

**Report to Council of Town of Kirkland Lake Concerning  
Breach of Code of Conduct – Distribution of a Confidential Report  
Inquiry No. 2020-12-01**

**Date of Alleged Incident:** December 11, 2020  
**Date of Investigation:** December 30, 2020 – January 15, 2021  
**Integrity Commissioner:** Kim Cholette  
**Respondent:** Mayor Pat Kiely  
**Requestor:** Wishes to remain anonymous

**Summary of Findings**

This complaint relates narrowly to whether distribution of a statutorily deemed confidential report to staff was a breach of the Code of Conduct. After careful consideration of the evidence obtained during my investigation and the detailed submissions of the parties, I find that the Respondent contravened section 5 of the Code of Conduct.

**The Complaint**

It is alleged that the Mayor requested a statutorily deemed confidential report from legal counsel and circulated it to two staff, contrary to established policy.

**A. Inquiry Process**

In operating under the Code of Conduct, I followed the Inquiry Protocol as established for the Integrity Commissioner.

- The request for inquiry was sent to me on December 23<sup>rd</sup>, 2020. I began the inquiry almost immediately. The inquiry concluded on January 15, 2021.
- The Requestor has indicated a desire to remain anonymous. I have respected this as I see no reason why the Requestor's name must be published.
- The process included advising the respondent of the allegation and providing him with a redacted copy of the complaint, and meeting with the respondent to discuss specifics around the incident and providing him with an opportunity to respond.
- Interviewing relevant witnesses.
- All parties interviewed were provided with a transcript of their interview with me and given an opportunity to comment on it.
- I have not assisted the requestor in drafting the complaint nor have I assisted the respondent in preparing responses or replies.
- Reviewing the confidential report.
- Reviewing the *Municipal Act*, the *Occupational Health and Safety Act* as well as internal policy.

The conclusions arrived at are based upon the standard of a balance of probabilities. As required, assessments of credibility have been made. These assessments are based on:

- whether or not the individual had first-hand knowledge of the situation
- whether or not the individual had an opportunity to observe the events
- whether or not the individual may have bias or other motive
- the individual's ability to clearly describe events
- consistency within the story
- the attitude of the individual as they were participating
- any admission of dishonesty

**Interviews:**

For a list of individuals interviewed, refer to Appendix A.

**B. Background**

This inquiry is about an allegation of a breach of procedure related to the handling of a statutorily deemed confidential report. Specifically - how a confidential report was circulated by the Mayor, to two TKL staff members, in breach of policy.

Legal counsel was responsible for receiving the report; legal counsel did not circulate the report and instead, held a Zoom meeting to provide a summary overview of the findings.

It is alleged that on December 11<sup>th</sup>, the Mayor requested from legal counsel, a copy of the report. In response, legal counsel advised the Mayor that circulating the report is contrary to the *Occupational Health and Safety Act*. As part of this investigation, I was provided with a copy of an email from legal counsel to the Mayor. That email is copied below:

*Your Worship - as instructed, attached please find a copy of the I[ Report ...[...].*

*I typically hold a copy in my file so that it is not distributed and to protect it with solicitor client privilege and litigation privilege. That is why I presented it to Council via Zoom and did not share copies. I did discuss this with you and you have instructed me to send you a copy notwithstanding.*

*In considering this matter, as you now have a copy, it should be shared with all Members of Council as it is not proper for one Member to have access to information that all members do not have, so please do share it with all members of Council but please as well confirm that it will be kept confidential. It is a breach of the Occupational Health and Safety Act to release the information in the document.... Please confirm that you have shared this with all Members of Council and confirm their commitment to keep it confidential.*

The Mayor, on December 12<sup>th</sup>, is alleged to have proceeded to circulate the report to Council and to two staff members. Below is a copy of the email from the Mayor to Council and to two staff members.

*I am sharing a copy of the [...] report to ensure transparency. It is highly confidential and must not be shared outside of Council and [unnamed staffing position] . ...*

## C. Integrity Commissioner's Jurisdiction

Section 223.3 of the *Municipal Act* 2001 states that:

(1) Without limiting sections 9, 10, 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to Council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of Council and the code of conduct for members of local boards.

[...]

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

## D. The Allegations

On December 21<sup>st</sup>, 2020, I received a request for inquiry under the Code of Conduct. The request was submitted on the Town of Kirkland Lake Schedule A – Integrity *Commissioner Request for Inquiry* form as per section 5 of the Integrity Commissioner Inquiry Protocol dated March 1, 2019. On this form, the requestor indicated that they wished to remain anonymous.

It is alleged that the Mayor breached approved procedures [see section E below for specifics] for handling of confidential reports.

## E. Relevant Policy/Code Provisions

The relevant policy is discussed below:

1. Town of Kirkland Lake Code of Conduct - multiple sections:

**a) Section 10.1**

*No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so.*

**b) Section 10.5**

*No Member shall obtain access, or attempt to gain access, to Confidential Information in the custody of the Municipality, Local Board or Committee except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law.*

## F. Position of the Parties

### Requestor - (anonymous)

The requestor is of the view that the mayor breached the Code of Conduct by circulating the confidential report to staff. The requestor further believes that the Mayor breached the Code of Conduct by asking that legal counsel provide him with the report as he did not have consent of council to direct staff to do so.

### Respondent – Mayor Pat Kiely

The respondent confirms that he did in fact request the report from legal counsel. He states that he had not intended to circulate it to anyone, and it was on advice from legal counsel, that it was suggested that it be circulated to Council. The respondent stated that there was no malicious intent in wanting to see the report. The respondent indicates that when he circulated the report, he used an email distribution list called “Council” and trusted that it was just Council but as it turns out, it also included two staff members. The respondent stated he had not intended to circulate the report to anyone other than Council.

## G. Analysis

### i. Was the confidential report circulated by the Mayor to two staff?

- I find as fact that a confidential report was received by legal counsel.
- I find that the report was not circulated by legal counsel and instead, legal counsel arranged to provide Council with an overview of the findings, in an in-camera Council meeting via Zoom.
- I find as a fact, that the Mayor requested that legal counsel provide the Mayor with a copy of the report.
- I find that the Mayor was cautioned by legal counsel that releasing the report was contrary to the OHS Act and advised against it.
  - In an email from legal counsel to the Mayor, legal counsel states that *“I typically hold a copy in my file so that it is not distributed and to protect it with solicitor client privilege and litigation privilege”*.
- I find that legal counsel recommended that if the Mayor was receiving a copy of the report that it should also be shared with other Council members.
  - *In considering this matter, as you now have a copy, it should be shared with all Members of Council as it is not proper for one Member to have access to information that all members do not have, so please do share it with all members of Council but please as well confirm that it will be kept confidential. It is a breach of the Occupational Health and Safety Act to release the information in the document ...[...]. Please confirm that you have shared this with all Members of Council and confirm their commitment to keep it confidential.*

- I further find that the Mayor circulated the report to Council and to two staff members.

The Mayor was asked why he believed it essential to see the confidential report.

ii. Did the conduct of the Mayor constitute a breach of the Code of Conduct?

Below are the relevant sections of the Code which are at play.

c) **Section 10.1**

*No Member shall disclose, release, sell or publish by any means directly or indirectly, to any person or to the public, any Confidential Information acquired by virtue of his or her office, in any form including, but not limited to, written notes, reports, oral and video recording, pictures, electronic correspondence, and any form of social media except when required or authorized by Council or otherwise by law to do so. [emphasis added].*

FINDING:

I find that the report in question was in fact, a statutorily deemed confidential report. I find that the Mayor released a confidential report to staff without the authorization of Council, contrary to section 10.1 of the Code of Conduct. The respondent stated that it was an error that the report went to staff. He explains that the error arose as a result of the Mayor assuming that the email distribution called “council” only had council members on it. But the message in the Mayor’s email forwarding the report (copied below), is not consistent with this version of events:

*I am sharing a copy of the [...] report to ensure transparency. It is highly confidential and must not be shared outside of Council and the [unnamed staff member].*

Clearly, the Mayor knew at the time, that the report was being forwarded to staff as he named the staff in his email.

d) **Section 10.5**

*No Member shall obtain access, or attempt to gain access, to Confidential Information in the custody of the Municipality, Local Board or Committee except to the extent that such access is necessary for the performance of his or her duties and such access is not prohibited by Council or otherwise by law. [emphasis added].*

FINDING:

I find that the report was accessed when there was no necessity to access the report as Council did not need it to perform their duties. Council had been briefed on the report and no further action in response to the report was needed.

## **H. Did the behavior constitute a breach of the Code of Conduct?**

I find that the Mayor’s behaviour constituted a breach of the Code of Conduct as he did not follow established policy. The distribution of the report is an unreasonable invasion of a third party’s confidentiality. I find that the parties had a strong privacy interest in not having the contents of the confidential report, known. Not only did the Mayor breach established policy, but he also disregarded cautions by legal counsel related to the proposed circulation of the report.

I submit that the confidential report contained highly sensitive information and was surrounded by an atmosphere of caution and volatility.

## Recommendation

The Integrity Commissioner recommends that:

- (1) The Integrity Commissioner's report on Code of Conduct Complaint in respect of Mayor Pat Kiely, be received;
- (2) That Council adopt the finding that the Mayor contravened the Code of Conduct; and
- (3) That the recommendations set out by the Integrity Commissioner be adopted by Council.

Specifically, that

- a) That Council impose a reprimand on the Respondent; and
- b) that Council enact the following corrective actions:
  - i. That Council request the Respondent to issue an apology to Council and to staff whose confidentiality was breached.

## **APPENDIX A – INTERVIEWS**

The following parties were interviewed in the course of this inquiry:

- Mayor Pat Kiely
- Clerk Meagan Elliott
- Requestor (who wishes to remain anonymous)

# INVOICE



**Billing #:** 2118-001  
**Contract #:** 20-082  
**Other #:** RFP-553-20

**Billing Date:** 01/31/21  
**Invoice Due Date:** 03/02/21

**Description:** (Complaint 2020-12-01) Review complaint, conduct interviews, findings and report writing.

**Bill To:**

Town of Kirkland Lake  
Attn: Meagan Elliott  
3 Kirkland Street

Kirkland Lake, ON P2N 3P4

**Remit To:**

DPRA Canada Incorporated  
60 Adelaide Street East, Suite 501

Toronto, ON M5C 3E4

Project Manager: Cholette, Kimberly A  
Account Number: 262118.0001  
Project Name: Kirkland Lake Integrity

Billing Period From:  
To: 01/29/21

Name	Current Rate	Current Hours	Current Billable
Kimberly Cholette	245.00	16.80	4,116.00
<b>Fees - Total</b>		<b>16.80</b>	<b>4,116.00</b>
<b>Before Tax - Total</b>			<b>4,116.00</b>
ON HST TAX - 13%			535.08
<b>Tax - Total</b>			<b>535.08</b>
<b>Invoice - Total</b>			<b>4,651.08</b>

GST/HST Registration #102497989RT0001

QST Registration #1214148885TQ0001