

# **CITY OF HAMILTON INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN**

**Citation: Cllr. Cassar re: Confidential Information Leak – DGB-HamiltonICI-25-003**

**Date:** February 28, 2025

## **REPORT ON COMPLAINT**

### **Overview**

[1] On February 11<sup>th</sup>, 2025 I received a Compliant from Councillor Jeff Beattie about Councillor Craig Cassar alleging that the latter leaked confidential information to members of the public on or about February 6, 2025 in violation of s. 5.(1) of Hamilton’s Code of Conduct for Members of Council (“COC” or “the Code”). In particular, the confidential information consisted of two motions Cllr. Beattie had circulated to the Clerk’s office and fellow councillors but which had not been released to the public.

[2] Although I am dismissing the Complaint against Cllr. Cassar, I am nevertheless issuing this Report as I believe it is in the interests of Members of Council and the public to better understand the application of the Code to breaches of confidentiality as well as complaints implicating a Member’s staff person.

### **Complaint**

[3] The complaint reads in its entirety:

On Feb 6th, between 11:50am and 12:50pm, Cllr. Cassar improperly circulated two motions pertaining to the deferral of expenditures on the Biodiversity Action Plan that I had submitted to Clerks for review, and other members of Council for their comments. These motions were circulated to some select members of the public, before the Motions had been properly vetted, checked for accuracy, procedural correctness and placed on the Public Agenda for the viewing by the General Public, with intent that this group might lobby or otherwise influence the decision making process of Council.

### **Relevant COC Provisions**

[4] The relevant COC provision reads as follows:

#### **SECTION 5: CONFIDENTIALITY**

5. (1) No Member of Council shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of his or her office, in either oral or written form, except when required by law or authorized by Council to do so.

## **Investigation**

### **The Leaked Motions**

[5] The motions are appended in full as Appendices “A” and “B” of this Report.

[6] The operative provisions of each motion were as follows:

#### Motion #1:

THEREFORE, BE IT RESOLVED:

That the Proposed 2025 Tax Supported Budget be amended as follows:

That 2025 Council referred item of Hamilton's Biodiversity Action Plan (PED21065(d)PW24040) be deferred from the 2025 budget to the 2026 budget, resulting in a net operating budget savings of \$560,000.

#### Motion #2:

THEREFORE, BE IT RESOLVED:

That the Proposed 2025 Tax Supported Budget be amended as follows:

That 2025 Council referred item PED 21065(d) Biodiversity Action Plan - Sr. Planner be deferred from the 2025 to the 2026 budget, resulting in a net operating budget savings of \$128,860.

That staff from the Planning and Economic and Development Department in the Planning Division assist in the interim to facilitate the development of the Biodiversity Action Plan governance model and other administrative and communications duties related to implantation of the plan.

## **Telephone Discussions and Email Exchanges with Cllr. Beattie**

[7] The following is a summary of our discussions, both by phone and email:

- The two motions that were prematurely made public pertained to the City's Biodiversity Action Plan.
- Before the motions had been included in the public agenda [ie. made available to the public] and within the first hour after sending his email to the Clerk's office and other Members of Council circulating the draft Motions on Thursday, February 6<sup>th</sup> at approximately 11:50 am, he was informed that members of the public had contacted a number of senior officials both within and outside the City expressing alarm about the two motions.

- After the General Issues Committee meeting on Friday, February 7<sup>th</sup>, where he had raised his concern about the leak of the motions, Cllr. Beattie was approached by Cllr Craig Cassar and [REDACTED].
- He stated that Councillor Cassar indicated that he had sent the draft motions to [REDACTED] after reading them.
- He further stated that Cllr. Cassar and [REDACTED] advised that it was [REDACTED] who disseminated the contents of the motions to outside parties.
- He expressed concerns about them prematurely releasing them to the general public and advised that he would be making a complaint to the Integrity Commissioner about it.
- In addition to [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]
- Both Cllr. Cassar and [REDACTED] were visibly remorseful and apologetic when they spoke to him on February 7<sup>th</sup>.

**Meeting with Cllr. Cassar**

[8] I met with Cllr. Cassar over Zoom on February 14<sup>th</sup>. The following summarizes my discussion with him:

- [REDACTED]  
[REDACTED]
- He forwarded Cllr. Beattie’s motion to [REDACTED]
- He did not leak the motions to the public and he did not direct [REDACTED] to do so. He was not aware [REDACTED] had leaked the motions until after Cllr. Beattie alerted fellow Members of Council that this had occurred.
- At some point after Cllr. Beattie raised the issue of the motions having been leaked, he spoke to [REDACTED] and learned that [REDACTED] had forwarded the motions to members of the Board of Hamilton’s Naturalists’ Club (“HNC”), which he described as a “partner” with the City in the City’s biodiversity initiative. [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]
- He indicated that [REDACTED] told him [REDACTED] did so because they were a very interested party in the subject-matter of the motions and because of the late release of the motions relative to when they were to be considered (at a meeting the next day) and as the time for public comment had passed, [REDACTED] felt it important that they be brought to the HNC’s attention as soon as possible.



[REDACTED]

- [REDACTED] gave the following rationales for why [REDACTED] thought it was okay to send the motions to outside parties when [REDACTED] did:
  - [REDACTED] didn't know the motions were not immediately public.
  - The motions were not marked "Confidential".
  - [REDACTED] knew the public agenda was not finalized until 5 pm (~4.5 hours after [REDACTED] disseminated the motions to members of the public) but thought Clerk's was not vetting motions and were simply adding them to the agenda immediately<sup>3</sup> so did not think there would be any harm in sending them out earlier.
  - This was the first year there was a Mayor's Budget such that motions needed to be brought to make changes to it, unlike in previous years, and the process was confusing and chaotic, with motions flying around multiple times every day leading up to budget meetings.
  - The lack of time for interested parties to respond to the motions if it had been left until the public release of the agenda.
  - [REDACTED]
- When I pointed out the reference to the motions as "draft" and that they were not yet on the agenda but would be added "shortly" in [REDACTED] email to the outside parties,<sup>4</sup> [REDACTED] essentially reiterated the points in the sub-bulleted items directly above.

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<sup>3</sup> [REDACTED] reason for thinking this, [REDACTED] explained, was that there were at least two motions already on the previously released public agenda for the February 7<sup>th</sup> GIC – one related to Green Maintenance Vehicles and another relating to Climate Change Initiatives – which [REDACTED] knew had been voted on before so they should not be on the agenda and if Clerk's was vetting motions for this agenda, they would not have made it on for this reason, leading [REDACTED] to believe they were not being vetted.

<sup>4</sup> See my summary of the email below.

- [REDACTED] questioned whether there was really any harm, pointing out that of the 36 letters or emails sent as written delegations relating to the subject motions,<sup>5</sup> only two of them were received before 5 pm on February 6, 2025 (ie. the time the agenda was or should have been released) and the other 34 were sent after that time. When I asked [REDACTED] about the timing of telephone calls to councillors that [REDACTED] had urged others to make in her email forwarding the two motions,<sup>6</sup> [REDACTED] had no similar information.
- [REDACTED] heard Cllr. Beattie express his concern about the fact his motions had been given to third parties before they had become part of the public agenda just prior to the start of the GIC meeting the next day.<sup>7</sup> When the meeting ended that afternoon and Cllr. Cassar returned [REDACTED] told him that [REDACTED] had been the one who had sent the motions to third parties. [REDACTED] Cllr. Cassar then walked over to Cllr. Beattie's office and apologized to him when he became free, telling him [REDACTED] did not know the motions were not immediately public.

**Email from Councillor Cassar to [REDACTED] t, February 6, 2025 @ 12:08 pm**

[10] Cllr. Cassar forwards Cllr. Beattie's email with the motions in question attached to [REDACTED] without comment.

**Email from [REDACTED] to Various Recipients, February 6, 2025 @ 12:35 pm**

[11] This email, which [REDACTED] sent from [REDACTED]<sup>8</sup> email address, not [REDACTED] City email address, having forwarded the above-discussed email from Cllr. Cassar from [REDACTED] City email address to [REDACTED] email address at 12:20 pm, was addressed to 15 recipients, all but 3 having "hamilton nature" email addresses.<sup>9</sup> After a preamble which included reference to the motions as "*draft motions*" and the statement "*the motions will shortly be added to the Jan [sic] 7 GIC agenda.*" [my emphasis], the operative portion of each of the subject motions (the same part I quote in summarizing them above) was pasted into the email. The message then goes on to state:

It's too late to delegate but I think we can and should send emails to ALL councillors all day today and tomorrow. And get on the phone to Beattie and Clark and leave messages. Emails won't make it on tomorrow's agenda at this point, but they will land in the inboxes of decision makers. Other

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<sup>5</sup> These were all included with the February 12<sup>th</sup> Council agenda as they all came in too late to be included in the February 7<sup>th</sup> GIC agenda.

<sup>6</sup> See my summary of the email below.

<sup>7</sup> [REDACTED]

<sup>8</sup> [REDACTED]

<sup>9</sup> One of the other 3 had a Conservation Hamilton email address and another recipient was with Environment Hamilton.

thoughts for an intervention are welcome. If we are loud enough, we can hopefully convince the majority to vote this down. Can HNC send out an eblast to e-newsletter subscribers today with directions of who to write to? [the highlighting is from [REDACTED] original email] I can help draft it. Short and sweet.

### **Telephone Conversation with Janet Pilon**

[12] I spoke with Ms. Pilon of the Clerk's office on February 21, 2025. She advised me that the Clerk's office would consider draft motions such as those circulated by Cllr. Beattie on February 6<sup>th</sup> to be confidential until they were formally placed on the public agenda and uploaded to Escribe. She is not aware of any training or notices to staff relating to confidentiality but offered that it was common sense that draft motions are to be treated as confidential until published with the public agenda. She indicated that Clerk's did review the motions sent to them by Cllr. Beattie as well as the others on the agenda for the February 7<sup>th</sup> GIC but agreed that due to the flurry of motions submitted for consideration at that meeting, the level of review of some of them was more cursory than might otherwise have been the case. She advised that Clerk's office records indicate that Cllr. Beattie's motions became public when they were published by Angela McRae at 5:01 pm on February 6<sup>th</sup>.

### **Excerpts from Councillors' Staff Employment Agreements**

[13] The standard form terms contained in the employment contracts of councillors' staff as of the time [REDACTED] was hired included the following:

#### **I) CODE OF CONDUCT**

You specifically acknowledge and agree to abide by the obligations outlined in the Code of Conduct for Employee's Policy now in force or which hereafter may be amended, revised or adopted in the sole discretion of the City of Hamilton from time to time. A failure to comply with this section constitutes both a breach of this Agreement and cause for termination without notice or compensation in lieu of notice.

...

#### **K) CONFIDENTIALITY/NON-DISCLOSURE**

You recognize that in the performance of your duties, you may acquire detailed and confidential knowledge of the City of Hamilton's operations, its taxpayers and residents, and other confidential documents and information. You agree that you will not in any way use, divulge, furnish or make accessible to any person, either during your employment or any time thereafter, any confidential information relating to the business of the City of Hamilton, or of its taxpayers and residents, acquired by you in the course of your employment with the City of Hamilton.

[14] The terms of employment of councillors' staff make clear their obligation not to "divulge, furnish or make available... any confidential information relating to the business of the City of Hamilton... acquired by [them] in the course of [their] employment with the City of Hamilton."

**Employee Code of Conduct, Schedule C- Business and Financial Integrity**

[15] Sections 8, 9 and 11 of this Schedule state as follows with respect to Confidential Information:

8. Employees must ensure that information is securely held and used only for the purposes for which it was collected. Every employee shall safeguard confidential information and shall not release confidential information to anyone other than the persons who are authorized to receive such information.

9. Employees must not:

(a) Collect, use, modify, copy, disclose, transfer or destroy Confidential Information except to the extent required for the purpose of and in the course of employment related duties and in accordance with application legislation (e.g., MFIPPA, PHIPA).

(b) Collect, use, modify, copy, disclose, transfer or destroy Confidential Information for personal use or the use of someone else or an organization other than the City.

...

***11. Employees shall consult with the Manager, Records & Freedom of Information in the City's Clerk Division if clarification is required [emphasis added].***

[16] The definition of "Confidential Information" in the Employee Code includes "Sensitive Organizational Information – confidential or *internal (non-public) information,,,*" ***[emphasis added].***

**Analysis**

**Preliminary Issue: Can a Member of Council be Found in Breach of the Code of Conduct on Account of the Actions of the Member's Staff?**

[17] The title of the document I am retained to enforce is "Code of Conduct *For Members of Council* [emphasis added]. In Section 1(j) of the COC, "Member" is defined as "unless the context otherwise indicates, means a Member of the Council of the City of Hamilton." As can be seen, unless the context otherwise indicates, the Code definition of "Member" is not extended to apply to the conduct of the staff of Members. Accordingly, I find that this means two things:

1. A staff person cannot be found in breach of the Code of Conduct For Members of Council "unless [a particular provision of the Code] otherwise indicates;"



2. A Member, cannot, per se, be found in breach of the COC merely because his or her staff person does something that, if he/she had been a Member, would violate the Code.

[18] Having said that, if it is found that the Member directed his/her staff person to engage in conduct that amounts to a violation of the Code, or was aware of the staff person's intent to engage in misconduct and failed to direct the staff person not to commit the misconduct, it is my opinion that the Member would be in breach of the Code as if the Member committed the violation him- or herself.<sup>10</sup>

[19] In this case, all of the subsections of Section 5 of the Code dealing with confidentiality refer specifically to "Member of Council" or "Member", which leaves me with no doubt that the Section was only intended to be enforceable against Members of Council. Therefore, in order to find a COC violation, I must not only find that █████ committed what would be a breach of the Code if █████ was a Member, but that Cllr. Cassar directed █████ to engage in the misconduct, or was aware of █████ intent to engage in that misconduct and failed to direct █████ not to do so.

### **Findings**

[20] I find that the two motions constituted confidential information ("internal (non-public) information") at the time █████ disseminated them to third parties who were not authorized to possess that confidential information. They were draft motions subject to being vetted by the Clerk's office, or possibly amended following informal feedback from other councillors, and had not been publicly released through official channels as would be the case once they were released as part of the public agenda. Furthermore, I am satisfied that █████ owed a duty in █████ own right to maintain confidentiality over these documents.

[21] Cllr. Cassar passed on the confidential motions to █████, █████. I do not regard that as a violation of s. 5.(1) of the Code of Conduct. In my experience, it is routine for councillors employing support staff to pass on communications, including those of a confidential nature, to those staff for filing and possible action (eg. research), safe in the knowledge that staff are bound by the same confidentiality obligations as they are by virtue of the City's Employee Code of Conduct.

[22] I am satisfied, based on the interviews I conducted with both Cllr. Cassar and █████, as well as his email to █████ transmitting the motions, that Cllr. Cassar did not direct █████ to disseminate the motions to third parties outside of the City and, prior to the time that this happened, was not aware of █████ intention to do so and had no opportunity to direct █████ not to do so. I also find that once he learned of █████ actions, he took immediate steps to apprise Cllr. Beattie of what had happened.

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<sup>10</sup> I came to a similar conclusion in my capacity as IC for another municipality, although the Code complaint in question in that case did not involve breach of confidentiality: see Complaint re: Mayor's EA Harsadan Khattrā – DGB-CaledonICI-2024-04.

## Concluding Remarks

[23] Breaches of confidentiality need to be treated seriously as they lead to an erosion of respect for Council and the municipality itself amongst members of the public. It is also typically very difficult to hold the offenders to account where they are determined to hide their tracks. For these reasons, where a breach of confidentiality is verified, it should be dealt with harshly as a deterrent to such conduct in the future given the difficulty in verifying such actions in most cases. Doing otherwise, even where the particular breach may be regarded as relatively innocuous, can be seen as promoting a culture of disregard for confidentiality where a particular individual decides their personal interests would be advanced by disseminating the confidential information.

[24] While I have exonerated Cllr. Cassar in relation to any wrongdoing in relation to the leak of the subject motions, the fact is that [REDACTED], [REDACTED], did breach confidentiality, whether wilfully or innocently. [REDACTED], [REDACTED] has unique access to highly confidential information provided to [REDACTED] principal. I hasten to repeat that I am not responsible for dealing with staff violations of their code of ethics and am not making any findings in this regard. I am, however, initiating a formal complaint with the City's HR Department to have [REDACTED]'s conduct reviewed for possible breach of the City's Employee Code of Conduct.

[25] [REDACTED]  
[REDACTED]  
[REDACTED]

[26] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,  
Integrity Commissioner,  
City of Hamilton