

Disclosure Complaint on June 8, 2021

Summary of Investigation – Complaints/Issues Substantiated

This report is in relation to a complaint made against Councillor Darren Hill on June 8, 2021, by Jeff Jorgenson, City Manager, and Adam Tittlemore, City Clerk, City of Saskatoon. I regard the complaint as being akin to a ‘corporate’ complaint, brought on behalf of the municipal corporation, as opposed to anything personal. However, this does not change my analysis of it. Section 87 of *The Code of Ethical Conduct for Members of City Council Bylaw, 2019* (the “Ethics Bylaw”) says that “any person” may request an investigation to determine if a member has violated the Ethics Bylaw.

The complaint is that Councillor Darren Hill contravened sections 12 and 18.2 of the Ethics Bylaw in the course of a presentation he made at a City Council meeting held on May 10, 2021. More specifically, I have summarized the alleged breaches as follows:

Breach #1: At the May 10, 2021, Special City Council meeting he made public disclosures of confidential information he obtained from a meeting with the Mayor and two Councillors on April 29, 2021. At the April 29th meeting, the Mayor and two councillors disclosed confidential information to Councillor Hill emanating from an In Camera meeting of the Governance & Priorities Committee (“GPC”) held on April 19, 2021. Councillor Hill publicly presented that confidential information at the Special City Council meeting on May 10th to publicly argue for his continued role on the board of the Federation of Canadian Municipalities (FCM), for his own benefit;

Breach #2: At the May 10, 2021, Special City Council meeting he also disclosed that he and another individual had made a presentation to an In Camera meeting of the GPC that was held on May 3, 2021, including the topic of discussion. His public disclosure included specific information from a confidential follow-up discussion that occurred with Councillor Hill the following day, being May 4, 2021.

The assertion is also made that the alleged breaches made by Councillor Hill appeared intentional and malicious, as the disclosures were pre-planned and used to attempt to discredit the Mayor and the two councillors and to argue for his continued involvement on the FCM board.

Facts

The complaint originated with a letter received by the Mayor and all members of Council from the President of FCM, which was dated April 16, 2021 (the “FCM letter”). The FCM letter was provided in confidence and was marked “Confidential” and had also been shared with Councillor Hill directly by the author, being the President of FCM. The FCM letter raised concerns in relation to Councillor Hill’s role on the FCM board. City Council needed to decide whether to confirm Councillor Hill’s nomination to the board for 2021/22 by the deadline of May 14, 2021. At the

time, Councillor Hill was the 2nd Vice President of FCM, in line to become the 1st Vice President in 2021/22, and in line to become President of the national organization in 2022/23.

Up to this point in time, Councillor Hill had been involved with FCM, as the City's representative, for 14 years. Prior to receiving the FCM letter, Mayor Clark confirms that officials from FCM had reached out to him privately, verbally raising concerns in relation to Councillor Hill's conduct on the FCM board. These concerns were subsequently confirmed, in writing, through the FCM letter. Councillor Hill was aware of the concerns but took strong exception to the FCM president issuing the formal letter.

The FCM letter was dealt with and discussed at an In Camera meeting of the GPC on April 19, 2019. The minutes from that meeting confirm "That the information be received and the report and discussion remain In Camera under Section 21 of *LAFOIP*." The reference to "*LAFOIP*" is to *The Local Freedom of Information and Protection of Privacy Act*. Councillor Hill was absent from this part of the meeting and was unaware that a discussion about the FCM letter had taken place.

On April 29, 2021, the Mayor and councillors Loewen and Donauer met informally with Councillor Hill and his representative, Ann Iwanchuk, through a 'virtual' meeting, to discuss the FCM letter and potential direction to be provided by Council in response to it. At that meeting, Councillor Hill was advised that the confidential FCM letter had been dealt with at the In Camera GPC meeting on April 19th and that GPC was not prepared to endorse his nomination to the FCM board. Instead, a proposal was advanced to settle the matter. The April 29th meeting was not, itself, an In Camera meeting but the matters being discussed were still confidential, as they emanated from the In Camera meeting on April 19th. Councillor Hill did not accept the proposed resolution that was made to him on April 29th and requested an opportunity to formally address his council colleagues on the GPC about the matter.

As a result of Councillor Hill's request, another In Camera meeting of the GPC was held on May 3, 2021, so that Councillor Hill could make formal submissions to all of his council colleagues. This did occur. The minutes from that meeting confirm: "That the verbal updates of the Members of Council be received as information and the discussion remain In Camera under Sections 13, 15, 16, 17, 18, 21 and 28 of *LAFOIP*."

The issue was not resolved at the May 3, 2021, meeting, so a Special City Council meeting was held on May 10, 2021, to deal with Councillor Hill's nomination to the FCM board. This was a public meeting. A motion to rescind his nomination to the FCM board was made at that time. The following is an extract from the transcript of that meeting indicating what Councillor Hill said, in response to that motion. Note that I have numbered and highlighted key disclosures that he made during his presentation as they relate to alleged Breaches #1 and #2:

Councillor Hill: Thank you Your Worship and thank you colleagues for the opportunity to address you today regarding the rescission motion. I want to provide you with a timeline that directly relates to the issue being discussed today. Sometime prior to April 14th, Mayor Clark contacted the President of FCM, and asked him for a letter about

me. On April 16th, without the FCM Executive's knowledge or approval, the President of FCM sent a letter to City Council outlining certain concerns about me. These concerns are in line with some mental health issues I have been facing, and I am now in treatment for. **[Breach #1] On April 19th, without any notice to me, GPC considered the letter and voted to rescind their support of my FCM candidacy.** Even more egregious, was that not telling me that GPC was going to consider the letter. I was actually present at the GPC meeting to discuss other issues, was purposely not told about the letter. All members of Council let me leave the meeting without telling me that this was an item to be discussed. **[Breach #1] The full 10 days later on April 29th, I was invited to attend a meeting with Mayor Clark and Councillors Loewen and Donauer, where they told me that Council was going to rescind their support of me sitting on FCM,** without giving me a chance to speak to the decision. **[Breach #1] I was threatened with the choice of either voluntarily resigning, or they would hold a special public meeting to rescind their support.** I felt shocked and betrayed. **[Breach #1] The Mayor specifically advised me that this was not a negotiation, and that a decision had been made.** Oddly, the following day, Mayor Clark then contacted me and said that I could address GPC to speak to the letter from the President of FCM. **[Breach #2] On May 3rd, an in-camera meeting was held, and I addressed the Committee. On May 4th, I was told that GPC had not changed their minds, and I was again threatened with a choice of either voluntarily resigning or they would hold a public meeting and advise that Council would rescind their support based on the mental health challenges I was facing. I was also advised by His Worship, that there was urgency to this decision because of the nomination deadline.** However, support could be revoked at any time, and a by-election could be held, so today is a false deadline. **[Breach #2] I offered to have my position reviewed every three months to ensure I am capably performing the duties. If concerns were raised at any time, I would relinquish my position, and a by-election could be held.** That offer remains on the table.

[...and later...]

Councillor Hill: Most certainly, and the one incident that was relayed to me, goes back to a standing policy committee that I chaired in Penticton in March of 2019. We were testing on a new process of retiring portions of resolutions, and it didn't go so well. I had I guess, gotten frustrated, and took it out on the staff. It wasn't until afterwards, that a senior policy person had identified that to me. I was quite shocked because one, I take great pride in how I chair meetings and two, I am always respectful of staff when I'm chairing a meeting because they're your support during it, so I apologized to the staff. **[Breach #2] I received a response back from each of the staff members with regards to the apology that I sent them, and I believe I shared that with you at the last in-camera meeting.** It was the ice-skating analogy, comparing about falling down and kicking them. I did share that with you, did I not?

In his submission to City Council on May 10th, and at several points in his submissions to me as Integrity Commissioner, Councillor Hill has made the allegation that the Mayor solicited the FCM letter, as though this was done on the Mayor's own initiative. For example, in his submission on

May 10th, Councillor Hill put it simply as follows: "Sometime prior to April 14th, Mayor Clark contacted the President of FCM, and asked him for a letter about me." I believe that statement is misleading. At the Special City Council meeting on May 10, 2021, the transcript from that meeting shows Mayor Clark responded to Councillor Hill's allegation, in a detailed way, as follows:

Mayor Clark: ...I did not reach out to FCM, FCM reached out to me. Before I spoke to President Frizzell, I told Councillor Hill that they had reached out to me, and this was at a time when we had talked about his plans [Councillor Hill's] to try and take some steps to address some of his life circumstances. I felt it was only fair to let [him] know that they had reached out and expressed some concerns. So the next day, I talked to the President of FCM and the CEO of FCM, and they expressed some concerns as noted around patterns of behaviour that they've seen, and the impact that it was having on staff, and on the governance of FCM. I said that if we are considering a need to consider our appointments, we will need to have documented correspondence in order for that to be considered by Council as a whole. Because, as Mayor, I don't make these determinations myself, and I can't make these determinations based on verbal correspondence. The President took that under consideration and then sometime later, they submitted a letter with official correspondence, that as I understand, through the input of legal counsel. As noted, it was a letter from the President, outlining these concerns, and so I'm not going to get into all the details of all the steps. This is not something I asked for, to was something that came out of a request from FCM to talk to me about concerns raised.

The Mayor has confirmed the above information with me and I accept his version of these events as factual.

Discussion

The rules surrounding the disclosure of confidential information are quite clear. The following sections of the Ethics Bylaw state:

12.(1) Members shall refrain from disclosing or releasing any confidential information acquired by virtue of their office except when required by law or authorized by Council to do so.

18.(2) A member must protect confidential information. This includes the following duties:

(a) a member must not disclose confidential information, including to City staff, or to persons outside the City, except as authorized by Council.

I accept that both breeches of the Ethics Bylaw alleged by the complainants, as set out above, are substantiated. In both cases, section 12.(1) and 18.(2)(a) of the Ethics Bylaw have been violated.

In connection with Breach #1, at the Special City Council meeting on May 10, 2021, Councillor Hill publicly disclosed information from the April 19, 2021, In Camera GPC meeting. He learned this

information from Mayor and Councillors Loewen and Donauer at the informal meeting on April 29, 2021. Councillor Hill was aware that the information had come from In Camera discussions. The meeting on April 29th was really a continuation of those confidential discussions. In my view, confidentiality still applied whether the April 29th meeting was In Camera or not. Councillor Hill was a member of City Council and, as a member, he was required to protect confidential information and to refrain from disclosing it. He failed to do this.

Breach #2 is also substantiated in that at the May 10, 2021 meeting, he very clearly disclosed the fact that he and another individual attended the In Camera GPC meeting held on May 3, 2021. He also disclosed the topic of the discussion at the GPC meeting and the fact that he made a presentation, as well as details of what was related to him in confidence the following day, on May 4, 2021.

I do understand that Councillor Hill was, in a sense, fighting for his survival on the FCM board. He wanted to preserve his legacy and his path, one day, to be President of FCM. However, rules concerning confidentiality and unauthorized disclosure cannot be sacrificed in the process. The disclosures in question were self-serving and intentional and Councillor Hill has so far been unapologetic. However, on the evidence, I am unable to conclude the disclosures were necessarily malicious, even though he clearly went 'overboard' in his own defence. In any event, a finding that he acted maliciously is not necessary to my conclusion that breaches of the Ethics Bylaw did occur at the May 10th public meeting.

In his submissions to me, Councillor Hill has raised several arguments in his own defence, most of which are either legal or procedural in nature. He has asked that I address those arguments specifically. Some of my responses are embedded in my comments above, such as my belief that confidential matters remain confidential even when discussed later-on, outside of a formal In Camera meeting. I have summarized his other arguments as follows, together with my response:

1. **Councillor Hill:** He argues that Section 65(e) of *The Cities Act* says a member of Council breaches confidentiality only if they discuss something considered In Camera *before* it is discussed at a public meeting. Since the Special City Council meeting was called to discuss the FCM matter publicly, he says no breach could or did occur. Also, if there is a conflict between s.65(e) of *The Cities Act* and the Ethics Bylaw, the Bylaw provisions in question [presumably s.12.(1) and 18.2(a)], should have no effect.

Response: The matters disclosed by Councillor Hill, in opposition to the motion to rescind his nomination to the FCM board, relate to discussions that originated at *In Camera* meetings held on April 19 and May 3, 2021, respectively. The respective motions by Councillor Jeffries and Councillor Donauer at those meetings were that these discussions should "remain *In Camera*". Section 18(1) of the Ethics Bylaw defines "confidential information" as information that may be considered *In Camera* by council or a council committee pursuant to *The Cities Act* and that falls into the exemptions in Part III of *LAFOIP*. Under section 18(2) of the Ethics Bylaw a member has a duty not to

disclose confidential information “except as authorized by Council”. Council did not authorize the disclosures made by Councillor Hill.

Councillor Hill has argued that he was entitled to disclose the content of these discussions pursuant to section 65(e) of *The Cities Act*. In essence, he argues that matters discussed in private can be disclosed publicly once the item or report comes up for discussion at a public meeting. As such, he argues there was no restraint on him in terms of what he could say at the City Council meeting on May 10, 2021. However, this argument is problematic from a number of perspectives.

First of all, section 65(e) of the Act, by its terms, is “subject to the bylaws made pursuant to section 55.1”. Section 65(e) reads this way:

65. Councillors have the following duties:
- (e) subject to the bylaws made pursuant to section 55.1, to keep in confidence matters discussed in private or to be discussed in private at a council or council committee meeting until discussed at a meeting held in public.

Section 55.1 of the Act allows council to pass bylaws governing rules relating to confidentiality. It reads as follows:

- 55.1 (1) Subject to the regulations, a council shall, by bylaw, establish general procedures to be followed in conducting business at council meetings.
- (2) Without limiting the matters that may be addressed in a bylaw passed pursuant to subsection (1), the bylaw must include:
 - (b) rules regarding the confidentiality, transparency, openness and accessibility of documents and other matters to be discussed by or presented to a council.

The matters referred to in the above sections are covered by Council’s *Procedures and Committees Bylaw, 2014*, and by the Ethics Bylaw, and possibly by other Bylaws that bear on these issues. The Procedures Bylaw deals with how committees can go in camera at meetings, as was followed in the present case. The Ethics Bylaw sets out rules governing the protection and disclosure of confidential information. As the provisions of section 65(e) of the Act are “subject to” these bylaws, Councillor Hill was bound by them. There is no conflict between the bylaws and the provisions of section 65(e), as has also been argued.

It should also be stated that if Councillor Hill was correct in his argument, it follows that any matters discussed by council in camera would no longer be confidential once the item or report in question lands on Council’s public agenda for a decision. Potentially, this could include human resource matters, sensitive contract discussions, legal advice,

and the like. This would likely lead to an untenable situation for Council in the conduct of its business.

2. **Councillor Hill:** He argues that the letter from Garth Frizzell, the President of FCM, had not been authorized by the executive of FCM.

Response: Whether FCM followed its own processes for approving the letter is a moot point. City Council was not required to ensure that. The fact is that concerns were expressed by the President of an important national organization of which the City was a member. This gave members of council ample reason to consider those concerns. While Councillor Hill initially raised objections that he had not been allowed the opportunity to respond to the concerns raised, he was given that opportunity at the May 3, 2021, in Camera GPC meeting and he did respond at that time.

3. **Councillor Hill:** He argues that “everything was my own personal information” and that he consented to it being discussed at the Special City Council meeting.

Response: The information alluded to was not personal information, as alleged by Councillor Hill. Rather, it referenced discussions about how to resolve matters in relation to Councillor Hill’s nomination to the FCM board. Council determined that these discussions were confidential and fell within the exemptions within *LAFOIP*, thus the requirements for protection and non-disclosure under the Ethics Bylaw.

Recommendations

Councillor Hill’s health challenges have previously been reported publicly and do not need to be detailed here. Therefore I will not dwell on them, only to say that in his presentation to City Council on May 10, 2021, he made a point of saying his overall health status at that time was much improved. As such, I believe his health challenges in this case are less of a mitigating factor when compared to the earlier complaint Council is dealing with.

In view of the foregoing, I recommend that Councillor Hill be censured for violating the provisions of the Bylaw mentioned above. This censure should take the form of a letter of reprimand, in accordance with section 92(3)(a) of the Ethics Bylaw, addressed to him. There are likely several ways this could be done. One example would be to have City Council adopt a resolution censuring him and authorizing the Mayor to send a formal letter confirming this, on behalf of Council.

I have also reviewed the recommendations that were adopted by City Council in 2014, in relation to the Lorje matter, which involved the disclosure of confidential documents. Those provisions, however, were designed to guard against further disclosures of confidential documents. In the present case, it seems more difficult to guard against the disclosure of confidential verbal information. Exactly how this could be effectively done in the present case is something members may wish to discuss, if they believe the recommended censure does not go far enough.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of October, 2021.

Randy Langgard



Integrity Commissioner
City of Saskatoon