such as the *Municipal Freedom of Information and Protection of Privacy Act*. In addition to the statutory requirements respecting confidentiality, there are other mandatory forms of confidentiality related to the protection of the Corporation. Finally, there are matters that Council is voluntarily permitted to consider confidentially under the *Municipal Act*. Those matters are set out in Section 239 of the *Municipal Act*, including with respect to the proposed disposition of land.

The Ombudsman of Ontario is the provincial legislative officer with the mandate over several accountability matters including being the default Closed Meeting Investigator for municipalities. The Ombudsman's webpage sets out that:

When a municipality is in the process of buying or selling municipal land, holding discussions about the land transaction in an open session could affect the municipality's bargaining position or negotiation strategy. The purpose of the exception for acquisition or disposition of land is to protect the municipality's bargaining position by permitting discussions to be held in closed session about a proposed or pending acquisition or disposition of land by a municipality.

The exception does not apply to discussions that involve speculation about a land transaction or discussions about land transactions that

may or may not happen in the future.^[2] The discussion must involve an actual land transaction that is currently pending or has been proposed.^[3] [...] a staff report on current and pending land transactions where the municipality is a party is likely to fit within the exception.^[4]

Neither the Respondent nor the other Member of Council who was in attendance at the public meeting have a clear recollection of what was said at the public meeting by the Respondent. While staff were unable to tell me if the disclosure at a public meeting would risk the Town's position vis a vis the confidential matter, typically the premature public disclosure of such matters, could be prejudicial to the interests of a property owner or the Town, when the acquisition of or sale of property is being investigated or negotiated.

It is of vital importance for the municipality to have each Member of Council respect the majority decision of the Town Council as to whether a matter should be considered confidentially. Once Town Council as a whole decides to consider the matter confidentially in a Closed Session meeting, then, unless that decision is reversed, each member of Council must abide by that decision. Depending on the nature of the issue, ignoring the closed meeting decision could expose the municipality to significant liability claims. In addition, the integrity of the Town Corporation, the Council, and Town Staff involved in the particular matters, could be undermined.

Even though the Respondent did not attend the June 18th open session or closed session meeting, an email from staff was sent out to all Members of Council, including the Respondent, that contained a link to the separate closed agenda. The Respondent received the emails about the June 18th meeting, and when she reviewed the materials, she would have seen the line that stated "that all materials within this folder are confidential and are not to be reproduced and / or shared." This is the standard confidentiality statement provided when all closed meeting agendas and documents are shared with Council.

Members of Council have the privilege of attaining elected office. That privilege carries significant responsibilities and obligations. In order to strengthen the role of Council and to enhance public trust, this Code of Conduct supplements existing provincial conflict of interest legislation and municipal by-laws that govern their conduct.

As stated in an article in the Municipal and Planning Law Reports¹, "[t]he rationale to exclude the public was to allow discussion to take place in an environment that

¹ Municipal and Planning Law Reports (Articles), 4th series, 2011. Transparent Municipal Governance: When Must a

encouraged fulsome debate without the scrutiny of the public or the prying lens of the media, so long as the decisions themselves were made in an open session." However, the 2006 amendments to the *Municipal Act*, brought about the requirement for all municipalities in Ontario to have mandatory procedural by-laws to ensure the transparency in meeting management.

While the Respondent has stated that she had inadvertently disclosed the substance of deliberations from a Closed Session meeting, it is important to note that the information in the agenda minutes was clearly marked by the Town Clerk's Office as confidential, and the Respondent knew or should have known that all information in the Closed Session agenda minutes should not have been disclosed or discussed in any way. By discussing the confidential information, the Respondent contravened section 7 of the Code. As a Member of Council, in order to conscientiously act on behalf of the public and uphold the oath of office, a Member is necessarily required to obey the rules contained in all of the governing legislation of the municipality, in particular with respect to maintaining confidentiality.

Findings:

I find that the Respondent's disclosure of the substance of the deliberations of a Closed Session meeting is in contravention of section 7 of the Code.

Section 27 of the Code sets out that if the Integrity Commissioner determines that:

- b) a contravention occurred but:
 - i) the Member took all reasonable measures to prevent it;
 - ii) sought and followed the advice of the Integrity Commissioner and provided all relevant facts known to him or her;
 - iii) it was trivial;
 - iv) it was committed through inadvertence; or
 - v) it resulted from an error in judgement made in good faith

the Integrity Commissioner may so state in the report in the report and may make appropriate recommendations pursuant to the *Municipal Act*, including but not limited to, a recommendation of no penalty.

While this Office accepts that the actions of the Respondent were committed through inadvertence or an error of judgement made in good faith, in making my decision on sanctions, I took into consideration that the Town has in place a Procedure By-Law that

Meeting be Open? . Jason Reynar, p.2.

contains rules regarding *in camera* meetings and a Code rule to protect the confidentiality of matters from premature public disclosure. In addition, the Town's senior officials have provided information sessions to newly elected Members of Council on rules pertaining to the exercise of their duties, including those rules that relate to confidentiality.

I listened to the Respondent's explanation about her behaviour. She explained:

I had been on vacation from June 6-20, 2024. The Committee of the Whole Agenda was 274 pages long. Proceeding the Committee of the Whole meeting that take place on June 18, 2024, there was a one page Closed agenda. I read both agendas concurrently although I did not attend either meeting in person or virtually. In the simplest of terms I did not compartmentalize the Closed report from the Open Committee reports. The Closed portion refers to [...]. On the agenda, there is no reference to the amount of dollars they would be willing to spend for the purchase and no time frame was mentioned. Nothing that would normally trigger my memory to align it as being part of a closed session. This might have been discussed at the physical meeting but I did not have that information. I only had what was in print form.

I appreciate the Respondent's explanation that she did not intend to disclose confidential information. In fact, she states in her reply that she did not "compartmentalize" the closed session materials from the open session materials. The Respondent states that after the public meeting at which she discussed information that subject of a Closed Session of Council, she said that another Member of Council who was also at the event, "was kind enough to send me a note" advising that the matter I discussed at the public meeting "was in our closed session agenda".

In a 2018 Divisional Court decision², the Court reviewed the interpretation of "inadvertence" with respect to a contravention of the *Municipal Conflict of Interest Act* (MCIA). Inadvertence was said to involve "oversight, inattention, carelessness or the like". The Court found that the Respondent contravened the MCIA because although she believed in good faith that she had resigned her membership in a body; however, she had not followed the procedure set out in the body's By-laws to perfect her resignation.

In the Complaint before me, the Respondent admits that she disclosed matters subject of a Closed Meeting of Council but in explaining her behaviour she purports to a) have

² COOPER ET AL. v. WIANCKO ET AL., 2018 ONSC 342, 2018 CarswellOnt 676

disclosed confidential information inadvertently because she hadn't compartmentalized the closed from the open session materials, and b) she didn't believe that anything about the matter was confidential because those criteria that usually alert her to a matter being confidential, such as reference to the purchase price and a sale date, were not mentioned. After the fact, the Respondent turned her mind to what typically results in being subject of confidential cover, such as a dollar amount and a timeframe; however, I have no doubt that she will now pay closer attention to whether an issue is marked as confidential using other cues. I find that the Respondent disclosed information that was subject of a closed session agenda (out of the 274 page agenda, the closed session agenda was 1 page). She did not pay close enough attention to the closed meeting agenda topics and did discuss confidential information at a public meeting. I accept that the disclosure of confidential information was not intentional, however for section 7 to have any meaning with respect to a Member's obligation to maintain the confidentiality of closed session minutes, I have determined that inadvertence cannot entirely eliminate the need for a sanction.

It is insufficient for a Member of Council to claim to be unaware of what matters are confidential and should not be disclosed publicly, when the Town has clear processes that govern how Members shall be advised that information is part of a Closed Session agenda and how the information discussed at that meeting and the subsequent minutes are not to be disclosed or shared in whole or in part publicly until the information is made public by the Town. All Members of Council, including the Respondent received an email about the June 18th Closed Session Council meeting stating that the materials were confidential and should not be shared.

Recommendations:

Section 26 of the Codes states that when the Complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings and any remedial or corrective action.

Section 13 of the Code sets out that where Council receives a report from the Integrity Commissioner that there has been a violation of the Code by a Member, Council may impose the following penalties on the Member:

- a) A reprimand; or
- b) A Suspension of the remuneration paid to the Member in respect of his or her services as a Member for a period of up to ninety (90) days.

I recommend Council impose on the Respondent:

1. A penalty of a Reprimand; and

2. A remedial action of attendance at an information session with the Town Clerk's Office within 60 days of this report. In that session, the Respondent will discuss the relevant sections of the Town's Procedural By-law and the Town processes regarding receipt and the duty of care regarding confidential information received in Closed Session meetings.

I remain seized of this matter until I have received Notice from the Town Clerk's Office that the remedial action in 2 above has been concluded.

Respectfully submitted,

This 10th day of October, 2024



Suzanne Craig
Integrity Commissioner

ATTACHMENT 1

"Dear Colleagues,

When I realized that I had breached the code of conduct, I immediately reported my error to the CAO, the Mayor, and the Integrity Commissioner on the same day. I fully understand that there would be consequences for my actions, but it was important for me to address the mistake I had made, protect the Town's interests and apologize to all of you.

The investigation has been completed, and I accept the findings and recommendations made by the Integrity Commissioner. I believe these recommendations are fair and reasonable, and I am prepared to accept them as part of my commitment to uphold the integrity of our council.

Thank you for your understanding and support as we move forward from this incident."

Thanks

Jo