

Town of Orangeville Integrity Commissioner File 2017-02

REPORT ON COMPLAINT

The Complaint

A local resident (the Complainant) alleges that Councillor Sylvia Bradley breached sections 8.2, 8.3 and 8.5 of the *Code of Conduct for Council, Local Boards and Committees* by disclosing and using the Complainant's personal information (email address) without consent.

The facts that give rise to the Complaint are straightforward and are mostly undisputed. At the relevant time, the Complainant was a public member of a committee of Council. Councillor Bradley was also a member of the same committee. As a result of their membership on the same committee, Councillor Bradley was in possession of the Complainant's email address.

On June 21, at 12:46 p.m., Councillor Bradley sent the following email to 21 people, including the Complainant:

Subject: OPP/OPS

Hi all,

Just a heads up that a gentleman will be attending Council on Monday, June 26th to object to the town's decision to stay with OPS and ask for the item to come back to Council for a revote. If you would like to attend and show support and potentially speak on this issue please attend. I do know that there are others coming forward as well. Also, if you know of other outraged residents, please inform them and ask them to attend. We still have time to reverse this bad decision and make our way to saving taxpayers millions of dollars.

Since the vote, the community has been very vocal in their disappointment with the decision and with Council. During all the presentations, and information sessions OPS, their families and friends came out in mass. Very few resident supporting OPP came out since they thought this was a slam dunk, a no brainer and that of course Council would vote for OPP especially those that ran on being fiscally responsible or 'tax fighters'. That didn't happen. We still have time. I have seen things get reversed when the public demanded it.

Appreciate your support.

All 21 email recipients were public members of Council committees that Councillor Bradley chairs or of which she is a member:

- Nine recipients were public members of the Orangeville Sustainability Action Team (OSAT) Committee, which Councillor Bradley chairs.
- Seven recipients were public members of Heritage Orangeville, which Councillor Bradley chairs.
- Five recipients were public members of the Orangeville Public Library Board, of which Councillor Bradley is a member.

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As can be seen, the email was unrelated to Heritage Orangeville business, Library Board business and OSAT business.

At 8:55 a.m. the next day, the Complainant emailed Councillor Bradley to object to "a serious breach of privacy," because the Complainant's email address had been shared with the 20 other recipients and had been used for purposes unrelated to the Council committee on which the Complainant served, in both cases without consent. The Complainant concluded by giving notice of a complaint to the Integrity Commissioner.

Thirteen minutes after receiving the Complainant's email, at 9:08 a.m., Councillor Bradley apologized as follows:

First, I would like to apologize since I have offended you and that was certainly not my intent. As a Councillor, elected to govern, my email was simply intended to communicate an event that will be taking place and inviting those who are interested to attend. I was unaware that your email could only be used for committee communications. I will seek the advice of our Clerk for clarification since that would have implications for all committees.

By then, however, the Complainant was already completing a Complaint under the Code of Conduct, which was emailed to me at 9:25 a.m. (There is no indication that the Complainant actually saw Councillor Bradley's apology until after the Complaint had already been filed.)

Meanwhile, Councillor Bradley had reached out to the Town Clerk with a request for guidance. She emailed the Clerk as follows at 9:14 a.m.:

Susan, can you clarify the email issue[?] I did not know that we cannot use committee member email to communicate anything other than committee business. If that is the case, there would be huge implications for all committees since I'm sure we all use the email addresses for other purposes at times.

Also, can you comment on my email that I sent to various people. I did not think it was improper or I wouldn't have done it. I was just trying to communicate with committee members that had shared their disappointment in the OPP/OPS outcome.

At 9:21 a.m., the Town Clerk replied to Councillor Bradley to outline the rules on use of personal email addresses. Her email reads, in part, as follows:

It somewhat depends on where you got the email address. If you received it from staff for Committee purposes, then it should be used only for Committee business. There is usually a disclaimer on all our notices that says the personal information will only be used for that specific purpose.

If the email address was given to you voluntarily by a member of the Committee, then it might be okay to send them other information.

I think it would be best to clarify with members of the Committee if they want to receive other emails from the Town or members of Council or whether their email address is specifically for Committee business.

I will send a general email to all Committee secretaries, Department Heads, managers and members of Council, advising them that email addresses are personal information and they

should have the consent of individual members to use it for anything other than Committee purposes.

The Clerk then followed up, at 1:20 p.m., with a detailed email to all committee secretaries, department heads, managers, and Council Members. Because of its significance I am reproducing the communication at length:

Subject: Committee Members - Personal Contact Information

A public member of a committee recently expressed concern that an email unrelated to committee business was sent to members' personal email addresses in a group email. The individual considered it a breach of privacy.

There are two issues involved in the purported breach of privacy:

1. the email was sent to a number of recipients, which disclosed individual email addresses to everyone on the list
2. an individual's personal information was used for purposes unrelated to Committee business.

In order to avoid these issues in the future, please list this issue as an agenda item at your next Committee meeting, as follows:

Use of Personal Contact information

1. Committee members are advised that, by accepting a position on a Town committee, members consent to the use of their personal contact information (address, email address or telephone) by Town staff for committee purposes.
2. Do individual committee members consent to their personal contact information (address, telephone number and email address) being made available to and used by other committee members?

Minutes should reflect:

Member A	Yes
Member B	No
Member C	Yes

3. Do individual committee members consent to receiving emails from Town staff, members of Council, or other Committee members, unrelated to committee business?

Minutes should reflect:

Member A	Yes
Member B	No
Member B	No

Please note that a member can consent to their information being made available to other members, yet object to the information being used for anything other than committee business. **Each member must make their own decision. A motion of the committee cannot compel an individual to consent to the release of personal information.**

If a Committee member does not want to receive emails unrelated to Committee business, I recommend they not consent to the sharing of their information, which leaves their personal information with the secretary only and reduces the opportunity for inadvertent release by another member of the committee.

Once your committee has dealt with this issue, please:

- ensure committee secretaries create and maintain a list of committee members' decisions and appropriately protect the personal information;
- email me with the results, advising of the individual members' decisions and we will update our records to reflect the individual wishes of committee members.

Blanket emails to committee members

Going forward, any emails sent to committee members by staff or members of Council should be addressed to the sender and blind copied to the committee members. This resolves the issue of personal contact information being shared with others. For example, if I want to send an email to a committee, I address it to my own Town email account and blind copy everyone else. Committee members should be advised to do the same if they send emails to other Committee members.

Sharing Contact Information

A committee member's **name is public information** since Council approves committee appointments through a public by-law. A committee member's **personal contact information (address, telephone, email address) is confidential**. Under no circumstances should personal contact information be shared with anyone, including members of Council or the same committee, without the individual's consent.

If you receive a request for contact information, advise the requester to:

1. to send you an email which you will forward to the Committee member
2. the committee member will decide for themselves whether they wish to respond directly, through you (staff member) or not at all

In addition to the above precautions, we will also redact personal information from applications to Committees when they are submitted to Council for consideration. Clerk's staff will have the information to confirm the residency of the applicant and notify the applicant of Council's decision. If an applicant is appointed to a Committee his/her contact information will be shared only with the committee secretary and the individual will be asked to answer the above questions.

If you have any questions, please email or telephone me. I will be following up with all committee secretaries in September to ensure the matter has been addressed at meetings of all committees.

In short, a little more than 24 hours after the original email was sent, Councillor Bradley had apologized to the Complainant and the Town Clerk had used the opportunity to remind all committee secretaries, department heads, managers and Council Members about the manner in which committee members' contact information should be protected.

On June 26, one of the 21 email recipients appeared before Town Council to speak in opposition to Council's June 12 policing decision.

In protest of Councillor Bradley's use of the email addresses, one of the 21 email recipients resigned as a public member of the committee of Council.

Despite Councillor Bradley's apology and the Clerk's remedial action, the Complainant still wishes to pursue a public finding and a public report. This is the Complainant's right.

I am required to investigate and report to Council.¹ I must continue with an investigation unless a complaint is frivolous or vexatious or a complainant is not acting in good faith.² The present Complaint is neither frivolous nor vexatious. There is no evidence of a failure to act in good faith.

Summary of Findings

After carefully considering the evidence obtained during the course of my investigation and the submissions of the parties, I find that Councillor Bradley did breach the Code of Conduct, but I recommend no penalty.

I find that the Complainant's email address, both alone and when used in connection with the individual's name, is personal information under the *Municipal Freedom of Information and Protection of Privacy Act* and, therefore, is "confidential information" under the Code as defined by section 8.4.

I further find that this confidential information was acquired by Councillor Bradley by virtue of her office.

I find that Councillor Bradley breached section 8.2 of the Code by disclosing or releasing this confidential information to the 20 other recipients of the email, when she was not required by law to do so.

I make no finding that Councillor Bradley breached section 8.3 of the Code (permitting any persons other than those entitled to have access to confidential information) because I have already found that her sending of the email contravened section 8.2. Multiple contraventions should not be found when only one wrong has occurred.

I find that Councillor Bradley used confidential information for a purpose other than the purpose for which she had access to it. However, I find that the text of section 8.5 of the Code does not address this situation. Councillor Bradley used the confidential information for a political purpose but not for private or personal gain. Council may wish to consider whether section 8.5 should be amended.

Process Followed

In operating under the Code, I follow a process that ensures fairness to both the individual bringing a complaint (Complainant) and the Council Member responding to the complaint (Respondent).

¹ Code, section 18.3: "The Integrity Commission will conduct an investigation and report to Council."

² Complaint Protocol, section 7.3: "The Commissioner has the discretion to decline to commence an investigation if on its face the complaint appears to be frivolous, vexatious or not made in good faith, and subsequently the Commissioner may terminate an investigation if at any time the Commissioner forms the opinion that the complaint is frivolous or vexatious or that the Complainant is not acting in good faith."

This fair and balanced process is governed by the Code's Complaint Protocol. It includes the following elements:

- The Respondent receives notice of the Complaint and is given an opportunity to respond.
- The Complainant receives the Respondent's Response and is given an opportunity to reply.
- More generally, the process is transparent in that the Respondent and Complainant get to see each other's communications with me.³
- The Respondent is made aware of the Complainant's name. I do, however, redact personal information such as phone numbers and email addresses.
- As a further safeguard to ensure fairness, I will not help to draft a Complaint and will not help to draft a Response or Reply.
- Where appropriate I will, however, invite a Complainant to clarify a Complaint. When a Complaint has been clarified the Respondent is provided with the original document and all communications between the Complainant and me related to clarification.
- When a Complaint has been clarified I deem the date of final clarification to be the official date the Complaint was made.

In this case, the Complaint was originally submitted June 22, 2017. It was further clarified June 23. June 23 is therefore deemed to be the official Complaint date.

Councillor Bradley was sent notice of the Complaint on June 23. I received Councillor Bradley's Response on July 5. The Complainant submitted a Reply on July 16.

On August 29 I invited the parties to provide additional input on the *Municipal Freedom of Information and Privacy Act* issue.

Under the circumstances, it was not necessary for me to interview the parties.

I have taken into consideration all of the parties' communications with me.

As provided in the Complaint Protocol, a draft of this report was provided to Councillor Bradley, August 31, and she was given the opportunity to comment. I have taken her comments into consideration in issuing this final report.

³ Occasionally, in my discretion, I may decline to share a communication where the communication is irrelevant to the investigation, I will not consider the communication, and/or the other party is not prejudiced by the lack of sharing.

Preliminary Issue

The email address and email signature used by the Complainant identify the Complainant's employer. Upon first seeing this information, I recognized the employer as a company to which I provided legal services a long time ago. Those services were unrelated to Orangeville, to Integrity Commissioner duties, to the Complainant, and to the subject matter of this Complaint.

With the company's consent, I disclosed to the parties that for a period of time, ending in approximately 2007, I provided legal services to the company that employs the Complainant, that I had no dealings with the Complainant personally and that since 2008 I have not had dealings with the company. I stated my belief that this history does not prevent me from objectively investigating the Complaint and does not create the perception of a conflict. The Complainant has complained in a personal capacity and the Complaint does not involve the employer.

I invited the parties to state any objection to my participation in the Complaint investigation, and neither did. I have proceeded on that basis.

Questions Raised in the Investigation

My investigation considered the following questions:

- A. Was the Complainant's email address "confidential information" under the Code?
- B. If so, did Councillor Bradley disclose or release the confidential information contrary to section 8.2?
- C. Further, did Councillor Bradley permit any persons other than those entitled to have access to the confidential information, contrary to section 8.3?
- D. Did Councillor Bradley breach section 8.5 by using the confidential information for personal or private gain, or for the gain of relatives or any person or corporation or cause detriment to the Town, Council, local board, or others?

The Evidence

The evidence is detailed above, under the heading, "The Complaint."

I have also confirmed the following facts:

Email addresses of committee members tend to be shared within the committee in a number of different ways. Until June 21, it was not uncommon for a committee agenda or other information to be distributed to committee members using a "group" email in which everyone could see everyone else's address. Since then, the Clerk's guidance

requires that any emails to the entire committee be sent using the "bcc" feature: see "Blanket emails to committee members," at page 4, above.

Also, at the beginning of a term, a committee's members may agree among themselves to share email addresses with one another. Sometimes a committee develops a contact list and provides it to all committee members.

I was told that while the Town takes care not to disclose public members' contact information outside each committee, until June 21 committee members were not cautioned of the need to use personal contact information for committee business only. In the words of one individual, "Until the incident ... this was not on anyone's radar."

Before the Clerk issued the June 22 email notice, "Committee Members - Personal Contact Information" (see full text at pages 3-4, above), committee chairs were not specifically reminded of the need to protect the confidentiality of public members' email addresses.

All Council Members receive a Council Reference Binder that includes the booklet, "Working with the *Municipal Freedom of Information and Protection of Privacy Act: A Councillor's Guide*." This document is available online at <https://www.ipc.on.ca/wp-content/uploads/Resources/counc-e.pdf>. According to the version that I reviewed:

This information was published by the City of Ottawa in November 2001 and is posted on the Information and Privacy Commissioner's website for educational purposes. It is generally applicable to all Ontario municipalities.

The following is the section of the guide that addresses privacy protection:⁴

Protection of Privacy Obligations

Councillors who have received access to personal information or other confidential information in the performance of their duties have a responsibility to protect this information while it is in their possession. These obligations are part and parcel of the overall obligations imposed on the City under the Act's protection of privacy provisions. Councillors must therefore ensure that the privacy of the individual to whom the information relates is protected at all times, and must keep the information physically secure so as to avoid unauthorized disclosure or destruction. Ways to protect personal privacy would include:

- not leaving a document containing personal information on your desk, in your car, in your home or other areas where others may have access to it;
- ensuring that personal information on your computer screen is not visible to others;
- ensuring that the files in your office are secure;
- not discussing the personal information of others in open areas, such as reception areas and hallways; and;
- not disclosing an individual's personal information during a public council meeting without the individual's written consent.

⁴ City of Ottawa, "Working with the *Municipal Freedom of Information and Protection of Privacy Act: A Councillor's Guide*" (2001), at 4.

While the booklet addresses privacy protection generally it does not specifically address the use of the contact information of public members of committees. It also does not cover MFIPPA's rules on use and disclosure of personal information (sections 31 and 32 of that Act).

Members of the public who wish to volunteer to serve on Orangeville committees and boards must complete an "Application for Appointment To a Board or Committee." The application form includes the following agreement, which each applicant must sign and date:

Confidentiality Agreement

1. I agree that any written or oral information that has been disclosed to me as "confidential" during my term will remain in the strictest confidence.
2. I agree that all confidential material that has been given to me as a result of my volunteering on the commission, board or committee, will be maintained, and when necessary, disposed of in a secure and confidential manner.
3. I agree not to publicize any of the confidential aspects of my work orally, by written word, or any other medium of communication.
4. I agree to exercise due care to ensure that any information that I may give to others in the course of my term will be given only to persons I believe are entitled to receive such information.

Council Members are not required to sign this agreement in respect of the committees on which they serve. Also, the agreement does not specifically mention committee members' personal information.

I find that the Clerk's June 22 notice now provides clear guidance concerning the use and disclosure of personal contact information.

The Complainant's objection to the use and disclosure of personal contact information has been a salutary lesson for the Town. Gaps have been closed and there is greater sensitivity to the need to protect such information.

Submissions

Complainant

The Complainant submits that Councillor Bradley breached the following sections of the Code in the manner described:

- Section 8.2, in that the Complainant's email address, which is confidential information acquired by virtue of Councillor Bradley's office, was disclosed in writing to third parties without authorization.

- Section 8.3, in that Councillor Bradley, by sending the Complainant's email address to third parties, has permitted these third parties to access confidential information without authorization.
- Section 8.5, in that Councillor Bradley used the confidential information to support her position on Town Council in relation to the OPP/OPS debate. She also used her position on the committee to attempt to influence the Complainant and other public members of the committee to lobby other Council Members to support her position.

Councillor Bradley's Response

Councillor Bradley takes full responsibility for the email. She notes that she has already apologized to the Complainant. She also immediately requested clarification from the Clerk which led the Clerk to issue a new practice (or a reminder of best practice) to everyone responsible for committees. As Councillor Bradley points out, she made a mistake and sought clarification, and the result is a Town-wide policy to prevent a recurrence.

She also states that she was previously unaware that public members' email addresses could only be used for specific committee business. While Council Members were given information about the appropriate use of their own Town email addresses (as opposed to personal email addresses) she says that she did not receive clear instructions on the use of committee members' email addresses and wrongly assumed that she could use them for other Town-related business.

She says she did not believe the use of a business email address would constitute a breach of confidentiality since business email addresses are available to the public and can be easily accessed.

Councillor Bradley states that she was not trying to influence any public members of committees; she was simply providing information about what was happening.

As for personal, private or political gain, Councillor Bradley says she did not gain anything by sending the email. She was simply communicating information to constituents.

Councillor Bradley notes that she has been a Council Member for many years and has worked with many volunteers on various committees. After such a long period of time, these committee members become friends: they attend events; Councillor Bradley has been invited to their homes; they communicate on various subjects; they are friends on social media. She states that she considers the public members of committees to be friends and she communicates with them in a less than formal way.

In relation to non-committee-related communication with the Complainant specifically, Councillor Bradley makes two observations:

- She and the Complainant are Facebook friends.
- On August 31, 2016, she received an email, asking about a topic not related to committee business, which showed the Complainant's work email address and personal email address. A third individual, unknown to Councillor Bradley, was copied on the email. She says that in her mind this email exchange changed her relationship with the Complainant from a strictly formal committee relationship to a friendly relationship and opened an opportunity for Councillor Bradley and the Complainant to communicate with each other on topics outside the committee.

In support of the second observation, Councillor Bradley provided a copy of the email exchange. I reproduce all three emails below, with edits made to remove identifying information:

Email #1

From: Complainant [work email]
Sent: Wednesday, August 31, 2016 10:56 AM
To: Sylvia Bradley
Cc: Third Individual; Complainant [personal email]
Subject: Evacuation Plans

Good morning Sylvia. I'm a volunteer for [local project] and have been tasked to review its Contracts and Risk Management Plans.

As such, one of the areas that has been identified as being deficient is the lack of an evacuation plan in case of a severe storm or power outage, etc.

Does the Town of Orangeville already have such a plan in place? If so would it be possible to get a copy of it? Or can you refer me to the right person?

[reference to location of project deleted]

Many thx.

Email #2

From: Sylvia Bradley [<mailto:sbradley@orangeville.ca>]
Sent: September 1, 2016 9:48 AM
To: Complainant [work email]
[not copied to Third Individual]
Subject: RE: Evacuation Plans

Hi [name],

[Comment that the Complainant has been busy.] Very nice to see you making a contribution to Orangeville with the [local project].

Ron Morden, Fire Chief, would be the person to contact and inquire about evacuation plans. His email is rmorden@orangeville.ca

I'm sure he will be able to assist you.

Sylvia

Email #3

From: Complainant [work email]
To: Sylvia Bradley <sbradley@orangeville.ca>
[not copied to Third Individual]
Subject: RE: Evacuation Plans

Thx Sylvia, now that [personal comment about Complainant] I [am] putting my efforts into our great Town.

Complainant's Reply

The Complainant makes the following submissions in reply:

- Councillor Bradley's immediate reaction is a clear indication that she knew or ought to have known that she had breached the Code.
- The Complainant and Councillor Bradley have never been friends. The Complainant has never attended any functions outside of Town Hall or at members' homes.
- The Complainant's August 31, 2016, email was clearly sent in the role of volunteer for [local project.] The fact that the Complainant copied another volunteer (the Third Individual) and the Complainant's own personal email address are irrelevant.
- The Complainant uses social media including Facebook to keep track of what people are doing and thinking, not always out of friendship.
- If Councillor Bradley felt she had not received clear instructions on the use of committee members' email addresses then she had a duty and obligation to understand the rules and when in doubt to seek answers.
- The basic procedures implemented as a result of the Complaint should have been in place much sooner. The speed with which they were implemented shows how fundamental and important they are.
- If Councillor Bradley wanted to communicate an important event to constituents, surely using social media would have been more effective than sending an email to a few individuals.
- The Complainant also made observations about Councillor Bradley's position on the OPS/OPP policing issue as well as the Complainant's own position.

Analysis and Findings

A. Was the Complainant's email address "confidential information" under the Code?

According to section 8.4 of the Code, confidential information includes "personal information" as defined by the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The relevant provisions of MFIPPA are set out in the Appendix.

Ordinarily an individual's email address would constitute personal information under MFIPPA, but subsection 2(2.1) of the legislation provides an exception for business email addresses:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

The email address that Councillor Bradley used is the Complainant's work email address. However, the Complainant's volunteer service as a public member of the committee was entirely unrelated to the Complainant's employment.

Is a work email address, when used in a personal context, not a work context, personal information under MFIPPA? Because the Code incorporates the MFIPPA personal-information definition, the answer to this question determines whether the Complainant's email address constitutes confidential information under section 8.4 of the Code.

This question was recently answered by the Office of the Information and Privacy Commissioner in Order MO-3436-I, *Re Township of Uxbridge* (May 9, 2017). In that case, an individual used his work email address to communicate with the Township in his personal capacity. The adjudicator found that the work email address constituted personal information and was not subject to subsection 2(2.1).⁵

The Information and Privacy Commissioner possesses specialized expertise in interpreting and applying MFIPPA. I adopt the reasoning in IPC Order MO-3436-I and I apply it here. I find that the Complainant's work email address is "personal information" under MFIPPA and therefore it is "confidential information" under section 8.4 of the Code.

I accept that Councillor Bradley was unaware of IPC Order MO-3436-I when she sent the email. I accept she was unaware that business email addresses might sometimes constitute personal information (under MFIPPA) and confidential information (under the Code). As a result of this report, going forward, Council and the Town will now be aware that business email addresses used for personal purposes are personal and confidential information.

⁵ IPC Order MO-3436-I (2017), Adjudicator An, at para. 18.

The Complainant was just one of 21 recipients of Councillor Bradley's email. The others' email addresses are a mix of work email addresses and addresses that are clearly personal (gmail.com, sympatico.ca, yahoo.com, etc.). I find that their email addresses, too, are confidential information under the Code.

B. Did Councillor Bradley disclose or release the confidential information contrary to section 8.2?

I further find that the confidential information (the Complainant's email address and the addresses of the others) was acquired by Councillor Bradley by virtue of her office.

I specifically find that Councillor Bradley acquired the Complainant's email address, and the other 20 email addresses, by virtue of her membership on the three committees.

Councillor Bradley observes that the Complainant emailed her separately on August 31, 2016, about another issue.

First, by this time the Complainant was already a public member of the committee, so Councillor Bradley had already acquired the Complainant's email address in relation to the committee.

Second, even if the Complainant had provided the email address to Councillor Bradley on August 31, 2016, the Complainant was communicating about Town business in Councillor Bradley's role as a Council Member. In other words, Councillor Bradley acquired the email address by virtue of her office.

Third, Councillor Bradley's email was sent to 21 individuals, all of them public members of the three committees to which she belongs (two of which she chairs). It is clear from this distribution that Councillor Bradley was using lists of committee members available to her as a committee chair/committee member, even if she also had happened to acquire some of the email addresses separately.

I have also considered Councillor Bradley's submission that she was friends with all recipients. (The Complainant disputes this.) Under section 8.2 of the Code friendship does not justify the disclosure of confidential information. Friendship is only relevant if confidential information is acquired through friendship and not acquired by virtue of office. I find that Councillor Bradley acquired the email addresses by virtue of her office (committee business) and not through friendship.

In section A, I find that the email addresses constitute confidential information. Above, I find that Councillor Bradley acquired the email addresses by virtue of her office.

Sending the email was a form of disclosure/release of everyone's email address to everyone else.

These findings therefore constitute all the elements of a contravention of section 8.2:

- confidential information
- acquired by virtue of office
- was disclosed or released

Section 8.2 provides an exception when disclosure or release is required by law. There was no legal requirement that Councillor Bradley send an email asking that recipients "please attend" the June 26 Council meeting to ask Council to hold another vote on the OPP policing issue. The disclosure or release in this instance was not required by law.

Both the Complainant and Councillor Bradley have made observations about the connection between the email and the OPS/OPP policing issue. I do not find the observations relevant to the section 8.2 analysis. Unless disclosure is required by law, the purpose for which confidential information is disclosed has no bearing on compliance (or lack of compliance) with section 8.2.

C. Further, did Councillor Bradley Members permit any persons other than those entitled to have access to the confidential information, contrary to section 8.3?

The same findings lead to the conclusion that Councillor Bradley permitted persons other than those who are entitled to have access to information that is confidential.

I note again that the list of recipients included nine public members of the OSAT Committee (which Councillor Bradley chairs), seven public members of Heritage Orangeville (which Councillor Bradley chairs) and five public members of the Orangeville Public Library Board (on which Councillor Bradley sits).

All the recipients received all the other recipients' email addresses.

While members of a committee may be entitled to have access to the email addresses of other members *of the same committee*, I find no evidence that a member of one committee is entitled to have access to the email addresses of public members *of a different committee*.

The Complainant's email address is confidential information. All the other email addresses are confidential information. By sending the June 21 email, Councillor Bradley permitted persons other than those who are entitled to have access to information that is confidential.

This action was contrary to section 8.3: "Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential."

However, I decline to find that Councillor Bradley breached section 8.3, because I have already found that her sending of the email contravened section 8.2.

I accept and apply the principle that I should not find contraventions of multiple sections of the Code arising from essentially the same facts and a single wrong: see

R. v. Kienapple, which applies the *res judicata* principle to prevent multiple convictions for the same wrong.⁶

In this case, the sending of the June 21 email both disclosed or released confidential information acquired by virtue of office (section 8.2) and permitted persons other than those entitled to have access to information that is confidential (section 8.3). The contraventions arise from the same action, the elements of the contraventions are substantially the same, and there are no additional elements that make the contravention of section 8.2 distinguishable from the contravention of section 8.3

Therefore, I ought to make just a single finding of contravention. I find that Councillor Bradley contravened section 8.2 and I decline to find that she contravened section 8.3.

D. Did Councillor Bradley breach section 8.5 by using the confidential information for personal or private gain, or for the gain of relatives or any person or corporation or cause detriment to the Town, Council, local board, or others?

I find that for committee purposes Councillor Bradley had access to the email addresses of public members of committees. I find that her June 21 email was not sent for purposes related to any of the three committees.

Councillor Bradley submits that she was simply communicating information about matters before Council. I agree that *some* of the content of her email meets that description. However, much of the email goes beyond informational content. Significant portions of the email are editorial content and/or advocacy. In particular, I find that the underlined, bolded passages below go beyond what Councillor Bradley calls “communicating information to constituents.”

Just a heads up that a gentleman will be attending Council on Monday, June 26th to object to the town’s decision to stay with OPS and ask for the item to come back to Council for a revote. If you would like to attend and show support and potentially speak on this issue **please attend**. I do know that there are others coming forward as well. **Also, if you know of other outraged residents, please inform them and ask them to attend. We still have time to reverse this bad decision and make our way to saving taxpayers millions of dollars.**

Since the vote, the community has been very vocal in their disappointment with the decision and with Council. During all the presentations, and information sessions OPS, their families and friends came out in mass. **Very few resident supporting OPP came out since they thought this was a slam dunk, a no brainer and that of course Council would vote for OPP especially those that ran on being fiscally responsible or ‘tax fighters’. That didn’t happen. We still have time. I have seen things get reversed when the public demanded it.**

Appreciate your support.

⁶ [1975] 1 S.C.R. 729 at 745-751.

To be clear, Councillor Bradley has every right to advocate, to persuade and to express her opinion. I am simply noting that I find her advocacy and expression of opinion are unrelated to the committee purposes for which she obtained access to the email addresses in the first place.

The Complainant makes submissions about Councillor Bradley's underlying basis for sending the email, and cites examples to support the argument. In my view, the Complainant is inviting me to assess the merits of the Council Member's political position; this is something that, as Integrity Commissioner, I should not do. It is not for me to judge, nor is it relevant under the Code, whether Councillor Bradley's political purposes are good or bad. The issue is whether using confidential information for a political purpose (it matters not which political purpose) is contrary to section 8.5.

Councillor Bradley used confidential information for a purpose other than the purpose for which she had access to it. However, that alone is insufficient to constitute a contravention of section 8.5. Section 8.5 is breached only when the confidential information is used,

- for personal or private gain,
- for the gain of relatives or any person or corporation, or
- to cause detriment to the Town, Council, local board, or others.

The second category clearly does not apply here. I find that the third category also does not apply. I agree that when Councillor Bradley's email precipitated the resignation of a public member of a committee the result was a "detriment" to the Town, but I do not believe the personal email addresses *were used to cause detriment*, which is the wording of the passage.

That leaves the first category: use of confidential information *for personal or private gain*.

The Complainant argues that by sending the email for political purposes – in order to encourage support for one side of the policing issue – Councillor Bradley was using the email addresses for personal or private gain.

I agree with the Complainant that Councillor Bradley used the email addresses (the confidential information) for a political purpose. I do not, however, find that the use was for personal or private gain.

This has been a long-standing issue in government ethics law in Canada. Does a political benefit, political advantage or political gain⁷ constitute a personal or private benefit, advantage or gain? In the absence of explicit language in a code, it does not.

⁷ Different jurisdictions' codes and rules use different terminology. Section 8.5 of Orangeville's Code uses "gain": personal or private *gain*.

In 2010 the federal Conflict of Interest and Ethics Commissioner examined certain complaints under the *Conflict of Interest Code for Members of the House of Commons*.⁸ The complaints revolved around a series of staged announcement-photo opportunities that arguably made the MPs look good. However, the issues were similar to the one I must consider under section 8.5, including whether the MPs had used information, obtained in their positions as MPs that is not generally available to the public, to further their private interests.⁹

The federal Commissioner held that under the MPs' code *furthering a political interest* did not constitute *furthering a private interest*:

In my view, the situations described in subsection 3(2) do not extend to cover the type of interests alleged to have been furthered in the requests under consideration. Those interests, namely the enhancement of the Members' profiles and the improvement of their electoral prospects, are partisan political interests.

...

The rules under the Code governing the disclosure of private interests reinforce the conclusion that private interests refer to a narrow range of interests. These interests would exist for anyone whether or not he or she was an elected official. They are also private in the sense that they would not normally be a matter of public record. Nowhere in the Code is there a suggestion that the expression "private interests" would cover political gain or advantage. To come to such an expansive interpretation would require some indication in the Code that this was intended. I find no such indication. To the contrary I find specific enumerations of a much narrower category of interests.

One could make the argument that a Member would have a private pecuniary interest in re-election because securing a seat in the House of Commons comes with a comfortable salary and benefits. Following this argument to its logical conclusion, however, would imply that any actions undertaken by a Member aimed at enhancing his or her image with constituents could be construed as furthering a private interest, and therefore contravene the Code. This cannot be the intent of the Code.

The interests of Members in participating in funding announcements are fundamentally political in nature. They are focused on attempting to raise their public profile by associating themselves and their party with initiatives that their party has put forward as the governing party, and that they believe will be viewed favourably by their constituents. These interests would not arise from purely personal considerations outside of their role as elected public officials.¹⁰

[emphasis added]

⁸ Canada, Conflict of Interest and Ethics Commissioner, *The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal funding announcements made under the Conflict of Interest Code for Members of the House of Commons* (April 29, 2010), Commissioner Dawson.

⁹ See *Conflict of Interest Code for Members of the House of Commons*, subs. 10(1).

¹⁰ *The Cheques Report under the Conflict of Interest Code for Members of the House of Commons*, note 8, at 16.

The same principle has been applied by commissioners in other jurisdictions.¹¹ For example:

- Ontario: "...a 'political interest' may be created but not a 'private interest' within the meaning of section 2 of the Act."¹²
- British Columbia: "In my view it is inconsistent with the intent and purpose of section 7 to interpret 'personal benefit' as encompassing a political benefit, whether direct or indirect."¹³
- New Brunswick: "As the result of my investigation, however, I have found that there is a 'political interest' rather than a 'private interest' involved in this case."¹⁴
- Alberta: "I share Commissioner Parker's grave doubts as to whether the furtherance of political interests is the furtherance of a private interest. If political interests, especially the interest in winning an election, is a 'private interest,' practically everything a Member does could be a breach of the Act ..."¹⁵

I find that Councillor Bradley used the confidential information for a political purpose but not for personal or private gain. The text of section 8.5 of the Code does not cover the use of confidential information for political gain. If it wishes, Council may consider whether to amend section 8.5.

At the same time, I find that Councillor Bradley's use of confidential information, namely the email addresses of the public members of three committees of Council, for a purpose other than committee business, deserves to be brought to Council's attention.¹⁶

Finally, I wish to repeat that it is irrelevant for which particular political purpose Councillor Bradley used the confidential personal information. Councillor Bradley could have used the email contact list for any political purpose, and the result of the analysis under section 8.5 would be the same.

¹¹ See also Alberta, Ethics Commissioner, *Re Hon. Kenneth R. Kowalski*, (August 26, 1993), another case about the alleged use of confidential information for political purposes, where Commissioner Clark declined to find that the Act applied to furthering a political interest.

¹² Ontario, Integrity Commissioner, *Re The Honourable Bob Chiarelli, The Honourable Michael Coteau and The Honourable Yasir Naqvi* (December 8, 2016), Commissioner Wake, at 11, para. 50.

¹³ British Columbia, Conflict of Interest Commissioner, *Re The Honourable Christy Clark* (May 4, 2016), Commissioner Fraser, at 23, para. 67.

¹⁴ New Brunswick, Conflict of Interest Commissioner, *Re The Honourable Margaret-Ann Blaney* (December 5, 2000), Commissioner Stratton.

¹⁵ Alberta, Ethics Commissioner, *Re The Honourable the Premier*, (April 21, 1997), Commissioner Clark, at 8.

¹⁶ Section 15 of the Complaint Protocol states: "If the Integrity Commissioner is of the opinion that a Respondent did not contravene the Code but the Respondent's conduct was blameworthy or otherwise deserving to be brought to Council's attention then the report shall so state."

Recommendations

As I have found a contravention, I must also recommend to Council an appropriate consequence.

To recap: I find that Councillor Bradley contravened section 8.2 of the Code. I decline to make a finding that she contravened section 8.3 because the wrong that occurred is already encompassed by the section 8.2 finding. I also find that Councillor Bradley used confidential information for a purpose other than the purpose for which she had access to it, but that because her she used it for a political purpose, not private or personal gain, section 8.5 did not apply.

In my view, many different considerations are relevant to the appropriate response.

On the one hand:

- Councillor Bradley apologized immediately.
- Council Members had not previously received guidance concerning the use of the personal contact information of public members of committees.
- Upon hearing from the Complainant, Councillor Bradley immediately contacted the Clerk, and this led to the issuance of guidance that has closed a gap.
- While Councillor Bradley was the one who sent the email, I find that she was not alone in overlooking the need to be more sensitive to the use and disclosure of public members' contact information.¹⁷
- This report, including the finding of contravention, is a public document.

On the other hand:

- By their very nature, privacy breaches are serious.
- The contravention involved the confidential information (personal information) of 21 public members across three committees.
- From what occurred, it is clear that committee membership contact information was used.
- As a result of the contravention, the Town lost the volunteer contribution of a public member of a committee.

¹⁷ Councillor Bradley was not alone: I base this finding on several facts, including: the common practice of circulating emails to committees with everyone's email address showing in the "To" line; the failure to make any mention of members' personal contact information in training and guidance materials; and the observation of one individual that, "this was not on anyone's radar."

- The confidential information was used for a purpose unrelated to the purpose for which Councillor Bradley had received access.

The Complainant argues that Councillor Bradley knew or should reasonably have known that her conduct breached the Code. I understand the logic that underlies this assertion: it's reasonable to expect a Council Member to know not to breach the rules.

Here, however, the specific situation of the Complainant's work email address involves a nuanced application of MFIPPA (remember that the definition of "confidential information" in the Code is based on the "personal information" definition in MFIPPA) that requires familiarity with the IPC jurisprudence. In the absence of specific training or guidance, it is not reasonable to expect a layperson to identify the circumstances in which a work email address does and does not constitute personal information.

More generally, this case raises awareness of an issue that "was not on anyone's radar." This does not justify the contravention. It simply suggests that Councillor Bradley was not alone in being insufficiently aware.

I appreciate that, despite a systemic lack of awareness, only Councillor Bradley appears to have used the members' personal contact information to communicate in the vein of her June 21 email. However, to take into account that one Council Member chose to communicate when another Councillor Member did not would essentially be to evaluate a Council Member's political purposes – a consideration completely irrelevant to compliance with the Code. The particular political purposes for which Councillor Bradley used and disclosed the confidential information are not relevant to whether sections 8.2, 8.3 and 8.5 were breached, and likewise they should not be relevant to the determination of penalty.

In all the circumstances, I believe that adoption of the finding of a contravention would be a sufficient consequence and that it is not necessary for Council to take additional action against Councillor Bradley. I do, however, make several forward-looking recommendations.

I recommend to Council as follows:

1. That the finding that Councillor Bradley contravened section 8.2 of the Code of Conduct be adopted.
2. That Council impose no penalty, discipline or remedial action on Councillor Bradley.
3. That future training and/or orientation materials for Council Members should include content on the permitted use and disclosure of personal information under sections 31 and 32 of MFIPPA.

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4. That, recognizing the staff's role to establish administrative practices and procedures¹⁸ and the Council's role to ensure that those practices and procedures are in place,¹⁹ Council request a report back from staff, at some reasonable point in the future, evaluating the impact of the new practices to protect the personal contact information of public members of committees.
5. That Council consider requesting a report with recommendations on whether to amend the Code of Conduct to require that confidential information (as defined in the Code, which includes personal information under MFIPPA) only be used by a Council Member for the purpose for which it was obtained or acquired or for a consistent purpose (or, in the case of confidential information that is personal information, for another purpose permitted by MFIPPA).

Respectfully submitted,



Guy Giorno
Integrity Commissioner
Town of Orangeville

September 6, 2017

¹⁸ *Municipal Act, clause 227(a).*

¹⁹ *Municipal Act, clause 224(d).*

APPENDIX: RELEVANT PROVISIONS OF CODE OF CONDUCT AND LEGISLATION

Code of Conduct

8. Confidential Information

- 8.1 All information, documents and deliberations received, reviewed or taken in closed session of Council and its committees are confidential, except as otherwise directed by Council.
- 8.2 Members shall not disclose or release verbally, in writing or by any other means, any confidential information acquired by virtue of their office, except when required by law to do so.
- 8.3 Members shall not permit any persons other than those who are entitled thereto to have access to information that is confidential.
- 8.4 Confidential information includes, but is not limited to information:
- about labour negotiations;
 - from suppliers which might be useful to other suppliers;
 - relating to the legal affairs of the Town;
 - where the identity of a complainant has been given in confidence;
 - about items under negotiation;
 - defined as "personal information" under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA);
 - protected under MFIPPA or other legislation;
 - of a personal nature to Town employees or clients;
 - that is not available to the public and that, if disclosed, could result in loss or damage to the Corporation or could give the person to whom it is disclosed an advantage;
 - disclosed or discussed at a closed meeting of Council;
 - given verbally in confidence in preparation for or following a meeting that is closed to the public;
 - circulated to members and marked "Confidential".

This list is provided for example and is not inclusive. Requests for information should be referred to the Office of the Clerk to be addressed as a formal request under the *Municipal Freedom of Information and Protection of Privacy Act*.

- 8.5 Members shall not use confidential information for personal or private gain, or for the gain of relatives or any person or corporation or cause detriment to the Town, Council, local board, or others.

- 8.6 Members of Council shall not access or attempt to access confidential information in the custody of the Town unless it is necessary for the performance of their duties and not prohibited by Council policy.
- 8.7 Members are only entitled to information in the possession of the Town that is relevant to matters before the Council or a committee. Otherwise, they enjoy the same right to information as any other member of the community and must follow the same processes as any private citizen.

Municipal Freedom of Information and Protection of Privacy Act

2. (1) In this Act,

...

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

...

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

