



OFFICE OF THE INTEGRITY COMMISSIONER

May 16, 2012

City Council
City of Hamilton

RE: Complaint(s) of Misconduct against Mayor Robert Bratina

Complaint

A Complainant filed an affidavit under section 9 of the Integrity Commissioner By-Law alleging that on four occasions, with regards to the raise given by Mayor Bob Bratina to his Chief of Staff, Peggy Chapman, Mayor Bratina had contravened Sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) of the Code of Conduct.

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.*

13.2 *Under the direction of the City Manager, City employees serve the Council as a whole, and the combined interests of all members of Council as evidenced through the decisions of Council. Accordingly:*

- (a) members of Council shall be respectful of the role of City employees to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council;*
- (b) no member of Council shall maliciously, falsely, negligently or recklessly injure the professional or ethical reputation, or the prospects or practice of City employees; and*
- (c) members of Council shall show respect for the professional capacities of City employees.*

The body of the complaint is as follows:

Allegation #1:

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) when in an interview on Tuesday, December 6, 2011, he stated, "I didn't give a raise, she didn't ask for a raise". Mayor Bratina in an email dated Wednesday December 7, 2011 wrote "HR evaluates everything. I didn't ask for it. It came from HR."

Mayor Bratina later admitted that the request for the salary information came from his office and his office was the impetus for the raise. It should be clear to all that Mayor Bob's comments were anything but "an unintentional misunderstanding".

Note that on Dec. 13, 2011, the O Show on Cable 14 showed a video clip of Mayor Bratina who at the meeting in February, 2011 stated: "My own Chief of Staff who is here, who has done a wonderful job when we were looking over the salaries over the past several years of people in that position, she decided on her own that she would take \$20,000 less on an annual basis than what had been paid." Mayor Bratina did not need to ask the HR Department for the salary range in Dec. since he was discussing the salary ranges with the public and Ms. Chapman when she accepted the position.

Allegation #2:

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), 2.1(d), 13.2(b) and 13.2(c) when during the council meeting on Tuesday Dec.13, 2011 Mayor Bratina stated "It would have been public knowledge. You get it leaked anyway." and "So there are a whole range of issues that have to be looked at in terms of why this city can't maintain confidentiality." and "So it was obviously leaked by somebody" All of these statements try to pin the blame on city staff. Later Mayor Bratina acknowledged that it was his office that released the details of the Peggy's raise on Cable 14 via The O Show.

Allegation #3:

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), and 2.1(d) when mayor Bratina during the council meeting on Tuesday Dec. 13, 2011 stated numerous times that he supports and believes in open and transparent government and that his (the Mayor's) office is open and transparent.

During that same meeting he also stated that "So it was obviously leaked by somebody" and "So there are a whole range of issues that have to be looked at in terms of why this city can't maintain confidentiality."

It is clear from these last statements that Mayor Bratina does not believe in government transparency.

Allegation #4:

Mayor Bratina contravened the Code of Conduct for members of the City of Hamilton's Council, sections 2.1(b), 2.1(c), and 2.1(d) when Mayor Bratina on Tuesday Dec. 13, 2011 released a letter to the media that states "The statement I made was very brief, with the intention of protecting the privacy of my employee as required by employment law." The fact is that Mayor Bratina was trying to justify his comments by hiding behind a "law" that does not exist. There is nothing in employment law that precludes any employer from disclosing to the public the earnings of each and every one of their employee.

Investigation

The Complainant was interviewed and additional details of the allegations were obtained. Mayor Bratina was provided a copy of the complaint and responded in writing to the allegations. In addition, City staff was interviewed and a volume of documentation relating to budgets and financial information of the Mayor's Office along with other relevant documentation was compiled and reviewed.

Allegation #1, #2 and #3:

These allegations all stem from the same set of circumstance and are being addressed together.

For ease of understanding, there are two relevant time periods connected to this complaint. The first is the late fall of 2010. The second relevant time period is the fall of 2011 when the contract for the Mayor's Chief of Staff was reviewed.

Fall 2010:

From the information obtained in the course of this investigation, it was learned that when Mayor Bratina took office in December 2010 and staffed the Mayor's Office, he did so with less staff positions than the previous two administrations. According to City records, the Mayor's office was staffed as follows:

October 26, 2005: 7 administrative staff positions
September 10, 2010: 8 administrative staff positions
March 3, 2011: 4 administrative staff positions

According to City staff, this reduction in administrative staff positions was a conscious decision on the part of the Mayor as he wanted to begin with a lean office then evaluate the needs of the office over time and determine at a later date the appropriate staffing levels for the Mayor's Office.

Prior to taking office in 2010, Mayor Bratina and his Chief of Staff, Margaret Chapman, met with HR staff to determine an appropriate level of compensation for the Chief of Staff. Compensation for the position of Chief of Staff is included in the Salary Budget for the Mayor's Office and is at the discretion of the Mayor. HR's function in these proceedings is to provide the Mayor with information to assist him in making his decision.

HR staff compared the Chief of Staff Salary Grades for previous administrations. These were at Grade 9 for the administration immediately preceding Mayor Bratina and at Grade 10 for the administration prior to that. HR recommended that Mayor Bratina's Chief of Staff commence her salary at Grade 9.

At the time, it was not certain the scope of the responsibilities of the Chief of Staff nor was there a clear definition of the duties upon which to correctly base a salary grade. Mayor Bratina, in keeping with a lean budget for the Mayor's Office, started the Chief of Staff at Salary Grade 8 with the intent that it be evaluated during the annual review in 2011. The Chief of Staff agreed with this salary grade.

Fall 2011:

According to Mayor Bratina, the role and duties of the Chief of Staff evolved throughout her first year and it became clear and obvious that Pay Grade 8, in which she had agreed, was not suitable.

In September 2011, the Mayor's Office contacted HR to request a salary review and increase in salary when the annual review and contract renewal for the Mayor's Chief of Staff came due in November 2011. Changes in salary for staff in the Mayor's Office are at the discretion of the Mayor. HR began the process of developing information to assist the Mayor in making his decision.

In determining an appropriate pay level for staff, it is normal procedure for HR staff to research a number of sources. One of the sources commonly used by municipal HR staff is the Mercer Survey. Mercer International is an HR consulting firm that surveys compensation packages of municipalities and provides an Annual Report for comparison purposes. Comparative information to that of the Chief of Staff for the Mayor was not found in the Mercer Survey.

HR staff then conducted their own survey of other municipalities to provide a benchmark for compensation of the position of Chief of Staff. The results of this survey were not conclusive:

- The job description for the Mayor's Chief of Staff did not precisely compare with other similar positions in other municipalities;
- There were variants in the compensation packages of other like positions in other municipalities that were not comparable with the position of The Chief of Staff.

The results of this research were communicated to the Mayor's Office.

In October 2011, the Mayor's Office asked HR for and was provided with salary information for senior staff in the Mayor's Office of previous administrations and the current administrative positions in the City Manager's Office. According to a series of emails, the Mayor decided on Salary Grade 10 as the new salary level for his Chief of Staff. The Mayor came to this decision based on the pay grades of previous Chiefs of Staff and the fact that the Mayor had merged all duties of the Chief of Staff, Senior Advisor and Communications into the position of the Chief of Staff. This level was incorporated in the new contract for the Chief of Staff and signed off by the Mayor on November 10, 2011.

This resulted in a re-classification of the position of Chief of Staff from a Salary Grade 8 to a Salary Grade 10. This re-classification resulted in a significant increase in compensations for the Chief of Staff.

In conducting this investigation and to give me some insight into the cost of the Mayor's Office and the salary expenditures, I performed a comparison of Salary Expense for the Mayor's office from 2003 to 2011.

It is significant to note that in 2011, the Actual Salary Expense for the Mayor's Office was \$313,379 compared to \$595,496 in 2010, a reduction of \$282,117. It is also significant to note that the Actual Salary Expense for 2011 was under budget by \$345,556 and the Actual Salary Expense for 2011 was significantly smaller than any of the Actual Salary Expense for the Mayor's Offices between 2003 and 2011.

On December 7, 2011, Mayor Bratina and his Chief of Staff met with the Spectator Editorial Board. The video stream of that meeting was reviewed. Near the end of the interview Mayor Bratina was questioned about the appropriateness of giving a \$30,000

raise to his Chief of Staff. There was considerable discussion and Mayor Bratina provided information. At one point Mayor Bratina stated,

“None of this would have happened if she received the level of compensation that is designated for that post when she hired on in November of 2010. So what’s happened...is the citizens got a \$30,000 bonus that she was not paid, that should have been paid according to, not mine, but the parameters that are set out by HR. This job description, that’s the pay line.”

During this same interview, Mayor Bratina was asked the following question:

“HR evaluated obviously. Who asked for the evaluation?”

Mayor Bratina responds:

“HR evaluates everything. I didn’t ask for it.”

Mayor Bratina was then asked:

“Was it a specific request from the Mayor’s Office?”

The Mayor responded to this question by elaborating on a number of evaluations that were occurring at that time and stated in his response... “I guess you would say me in terms of evaluating all the jobs...”

As noted herein, Mayor Bratina’s response to the question of the appropriateness of a \$30,000 pay raise was:

“None of this would have happened if she received the level of compensation that is designated for that post when she hired on in November of 2010. So what’s happened...is the citizens got a \$30,000 bonus that she was not paid, that should have been paid according to, not mine, but the parameters that are set out by HR. This job description, that’s the pay line.”

The investigation found that this is not accurate. From the evidence compiled, it is clear that in the fall of 2010, HR Staff provided the Mayor with salary information on the position of Chief of Staff and recommended that the pay grade should be at Pay Grade 9. The Mayor did not follow this recommendation. It was the Mayor’s decision, and agreed by the Chief of Staff, that the pay grade be established at Pay Grade 8.

Mayor Bratina’s response to the question of who asked for the evaluation with “I didn’t ask for it” is not entirely correct. In the fall of 2010, it was agreed that after one year the Chief of Staff’s salary would be reviewed. The Mayor’s Office would consult with HR on an appropriate salary for the Chief of Staff. Thus, in the normal course of operations, it was the Mayor’s Office that planned for the salary review and it was the Mayor’s Office that had contacted HR to begin that process.

Mayor Bratina states that at no time did he intentionally attempt to lay the blame on HR for the significant raise in salary given to his Chief of Staff as a result of the re-

classification of the position. He states that it was his decision. Mayor Bratina met personally with the Director of HR and apologized for his comments and for any embarrassment he may have caused to her and her staff. He also apologized to Council for his actions.

I did not find any evidence to support Allegations #2 and #3.

Allegation #4:

Allegation #4 alleges that Mayor Bratina was trying to justify his comments by hiding behind a "law" that does not exist. The Complainant states that there is nothing in employment law that precludes any employer from disclosing to the public the earnings of each and every one of their employee.

That is not correct. The Municipal Freedom of Information Act (MFIPPA – Provincial Privacy Legislation) and the Personal Information Protection and Electronic Document Act (PIPEDA – Federal Privacy Legislation) protect a person's right to privacy and disclosure of specific salary earnings may be in violation of those statutes. Also, under labour case law, it would be inappropriate to divulge a person's salary without statutory or judicial authority to do so.

Provincial legislation requires that municipalities publish the names of employees whose salaries exceed \$100,000. The City of Hamilton complies with that legislation.

FINDINGS

Allegation #1:

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 on December 7, 2011 Mayor Bratina violated Section 13.2(b) of the Code of Conduct by providing erroneous information to the Spectator Editorial Board which had the potential of injuring the professional or ethical reputation of the City of Hamilton Human Resource staff had it not been for Council's pursuit of the matter and the trust and confidence they expressed in the City of Hamilton Human Resource staff.

Also, it is found that this was not a malicious or deliberate act by Mayor Bratina to mislead the Spectator Editorial Board or to discredit the professional or ethical reputation of the City of Hamilton Human Resource staff.

As per Section 19 of the Code of Conduct, I impose the penalty of a Reprimand on Mayor Bratina.

Allegation #2:

I find no evidence to support Allegation #2.

Allegation #3:

I find no evidence to support Allegation #3.

Allegation #4:

I find no evidence to support Allegation #4.

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 Mayor Bratina 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: Mayor Robert Bratina
Complainant