

**OFFICE OF THE INTEGRITY COMMISSIONER**

December 7, 2012

City Council
City of Hamilton

RE: Complaint of Misconduct against Councillor Russ Powers**Complaint**

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that Councillor Powers had contravened Section 2 of the Code of Conduct by providing false information relating to a "Stop" sign that had been erected in the Complainant's neighbourhood.

These sections state as follows:

- 2.1 The key statements of principle that underlie the Code of Conduct are as follows:*
- (a) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
 - (b) Members of Council shall be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;*
 - (c) Members of Council shall perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and*
 - (d) Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and Council.*

The substance of the complaint emanated from information that was provided to the Complainant by Councillor Powers in an email wherein Councillor Powers advised the Complainant that:

"The vast majority of pedestrian crossing signals, stoplights and stop signs are installed at the request of the neighbours and neighbourhood, either directly to staff or through the Councillor's offices...they may or may not meet the 'traffic

warrants' but in all cases, the locations are reviewed for safety issues. As I advised you in the past, traffic staff reviewed three locations along Newcombe Dr, Dundas and determined that the north leg of Linington Trail where it intersects with Newcombe Dr was considered the best and safest."

A subsequent email from Traffic Services for the City of Hamilton to the Complainant stated that:

"On October 13, 2010, Council approved a motion by the Ward Councillor to install an all-way stop at the intersection of Linington and Newcombe. Staff did not provide a formal report regarding this matter to Council....."

As a result of the information contained in these emails, specifically the information underlined by the Complainant, the Complainant believed that Councillor Powers had misled him by providing false information to him. The Complainant contended that the information provided to him by the City of Hamilton staff did not support the statement by Councillor Powers that studies were conducted relative to the installation of the "Stop" signs.

Investigation

The Complainant was interviewed and additional details of the allegations were obtained.

Councillor Powers was provided an opportunity to respond to the complaint and he did so in a timely and detailed manner.

City staff was also interviewed and information relating to their role in the location and installation of the "Stop" sign was determined.

The following are the results of the investigation:

On October 13, 2010, as a result of a Motion brought forward from the Public Works Committee, Council approved the installation of all-way "Stop" signs (signs) at the T-intersection at Linington Trail and Newcomb Road in Dundas (location). The signs were installed on November 16, 2010.

The erection of signs in any community normally results from two sources:

1. An identified need to solve a traffic control problem; or
2. From residents expressing a desire for signs.

Solutions to traffic control problems are normally identified by the Community Traffic Services Division (CTSD) as a result of traffic studies. These studies are common and are acceptable standards in the industry and measure:

1. Volume of traffic;
2. Collision history; and

3. Visibility.

Utilizing this method, CTSD conducted studies of this area in 2005, 2006 & 2008. The results of the traffic studies did not warrant the installation of signs at the location.

It was suggested that speed bumps be installed on Newcombe Road. CTSD also studied the potential of this possibility. Again, the study did not support the installation of speed bumps on Newcombe Road. As part of this study, there was discussion of the installation of a roundabout at Governors Road and Davidson Boulevard.

The Motion to Council on October 13, 2010 to erect the signs at the location was in response to neighbourhood requests to better control the traffic, particularly speed. This has been an issue in the community and there have been complaints made to Councillors and staff dating back to before 2005. Police have been called to step-up enforcement activity and the area was placed on the Neighbourhood Speed Watch Program.

As a result of this community interest to install the signs, a Notice of Motion was brought before the Public Works Committee on September 20, 2010 to install all-way "Stop" signs at the intersection of Newcombe Road and Linington Trail. This was followed by that Motion being made at the Public Works Committee on October 4, 2010 and approved by Council on October 13, 2010.

Once the signs had been installed, there were vocal expressions of displeasure from some residents in the neighbourhood. As a result, Councillor Powers conducted a survey of the neighbourhood, distributing 105 survey forms to residents on Newcombe Road, Linington Road and Cowper Court. A copy of the survey form is attached as Appendix "A".

This survey method is a common approach to identify opinions in a neighbourhood and although it is not a scientific survey, it does provide some measure of the preferences and opinions of those that return the survey and is a method accepted by Council.

In addition to Councillor Powers' initial survey, there was a second survey conducted by an unknown source which extended the survey area to a new subdivision on Newcombe Road up to Davidson Blvd. This survey utilized the same form as shown in Appendix "A". An additional 30 survey forms were distributed in this second survey.

The following are the results of the surveys:

Total Surveys Distributed	135
Total Surveys not Returned*	90

Total "Yes" to Removing the Signs 19

Total "No" to Removing the Signs 26

*Note: It was clearly enunciated on the Survey form that failure to return the survey was considered as opposed to removal of the stop signs.

The Survey form stipulated that to give consideration to the removal of the signs would require support from 50% + 1 of the affected properties that have been surveyed in the area.

Of the 135 forms distributed, there were 45 forms returned, 26 of those 45 returned forms or 58% were against the removal of the signs. However, as stipulated on the Survey form, failure to return the Survey form was considered as opposed to removal of the signs. This resulted in a conclusion that 116 of the 135 properties surveyed or 86% were opposed to the removal of the signs.

Throughout the process of the installation of the signs and the distribution of the Survey, Councillor Powers had considerable dialogue and email correspondence with residents and the CTSD and he was aware that the traffic studies conducted in 2005, 2006 and 2008 did not warrant the installation of the signs. Notwithstanding that the studies did not warrant that the signs be installed, the CTSD did not have any safety concerns if the signs were installed and they communicated that to Councillor Powers by email.

In addition, Councillor Powers had email correspondence with the CTSD as to the most effective location for the signs. There was some question whether to install the signs at the intersection of Cowper Court and Newcombe Drive or at the intersection of Linington Trail and Newcombe Drive. It was the opinion of the CTSD that the most effective location would be at Linington Trail and Newcombe Drive. This was communicated to Councillor Powers by email.


CTSD did not conduct another traffic study relative to the Motion that was presented to Council from the Public Works Committee on September 20, 2010 but they did review the installation of the signs and on September 15, 2010 advised Councillor Powers of their support to install the signs at Linington Trail and Newcombe Road.

On October 13, 2010 Council approved the installation of the signs. The CTSD did not submit a report to Council in relation to that Motion. That was a Motion from the Public Works Committee and had not been referred to CTSD for additional input.

FINDINGS

Based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that Councillor Powers acted in good faith with the Complainant in providing the information in his email and did not mislead the Complainant.

Also, based on the evidence compiled and reviewed and in accordance with the civil standard on the balance of probabilities, it is the Commissioner's finding that the complaint regarding the conduct of Councillor Powers is neither vexatious nor frivolous. As per Section 12(2) of By-Law 08-154, the fee for registering the complaint shall be refunded to the Complainant.



Earl D. Basse, Integrity Commissioner

cc: Councillor Russ Powers
Complainant

APPENDIX "A"



Hamilton

Neighbourhood Survey Newcombe Road & Linington Trail

In response to concerns raised by some residents regarding the recent installation of stop signs on Newcombe Road where it intersects with the northern leg of Linington Trail, you are being asked to provide your opinion about whether the signs should be removed.

In order to give consideration to the removal of these stop signs, we require support from 50% + 1 of the affected properties which have been surveyed in the area.

Question:

Would you support the removal of the stop signs on Newcombe Road (only) where it intersects with Linington Trail?

YES [] NO []

Household Name (only one per household address): _____
(required)

Address: (required) _____ Apt. No. _____

Phone #: (required) _____

Signature: _____
(required)

Comments: _____

Please return all questionnaires no later than Friday, March 11th, 2011.

Please note:

Any questionnaires not returned will be considered as opposed to removal of the stop signs.

*Or hand deliver to the Dundas Municipal Service Centre
(former Dundas Town Hall), 60 Main Street in Dundas for
forwarding to Ms. Russell.*

Mailing address:
Sue Russell
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Engineering Services Group
Environment and Sustainable Infrastructure Division
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320 - 77 James Street N.,
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