



Via Email to stephen.huycke@richmondhill.ca

March 11, 2021

Mayor Barrow and the Council of the City of Richmond Hill
c/o Stephen M.A. Huycke
Director of Legislative Services / City Clerk
City of Richmond Hill, ON L4B 3P4

Dear Mayor Barrow and Members of Council:

**Re: Mehrdad Sabouhi re Councillor Muench 2020.08.17
Our File No.: 0716-11247**

This is our report respecting a complaint brought by Mehrdad Sabouhi (the "Complainant") against Councillor Tom Muench (the "Respondent") under the Council Code of Conduct of the City of Richmond Hill (the "Code"). In accordance with the Complaint Procedure of the Code, via section 223.4(1) of the *Municipal Act, 2001*, council, a member of council, an employee of the city, or a member of the public may request that the Integrity Commissioner conduct an inquiry about whether a Member of Council has contravened the Code.

Pursuant to a delegation of powers, Norman Groot, in his capacity as Integrity Commissioner for the City of Richmond Hill, has delegated to Erin Stoik, pursuant to section 223.3(3) of the *Municipal Act, 2001*, his powers and duties as Integrity Commissioner to inquire into, investigate, and prepare a report with respect to the complaints described herein. Erin Stoik has investigated the complaint, interviewed all parties, conducted independent research, and drafted this report.

Norman Groot, as Integrity Commissioner for the City of Richmond Hill, has reviewed and edited this report. The findings and recommendations as contained in this report are a collaboration of the inquiry by Norman Groot and Erin Stoik into the complaint. Where "I" is used in this report, it refers to Erin Stoik. Where "we" is used, it refers to the formal findings and opinion of the Integrity Commissioner for the City of Richmond Hill.

THE COMPLAINT

On August 24, 2020, Mr. Sabouhi filed a complaint alleging that Councillor Muench violated the Code when he entered his property without permission and made various inquiries of, and representations to, two HVAC professionals who were replacing a broken air conditioner. For the reasons that follow, we find that the Respondent did contravene the Code.

INVESTIGATION PROCESS

I reviewed the Complainant's written complaint and his sworn affidavit dated August 17, 2020. During my initial conversations with the Complainant in mid-September 2020, he advised that the police investigation was ongoing but would likely be concluded in the near future. In light of this and s. 6.10(a) of the *Integrity Commissioner Procedures* which provides that the Integrity Commissioner does not have jurisdiction over complaints that are an allegation of a criminal nature, I suggested to the Complainant that we wait to see how the criminal process unfolded. However, when I was advised the following month that the criminal matter remained open, I determined it to be necessary to proceed with our own investigation. The Complaint and supporting material were served on the Respondent and he provided a written response, dated November 11, 2020 and additional documents. This response was served upon the Complainant and he provided a written reply and supporting materials on November 26, 2020, which were subsequently sent to the Respondent.

I conducted phone interviews with both the Complainant and the Respondent to discuss the Complaint. The Respondent also provided me with the names of several individuals whom he believed to have relevant information with respect to the incident at issue, and phone interviews were conducted with those individuals. Both parties were also given the opportunity to review and provide comments on the draft report.

Where the Integrity Commissioner completes an investigation and determines that there has been a breach of the Code, the Integrity Commissioner procedures dictate that the Commissioner shall report his findings to Council and may make a recommendation on whether Council should impose one of the penalties provided for in the *Municipal Act*.

THE POSITION OF THE COMPLAINANT

In his affidavit in support of the Complaint, Mr. Sabouhi alleges that on August 6, 2020, Councillor Muench trespassed on his private property and misrepresented his authority as a councillor to two individuals who were carrying out work in the residence.

The provisions of the Code relied upon by the Complainant include the following:

1.2 The principles of this Code are:

- (a) Members will act in an accountable and responsible manner with integrity and fairness in the performance of their duties;
- (b) Members shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- (c) Members are expected to perform their duties and arrange their private affairs in a manner that promotes public confidence and which will bear close public scrutiny; and
- (d) Members shall seek to serve the public interest by upholding both the letter of the law and the spirit of the laws and policies established by the Federal parliament, Ontario legislature, and Council of the Town.

4.3 No Member shall:

- (a) fail to observe and comply with the principles of the Code;
- (f) use the influence of their office for any purpose other than for the lawful exercise of their official duties for municipal purposes.

6.1 Members shall not disclose or release by any means, including social media, to any person either in oral or written form any confidential information acquired by virtue of their office except when required by law to do so.

9.2 Members are required to adhere to all other by-laws, policies, procedures and rules (collectively “policies”) that govern the behaviour of Members, including, but not limited to, those policies set out in Appendix B.

11.1 All Members shall be aware of and comply with the Code.

Background

The Complainant has owned the residence at 67 Bedford Park Avenue in Richmond Hill for more than a year and rents it out to tenants. At the time of the incident at issue he had tenants living on the main floor. His father was living in the basement temporarily while he had renovations done on his own home. The Complainant advises that although he does not know all the property owners in the neighbourhood, he does know his immediate neighbours and has a good relationship with them.

The Complainant states that he has received only one formal complaint about the property, which was in a letter from the City of Richmond Hill dated July 24, 2020, advising that there had been a complaint about a “change in use” with respect to the property. An inspection was conducted by Richmond Hill Fire & Emergency Services on August 25, 2020, and no violations of the Ontario Fire Code were found. In the course of my investigation I learned that this complaint had originated from the Respondent’s office, as explained further below.

The Complainant does not know the individuals who reside at the home across the street from him, but stated a neighbour he does know has told him that property owner is very close friends with the Respondent and that the Respondent visits that property frequently.

History with the Respondent

The parties knew one another prior to the incident at issue in the Complaint. The Complainant first met the Respondent while he (the Complainant) was the chair of the Richmond Hill Business Improvement Area (“BIA”) and the Respondent sat on the Board. The Complainant held that position for 5 years, leaving the role in December 2019. It is the Complainant’s opinion that his vision and that of the BIA were completely different from that of the Respondent, and that the Respondent wanted his vision to prevail. The Complainant alleges that the Respondent has insulted his culture and nationality in meetings of the BIA.

Twelve years ago, the Complainant ran unsuccessfully for councillor in Ward 3. At that time, the Respondent was not involved in municipal politics. The Complainant has never run against the Respondent or in his ward. The Complainant alleges that the Respondent intentionally targeted this property, knowing that it belongs to the Complainant.

August 6, 2020

The Complainant states that on August 6, 2020, the Respondent entered his property without invitation or permission. There was no one home at the time. The back door was open because two HVAC professionals were replacing a broken air conditioner. The Respondent entered the property through the back door and went through the house to the electrical room, where he confronted the two contractors.

The Complaint states that the Respondent was not wearing a mask, entered the house with his outdoor shoes and walked through the house towards the contractors, who were startled and surprised. The Respondent spoke to the contractors face to face and did not respect social distancing protocols. His demeanor was careless to others and a breach of the Complainant's values, rules and beliefs.

The Complainant alleges that the Respondent demanded that the contractors reveal their names and their company name as he approached them. When the contractors questioned who he was, he spoke aggressively to them saying, "What is the name of your company?" and repeatedly stating, "You don't want to tell me your name?". The Complainant describes his treatment of the contractors as "bullying" them.

One of the contractors told the Respondent that he was not allowed to walk into any property without permission and stated that they were in Canada and not "in Russia in the 1950s".

The Complaint states that the Respondent told the contractors that he is a councillor and he "is the law" and he "is the government". He went on to declare that he had the authority to inspect the property because there were changes being made to it.

The contractors told the Respondent that they did not need a permit to replace the air conditioner. The Complainant alleges that the contractors threatened to call the police.

The Complainant states that as the Respondent walked through the rest of the house, put his business cards on the kitchen table and left using the front door. He further alleges that as the Respondent left the property, he told the contractors that "he can handle the police because he is an important man and he knows Doug Ford".

An audio recording of much of this exchange was captured on the surveillance camera at the back door of the property. The transcript of this recording is provided later in this report.

The Complainant states that after leaving the property the Respondent attended the neighbouring property, spoke to the neighbour and asked him if he knew a job was being done on the Complainant's property without a permit. The Complainant advises that this conversation was captured on surveillance video from his property and that he was later advised of this conversation in person by his neighbour when the Complainant was cleaning leaves in front of his property.

The contractors immediately contacted the Complainant and told him about the incident. He was out of town and told the contractors to call the police to tell the Respondent to leave the property.

The Complainant states that he then texted the Respondent and demanded an explanation as to why he would enter his property without notice, invitation, or permission. The Complainant had the Respondent's phone number as they had previously corresponded by text about BIA matters.

The Complainant provided copies of several text messages between him and the Respondent dating from August 2015 to October 2016 to show that they were in touch by text and that the Respondent knew his cell phone number. He points to the fact that the Respondent never asked him to identify himself as proof that he knew that the person with whom he was texting was the Complainant.

Police Investigation

When the contractors called the police to report the trespass, they were told to have the homeowner make the complaint. The Complainant called the police on the same day or the following and was told to draft and submit a report, which he did approximately a week later. With this report he also provided video and audio evidence from surveillance cameras on the property.

The Complainant states that the police advised him they would be contacting the Respondent in order to obtain a statement. The Complainant advises that there was a delay in the police investigation, which he believes was due to one of the contractors being reluctant to give a statement.

The Complainant advises that for almost a month, the police were “chasing” the contractors to get their statements but could not reach them. The police then advised the Complainant that they could not reach the contractors. It took the Complainant two to three weeks to get in touch with them, which caused a delay in completing the police investigation.

The Complainant states that the police advised him that they were contacting the City of Richmond Hill to inquire about whether a municipal councillor had the jurisdiction to do what the Respondent had done. The Complainant advises that the detective investigating the matter subsequently told him that the Respondent did not have the authority to enter the home as he had.

The police investigation was put on hold again when other more pressing matters arose for the detective. The Complainant last spoke to the detective near the end of November and he apologized for the delay and advised that the investigation was still ongoing.

Article

On August 22, 2020, Sheila Wang wrote an article that was published in YorkRegion.com entitled, “*Richmond Hill Coun. Muench accused of ‘trespassing’ on resident’s property: Ward 2 councillor was caught on camera entering a property*”. The Complainant states that he did not contact Ms. Wang, but that one of the contractors knew the reporter and contacted her. Ms. Wang subsequently contacted the Complainant for comment. At the time the article was published, the Complainant had not yet filed his complaint with the City. The Complaint was received by the Clerk’s office on August 24, 2021. The Complainant signed the Consent and Confidentiality Agreement (which must be executed prior to our office reviewing a complaint) on August 25, 2021.

THE POSITION OF THE RESPONDENT

The Respondent provides a different account of the incident at issue in this Complaint and the events leading up to it.

The Respondent states that on August 6, 2020, he was visiting an individual who resides across the street from the Complainant's property. This individual and several neighbours had complained to the Respondent about the activity taking place at 67 Bedford Park Avenue. The Respondent describes this person as someone he is friendly with and whom he helps, for example, by doing shopping for him.

The Respondent states that it is common knowledge that the Complainant's property is a rooming house. On August 6, 2020, the neighbour who lives across the street saw a white truck with no markings parked in the driveway and two men who were not believed to live at that residence were seen going back and forth to the van with home contents. The neighbour was worried and concerned about the activity of the two men and van. He asked the Respondent if he or the city could assure him that everything was "normal" at the address.

The Respondent states that over several months prior to the incident at issue, several neighbours of 67 Bedford Park had made formal complaints to both his office and the City of Richmond Hill about the activity and use of the home at 67 Bedford Park. The Respondent advises that several neighbours believed the home was operating as a "rooming house" with 9 unrelated people residing there, despite the assertion of the owner that he was using the home for his elderly mother or mother-in-law. As a relatively new homeowner, the owner of 67 Bedford Park Avenue had a strained and increasingly distant relationship with the neighbours.

The Respondent told me that he is a very active councillor. He said that he is "up and down" Bedford Park Avenue on a weekly basis and had heard from residents that there was a problem with that house. Based on these concerns he said he would go across the street and check it out. In our interview, the Respondent said that the fact of a white van with no markings in the driveway and two men going back and forth raised the possibility that the house was being burglarized. People in that neighbourhood are not used to that type of movement in houses.

He denies knowing the identity of the homeowner prior to his visit to the property. The only thing he knew before attending the property on August 6, 2020, was that the owner's name was "Mehrdad". He had obtained this information after his assistant had used the public terminal to obtain information about the property owner.

The Respondent Attends the Complainant's Property

At approximately 10:40 am the Respondent crossed the street to the Complainant's property at 67 Bedford Park Avenue. He confirmed that the van in the driveway had no markings. He walked to the side of the house where he saw the side door had no storm door and the entry door was propped fully open. He spoke in a loud voice at the side door yelling, "Hello, Councillor Tom Muench, is anybody home?". He did not receive a reply but heard voices in the basement.

The Respondent entered the home and continued calling in a loud voice, "Hello, is anybody here?". He had a business card in his hand and proceeded to go down the stairs. He heard two men speaking in an adjacent room which had no door. He stood at the bottom of the stairs and continued speaking loudly, stating his name, and asking if anybody was there. He advised the two men of his name and position and asked them if, "Everything was ok".

One of the men took a step out of the room. Once again, the Respondent communicated who he was and asked if everything was okay and if they were occupants of the house. The man was not cordial or friendly towards the Respondent. According to the Respondent, as he spoke to the contractor the two men remained distanced from one another speaking across the room in the basement. The Respondent stayed at the bottom of the stairs and the man stood outside a room approximately 8 feet away from him.

The Respondent reports that he told the man who he was, his title and his concern about the safety and security of the dwelling due to the complaint he had received. The Respondent said his name numerous times and showed his business card. He asked the men what was going on and what their names were. The Respondent knew from a complaint a month earlier that the owner was "Mehrdad".

The Respondent reports that the man to whom he was speaking was not aware of what an elected councillor was, so to communicate with him the Respondent asked him what municipality he resided in and the man said that he was from Toronto/Etobicoke. The Respondent then advised that he was like a local councillor such as the late Rob Ford. The purpose was to try and explain to the man that he was an elected community representative for the City of Richmond Hill.

The man did not tell the Respondent his name or the name of the business for which he was working. He said he was working on the HVAC system. The Respondent asked if he was authorized to be in the home, as a complaint had been received from a concerned neighbour. He also advised that a concern over the security of the home existed and that it did not appear that anybody from the household was present.

In our interview, the Respondent told me that his objective was simply trying to ascertain the identities of the men, to determine if everyone was safe and if the homeowner knew the men were there. It is not common to have a van with no markings and the door wide open. There was nothing personal about his visit.

After this discussion, the Respondent left two business cards on the basement table which was situated between him and the contractor. The business card had his full contact information and picture with City of Richmond Hill logo prominently showcased. The Respondent asked the man in the house to have his company and the homeowner call him using the contact information on the card.

After leaving his business card, the Respondent walked up the stairs and exited the house from the same side door. The Respondent then took pictures of the van in the driveway in front of the house in case there was any future need for information about the occupant or vehicle. In the van he could see a sign with a phone number, so he called that number and left a message asking that his call be returned.

The Respondent then informed the neighbour across the street that it appeared that contractors were at the house and that he had asked the homeowner to contact him. He further advised that he had taken pictures of the van should any "monkey business" arise such as a break and enter.

The Respondent then got into his vehicle and drove to the city offices. While driving he arranged a conference call with the Manager of Inspections of the Building Inspection Division of the City of Richmond Hill and his assistant to tell them about the situation at 67 Bedford Park Avenue.

The Respondent states that during his drive to the city offices he received a text from an unknown

number. A text exchange took place over approximately 30 minutes. As the text exchange was evolving, the Respondent was on the phone with the Manager of Inspections and communicated the content of the text messages to him. The Respondent advised the Manager of Inspections that the text messages demonstrated belligerence and threats by a party who was attached to 67 Bedford Park Avenue.

The Respondent reports that in light of ongoing complaints about 67 Bedford Park Avenue, he was concerned about the safety of staff and therefore felt the information was prudent to share. Following his phone call with the Manager of Inspections, the Respondent did not take any further action with respect to the Complainant's property.

The Respondent states that at the time of receiving the texts he did not know the identity of the sender or that person's connection with 67 Bedford Park Avenue. Although he had had text exchanges in the past with the Complainant, it had been some time since they had corresponded and the Complainant's number was no longer stored in his contacts list, so his name did not come up when he initiated the text exchange. He characterizes the tone and language of the text exchange as mean spirited and belligerent.

Approximately two weeks later the Respondent was contacted by local reporter Sheila Wang who advised him that a Code complaint was going to be lodged by the homeowner of 67 Bedford Park Avenue about his trespassing on August 6, 2020. She advised that she was writing a story about the incident.

The Respondent advised Ms. Wang that he had entered the home as he was acting on a complaint and was only assuring the safety and security of the home. He had visited the home without any prior knowledge of the identity of the occupant or owner. He only learned this information after receiving a text message from the homeowner after visiting the home.

The Respondent and Ms. Wang had a conference call with the neighbour across the street who validated the Respondent's version of events.

Reaction to the Complaint

The Respondent denies that he walked through the house or that he stated that he:

- a) had the "authority to inspect";
- b) was "an important man" implying that he was above the law; or
- c) would engage the Premier to get involved with a regional police force on this matter to provide undue influence.

The Respondent reports that he believes in community engagement and applauds neighbours who are vigilant in watching out for their neighbourhoods. He assumes a homeowner would want their neighbours to be aware of and alert to events. In his view, it is suspicious to see entry doors wide open and for authorized contracting company vehicles not to have markings.

The Respondent denies that he misrepresented his position or himself to the public. He provided his business card and communicated who he was. He believes that most homeowners would prefer that the safety of their property is of concern to their neighbours and that a representative like himself would reach out.

The Respondent denies that the property was targeted. He was acting on a complaint without any knowledge as to the identity of the homeowner. He knew from a complaint a month earlier that

the owner was “Mehrdad”. He had received several complaints about the property.

The Respondent acknowledges that he and the Complainant have a history through his responsibilities with the local BIA, where the Complainant was the past chairperson. During their combined tenure on the BIA, he and the Complainant had many engagements in a professional context, but he also alleges that the Complainant made personal and adversarial attacks and misrepresentations about him to the community in his language (Persian).

One such incident occurred at the BIA Board change at the December 2019 AGM. The Respondent states that as a very active councillor he makes a substantial effort to reach out to the Persian business owners and greater community as a large contingent of Persians have businesses and properties in downtown Richmond Hill.

The Respondent reports that in the past the Complainant had run and lost to be the representative of Ward 2. He believes that the Complainant has political aspirations and is bitter at his transition out of the board of the BIA. Despite this bitterness the Respondent has always treated him with full professional respect even when disagreements arise between them.

The Respondent is of the view that by advising the media of his complaint, the Complainant shows disregard for process. He was belligerent to the Respondent and there are inconsistencies in his own complaint. The Respondent denies that his history with the Complainant had anything to do with this incident, as he did not know the identity of the property owner when he attended at 67 Bedford Park Avenue.

The Complainant’s Motives

It is the Respondent’s position that this complaint is mean spirited. Further, he asserts that the Complainant has demonstrated a disregard for privacy and secrecy as he publicly disclosed his Code of Conduct complaint, which is in breach of basic decency and the Code of Conduct guidelines, and another reason why the Respondent believes the complaint to be politically motivated in an attempt to embarrass him.

The Respondent does not believe he acted with disrespect in any way. He was simply trying to follow up a complaint by a resident and assure community safety and was acting with the highest respect for what he believes was the best interest of the Complainant, the residents and the community. His sole purpose was to ensure that the contractors were authorized to be there.

The Respondent denies that he violated the Code.

Police Investigation

The Respondent states that no charges were laid, and the police advised him that they would be taking no further action on the matter.

EVIDENCE CONSIDERED

Evidence Submitted by the Parties

The Complainant was not at the property at the time of the incident at issue. However, with his Complaint he has submitted the following evidence:

- video footage from a camera outside the back door of the property that shows the Respondent knocking on the back door, calling “hello” and immediately walking into the home. The Respondent is then shown leaving the home by the back door;
- video footage from a camera at the front of the home that shows the Respondent coming around from the back of the house, stopping in front of a white van parked in the driveway with the back doors open and taking pictures of the inside of the van. The Respondent approaches the back of the van to look inside, walks around the van to the end of the driveway, and then walks away down the street;
- a series of photographs that consisted of stills taken from the video footage;
- audio recordings of the interaction between the contractors and the Respondent taken from the surveillance camera at the back door of the property;
- a copy of a letter to him from the Fire Prevention Inspector of the City of Richmond Hill, dated August 27, 2020 re: inspection on August 25, 2020, which revealed no violation of the Ontario Fire Code; and
- screen captures of text exchanges with the Respondent dated August 11, 2015, November 9, 2015, January 19, 2016, July 5, 2019 and October 18, 2019.

The Respondent submitted:

- screen captures and a transcription of a text exchange with the Complainant on August 6, 2020.

Following his review of the draft report, the Respondent submitted a copy of a letter from the neighbour across the street from 67 Bedford Park Avenue. This letter elaborates on the evidence he provided when I interviewed him, and which is outlined below.

The Complainant also provided me with evidence relating to another incident in which the Respondent allegedly exceeded his jurisdiction as a municipal councillor in a roadside interaction with two individuals. However, this evidence is outside the scope of this inquiry, and therefore I did not consider it in coming to my conclusions with respect to the incident at issue.

Transcript of Audio File

The Complainant advises that the recording was taken by the surveillance camera at the back door of the property. The quality of the recording is variable and the transcription below is our best effort to accurately transcribe it. “TM” refers to the Respondent, and “C” is one of the contractors working in the Complainant’s home.

TM: (knocking) Hello?

C: Hi.

TM: How ya doing?

C: Good.

TM: Could you do me a favour? Give this to the owner? I'm a councillor in Richmond Hill.

C: Sure I can.

TM: I'm going to give you two.

C: What's that for?

TM: (inaudible) ...doing renovations down here (inaudible) ... and doing a lot of changes in here (inaudible)

C: Who are you though? Why did you just walk into the house?

TM: I'm the local councillor – Tom Muench, City of Richmond Hill.

C: Are you allowed to walk into the house, sir?

TM: (Inaudible)

C: (Inaudible)

TM: Can I leave this here? / Do you live here sir?

C: No

TM: (Inaudible) ... You are not allowed to change an A/C here.

C: For what?

TM: (Inaudible) ... You are not allowed..... (Inaudible)

C: I'm just asking why did you barge into the house?

TM: (Inaudible) ... You need a permit to work here?

C: For changing an A/C? (Inaudible) ... for what? Changing an A/C?

TM: Yeah, because it (inaudible) is.....a municipal.....

C: Sir, I'm gonna have to actually ask you (step out?) of the house. (inaudible)... you didn't even knock, you just barged in.

TM: I did knock. (Inaudible)

C: No one gave you permission...

TM: (Inaudible) I am the ... government ...and/of law..... Make sure if I were you (Inaudible)

C: Well I'm just saying like you can't just walk into people's homes.

TM: (Inaudible) ...call me

[talking over one another]

C: (inaudible) In America, in America when you...(inaudible). Have a great day.

TM: Ok (Mario?) right back at ya. Can I get your name? You aren't going to tell me your name? You going to tell me your name?

C: Do I have to?

TM: You don't have to but I'm going to calling the company, so your company is going to be contacted.

C: That's fine, but you know at the end of the day ...

TM: ...your company is going to be contacted.

C: You can't just walk into the house with no consent. You're in trouble. You're in trouble.

TM: Do you know who I am?

C: Well, to anyone, like you can't just walk ...(inaudible).

TM: Do you know who I am?

C: Huh?

TM: Here's my card. I am the government....and/of law....

(Inaudible)

C: The government... (Inaudible) ...of law?

TM: I am the government and the law ... it's right there.

C: Ok, that's fine but you can't walk into people's homes. Its not uh, like uh Russia back in the 1950s, buddy.

(Inaudible)

City Records of Previous Complaints

I contacted the City Clerk to request that he provide information about any formal complaints with respect to the property at 67 Bedford Park Avenue that had been lodged over the past year, either directly or forwarded from the Respondent's office.

The City Clerk made inquiries with the Building Division, the Community Standards Division (by-law enforcement) and Access Richmond Hill (the central customer/contact center). Neither the Building Division nor Access Richmond Hill had any records. The Community Standards Division had one inquiry about the property from the Respondent's office. On July 20, 2020, the Respondent's assistant sent an email to the Fire Chief for the City of Richmond Hill:

Councillor Muench has asked me to reach out to you regarding rooming houses in Richmond Hill. We have come across a few houses, especially 67 Bedford Park, that has rooms rented out to several different individuals. Not only is this not permitted but also creates a very dangerous fire hazard. Councillor Muench would like to discuss an ongoing plan on how to deal with this issue.

The Fire Chief suggested that the Respondent discuss the issue with the Commissioner of the Community Services Department and Director of Community Standards. He advised that he would forward the address to his fire inspectors for their review, and would send a letter to the owner of the residence/rooming house and seek permission to inspect the building. He clarified that fire services only looks for fire safety issues and does not necessarily focus on by-law infractions. In this response, the Fire Chief copied the Commissioner of the Community Services Department and Director of Community Standards.

The Director of Community Standards wrote a responding email advising that the by-law office did not currently have a case open for 67 Bedford Park Avenue, which meant that the office had never received a complaint about it. She asked if the Respondent wanted to open a by-law file to investigate the property, in which case the complainant's name, email, phone number and address would be required. The Respondent's assistant advised me that they did not request that a file be opened.

It appears that on August 13, 2020, by-law staff received a request from Fire Prevention to attend 67 Bedford Park Ave and assist with a rooming house inspection. The inspection was conducted on August 25, 2020. The property was found to be vacant and not in violation. The Complainant was present at the inspection and was cautioned that if he would like to rent out the basement or rooms he would first need to check with zoning/and or by-law to ensure compliance. The file was closed on September 1, 2020.

Based on the correspondence received from the City, it appears that there had not been several formal complaints about this address, and that in fact the only complaint was the one made by the Respondent's office in July 2020.

Witnesses

I spoke to the individual who resides across the street from the Complainant's property. He advised that when the Respondent was visiting him on August 6, 2020, he mentioned to the Respondent that there was something "fishy" going on across the street. A van was parked in the driveway of 67 Bedford Park Avenue with "things" coming in and out of the house. He asked the Respondent to go over and check it out. This individual advised that he had never made a formal

complaint about the Complainant's property.

I also interviewed the Respondent's assistant. She advised me that the July 2020 email to the Fire Chief had been prompted by a call received at the Respondent's office by an individual (the same neighbour referenced in the previous paragraph) who stated that people were coming and going from the Complainant's property all the time. The Respondent's assistant believed that the appropriate way to deal with this concern was to send an email to the Fire Chief.

This same individual called again on the day of the incident at issue to complain that something was going on across the street – there was a van outside and some kind of construction happening, and this person queried whether the appropriate permit had been obtained. The Respondent advises that he was not aware of this phone call.

The Respondent's assistant told me that the Respondent called her after his visit to 67 Bedford Park Avenue. The Respondent was receiving texts from the Complainant while he was speaking to her. He told her that the texts were very rude – she asked the identity of the sender and he said he did not know, but thought it was the owner of the property. The Respondent forwarded the text to his assistant and she did a Canada 411 search on the number. The sender came up as "Merdaad", with no last name.

When I asked about complaints received by the Respondent's office about the property at 67 Bedford Park Avenue, she advised that they had received complaints by phone, but could not provide any details about them.

I also interviewed the Manager of Inspections for the Building Department of the City of Richmond Hill. He advised that the Respondent called him on August 6, 2020, as he was receiving texts from the Complainant. He describes his conversation with the Respondent as "unofficial" and stated that he frequently receives calls from councillors who want his opinion on something. As the Manager of Inspections for the Building Department, he deals with commercial and not residential buildings.

The Manager of Inspections told me that he does not have the power to enter a building without permission of the owner. If he were to see signs of construction in front of a property, he could knock on the door and request access to the property and would also advise the property owner that they were not obligated to comply with this request. If he had concerns about work being done on a property without the proper permits and the owner did not consent to him entering the property to conduct an inspection, he would have to obtain a warrant.

I spoke to the owner of the contracting company who advised me that he was the person who had contacted reporter Sheila Wang to tell her about what had occurred at 67 Bedford Park Avenue on August 6, 2020. I subsequently asked the owner for the names and phone numbers for the contractors who were involved in the incident at issue, but he did not respond to my request. However, this did not impede our ability to conduct our investigation as our conclusions are based on the audio recording of the interaction between the Respondent and the contractors.

I also interviewed the detective from the York Regional Police who conducted the investigation into the trespassing allegation. He advised me that the investigation is now concluded and that no charges were laid against the Respondent.

ISSUES

As a preliminary matter, we note that the Complainant has cited subsection 6.1 as one of the grounds of his Complaint. This provision states:

Members shall not disclose or release by any means, including social media, to any person either in oral or written form any confidential information acquired by virtue of their office except when required by law to do so.

It is our view that this subsection is not applicable to this matter, and that there are other grounds cited by the Complainant that address the impugned conduct, so do not consider it in our analysis below.

In our inquiry into this Complaint we have considered the following issues:

- 1) can the aspirational and general provisions contained in the “Preamble and Principles” section, as well as subsections 4.3(a), 9.2 and 11.1 of the Code, be the basis for a substantive complaint?
- 2) did the Respondent breach subsection 4.3(f) of the Code insofar he used the influence of his office for any purpose other than for the lawful exercise of his official duties for municipal purposes?

ANALYSIS AND FINDINGS

Issue 1: Can the aspirational and general provisions contained in the “Preamble and Principles” section, as well as subsections 4.3(a), 9.2 and 11.1 of the Code, be the basis for a substantive complaint?

The Complainant alleges that the Respondent has contravened subsections 1.2 of the Code, which are contained under the heading “Preamble and Principles”. However, for the following reasons we are of the view that these sections are simply aspirational in nature and do not create substantive obligations that must be followed by Councillors. These provisions therefore cannot form the basis for a complaint.

This is the conclusion that has been drawn by Integrity Commissioners in other jurisdictions and we find their analysis compelling and applicable to the Code for the City of Richmond Hill. The Integrity Commissioner for the City of Toronto has stated repeatedly that the statements of principle in the preamble to the Code of Conduct are not the foundation for a finding of a breach, but rather provide a framework within which the substantive provisions of the Code of Conduct may be interpreted, and a Councillor’s conduct reviewed.¹

We note that Section 4 of the Code for the City of Richmond Hill provides that Councillors shall “observe and comply with the principles of the Code” as well as observing and complying “with every provision of the Code”. This, however, does not change our view that the statements of principle are not independently capable of founding a complaint – particularly in light of the

¹ *Ford (Re)*, 2013 ONMIC 12 (Toronto) (CanLII), per IC Leiper; *Ford (Re)*, 2016 ONMIC 11 (Toronto) (CanLII), per IC Jepson; *Grimes (Re)*, 2016 ONMIC 7 (Toronto) (CanLII), per IC Jepson; *Filion v. Thompson*, 2018 ONMIC 25 (Toronto) (CanLII), per IC Jepson.

concerns about clarity and certainty identified below. Even if we are incorrect, any complaint arising under Section 1 would be duplicative of the one we consider under subsection 4.3(f).

Integrity Commissioner Giorno has come to the same conclusion in decisions rendered with respect to the Council Codes of Conduct for Durham Region, the Town of Orangeville, the Township of Scugog, the City of Brampton, the Municipality of Clarington, the Township of Madawaska Valley and the City of Dryden:

As a general matter, a statement of principle does not create an obligation. It merely states the principle(s) that may be used to interpret obligations created elsewhere in the law.

The Council Code of Conduct was enacted by by-law. Principles of statutory interpretation apply. As explained in *Sullivan on the Construction of Statutes*, 6th ed.:

“Purpose statements may reveal the purpose of legislation either by describing the goals to be achieved or by setting out the governing principles, norms or policies. ... However, like definitions and application provisions, purpose statements do not apply directly to facts but rather give direction on how the substantive provisions of the legislation – that do apply to facts – are to be interpreted.” [emphasis added]

I find that Section 1 (Principles) provides interpretive direction only, and it does not create rules or obligations on Council Members that can be the subject of a Complaint. ...Statements of principle are not enforceable rules.

Another reason that I am not prepared to treat the content of the Principles section as binding rules is that its content is too general and unspecific to be treated as clear, enforceable obligations. Council Members are subject to penalties if they contravene the rules in the Code; it necessarily follows that the rules must be clear, certain and unambiguous.²

Therefore, we do not find any violation of the provisions within Section 1 of the Code, as they are simply statements of principle and cannot be the basis for a complaint. These principles, however, guide our interpretation of the substantive provisions cited by the Complainant as the basis for his Complaint.

In light of our position that this section is not capable of giving rise to a complaint, we recommend that the website for the City of Richmond Hill be amended to clarify this. We also recommend that the Complaint Form and Affidavit be similarly amended and that the Code of Conduct be amended to state that the “Preamble and Principles” section of the Code of Conduct is an aid to interpretation of the Code but that the provisions within this section cannot give rise to complaints.

² *Durham Region (Council Member) (Re)*, 2018 ONMIC 3 (CanLII) at paras. 32-35 [references removed]. See also, *Wilson (Re)*, 2017 ONMIC 13 (Orangeville) (CanLII) at paras. 118-123; *Singh v. Sprovieri*, 2018 ONMIC 20 (Brampton) (CanLII) at paras. 71-75; *Partner (Re)*, 2018 CanLII 16 (Clarington) (CanLII) at paras. 28-31; *Moore v. Maika*, 2018 ONMIC 7 (Madawaska Valley) (CanLII) at paras. 80-88; and *Beyak et al. (Re)*, 2018 ONMIC 8 (Dryden) (CanLII) at paras. 30-36.

Similarly, subsections 9.2 and 11.1 set out the general rule requiring Members to comply with the Code and all other by-laws, policies, procedures and rules that govern their behaviour.

We are of the view that these provisions are too vague and general to provide grounds for a substantive complaint. When read in context, subsection 11.1 can be said to provide the preamble to Section 11 which deals with compliance with the Code and a Member's obligations with respect to inquiries and investigations by the Integrity Commissioner.

Issue 2: Did the Respondent breach subsection 4.3(f) of the Code insofar he used the influence of his office for any purpose other than for the lawful exercise of his official duties for municipal purposes?

It is this issue that is central to this complaint. The Complainant asserts that the Respondent invaded his privacy and misrepresented his position and authority to the members of his ward and misrepresented himself to the public. The parties agree that the Respondent entered the home and spoke to the contractors, what is at issue is whether this constitutes a violation of the Code.

Preliminary Issues

The Respondent believes that the Complaint is vexatious and politically motivated. The *Integrity Commissioner Procedures* permit us to refuse to conduct an investigation or to cease an investigation if we determine that the complaint is frivolous, vexatious or not made in good faith, or if there are no or insufficient grounds for an investigation. None of those criteria were met in this case. We were made aware of the history between the parties, but the fact of a prior conflict or disagreement does not preclude a party from ever making a Code complaint. When we reviewed the Complaint and supporting evidence we determined that the Complainant had grounds to make the Complaint, and that it was neither vexatious ("without reasonable or probable cause or excuse") or frivolous ("something that is not worthy of serious consideration, or that is of little or no importance, due to its lack of seriousness or sense").

The Respondent also alleges that the Complainant breached the confidentiality that attaches to the integrity commissioner complaint and investigation process by soliciting and engaging the media after submitting his Code of Conduct complaint. We have considered this assertion and find that it is unsupported by the evidence. Although the Complaint is dated August 17, 2020, it was not received by the Clerk's office until August 24, 2020 and the Complainant did not sign the Consent and Confidentiality Agreement until August 25, 2020. The article was published on August 18, 2020. I have spoken to the owner of the contracting company whose employees were working in 67 Bedford Park Avenue on August 6, 2020. He told me that it was he and not the Complainant who contacted the media. The reporter then reached out to the Complainant for comment, at which time he advised her of his forthcoming complaint. Arguably confidentiality provisions did not apply as the Complaint had not yet been submitted to the City or to our office, further the Complainant had not yet signed the confidentiality agreement. In these circumstances, we have no jurisdiction to find that the Complainant breached an agreement that had not been signed at the time of the article and where he was responding to a media inquiry that he had not initiated.

Use of Influence of Office

There is no question that the Respondent was relying on his office as a municipal councillor as the basis for entering the Complainant's home and questioning the contractors who were working there. The conclusion that the Respondent entered the home in the role of a councillor making an inquiry on behalf of a constituent or the wellbeing of his ward is supported by the evidence of the Respondent, his assistant, the neighbour across the street and the audio recording of the Respondent's conversation with the contractors.

The Code provision at issue does not require that a Member be purporting to act in an official capacity, but only that he be using the influence of his office, which is what occurred on August 6, 2020.

Purpose Other than Lawful Exercise of Official Duties for Municipal Purposes

We note that the *Municipal Act* does not define the role and responsibilities of individual members of Council.

The Respondent has advised that he entered 67 Bedford Park Avenue to investigate a security concern raised by a neighbour. Although the Respondent was acting in good faith, we find that in doing so he exceeded the scope of his powers as a municipal councillor and used the influence of his office for a purpose other than the lawful exercise of his official duties for municipal purposes, thereby acting in contravention of subsection 4.3(f) of the Code.

The investigation of potential criminal activity is the jurisdiction of the police, and this is particularly the case where entry into private property is involved. In this situation, the Respondent could have walked over to 67 Bedford Park Avenue and talked to the contractors as they were going back and forth to the van. Or, he could have notified the police. What he should not have done is enter the private property of one constituent at the request of another constituent to determine whether criminal activity was taking place.

Further, we find the Respondent's claim that he was solely motivated by a concern about security is not borne out by the audio recording. Although parts of the recording are inaudible, it is clear that the Respondent opens the conversation by asking the contractors how they are doing, introducing himself as a councillor and asking the contractors to give his business cards to the owner. He then comments on the renovations they are doing and inquires as to whether they require a permit for the work being done. We know too from the evidence provided that the Respondent had been alerted to concerns about this property and whether it was being used as a rooming house.

While it is certainly appropriate for a councillor to have concerns about or an opinion on a by-law complaint with respect to a property within his ward, it is beyond the scope of that councillor's official duties to take by-law enforcement into his own hands. He should have simply contacted the police or municipal law enforcement officers and advised of his concerns and suspicions.

The City of Richmond Hill has appointed municipal law enforcement officers pursuant to s. 15(1) of the *Police Services Act*. They are peace officers for the purpose of enforcing municipal by-laws,³ and provincial offences officers while they are discharging their duties.⁴ Like police officers,

³ Section 15(2) of the *Police Services Act*.

⁴ *Provincial Offences Act*, s. 1(1), cited in *Partner (Re)* at para. 47.

municipal by-law officers are not lawfully permitted to enter a dwelling without the owner's consent or a warrant, except in certain limited circumstances, for example, where the delay in obtaining consent or a warrant would result in an immediate danger to the health and safety of any person.⁵

In the matter at issue, the Respondent was using the influence of his office as a municipal councillor as the justification for informally entering a private dwelling without the owner's consent or a warrant in order to obtain information about what was happening in the property so that he could report back to a neighbour. It is our view that such conduct does not constitute the lawful exercise of his official duties for municipal purposes.

The Respondent entered private property without the permission of the homeowner. He remained in the property in the face of repeated statements by the contractors working there that he was trespassing and did not have permission to be in the premises. As noted above, even a police officer or municipal law enforcement officer would not be have been able to enter the Complainant's property in these circumstances.

It is not the Respondent's role to investigate potential criminal activity, enforce a municipal by-law or conduct property inspections. Instead, in such a situation it is the role of a councillor to pass on any complaint to staff, or – if there was an urgent concern about the safety of the property – to contact the police.

There is insufficient evidence to support the Complainant's assertion that the Respondent knew his identity prior to the incident at issue and was targeting his property. Further, we wish to emphasize that we find that the Respondent was acting with good intentions and without malice.

Police Investigation

The Respondent advises that a detective from York Regional Police reviewed the trespassing allegation and no charges were laid. This is not surprising, given that the police would need to prove a charge beyond a reasonable doubt, and that the Crown would have to demonstrate a reasonable prospect of conviction and that the prosecution was in the public interest.

CONCLUSION

In conclusion, although the Respondent's actions were done in good faith and without malice, we determine that the Respondent has violated subsection 4.3(f) of the Code.

We make the following recommendations:

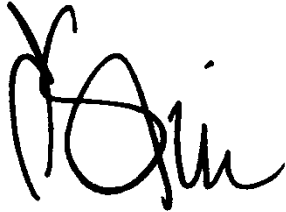
1. that Council impose a reprimand on the Respondent for the breach of the Code on August 6, 2020.
2. in order to provide greater clarity, the Code of Conduct be amended to state that the "Preamble and Principles" section is an aid to interpretation of the Code but that the provisions within it cannot give rise to complaints;
3. the information on the website for the City of Richmond Hill regarding how to file a Code of Conduct complaint be amended to include information on what matters do not give rise

⁵ Sections 435 to 439 of the *Municipal Act*.

to a Code complaint; and

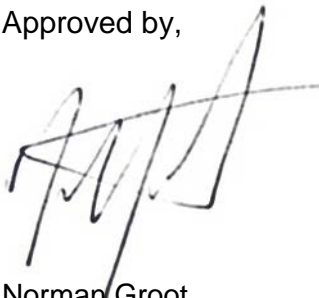
4. the Complaint Form and Affidavit be amended to indicate that none of the provisions in Section 1 of the Code of Conduct can be relied upon as the basis for a stand-alone complaint.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'Erin Stoik', with a stylized, cursive script.

Erin Stoik
Investigator
c/o Investigation Counsel PC
Office of the Integrity Commissioner

Approved by,

A handwritten signature in black ink, appearing to read 'Norman Groot', with a stylized, cursive script.

Norman Groot
Integrity Commissioner for the City of Richmond Hill
c/o Investigation Counsel PC
Office of the Integrity Commissioner