

**NORFOLK COUNTY INTEGRITY COMMISSIONER,
DAVID G. BOGHOSIAN**

Citation: Complaint re: Councillor Veri and Simcoe BIA Communications Committee – DGB-Norfolk County ICI-2024-03

Date: May 10, 2024

REPORT ON COMPLAINT

Introduction

[1] The Chair of the Communications Committee (“the Committee”) of the Simcoe Downtown Business Improvement Association (“BIA”), BIA Treasurer and member of the BIA Board, Lyndsey Ross, has filed a Code of Conduct complaint against Councillor Adam Veri alleging that he disclosed confidential information to third parties which he learned and/or obtained during an allegedly closed or confidential meeting of the Committee, disclosed a confidential email and disclosed the fact of an Integrity Commissioner Complaint filed against her and another BIA Board member, all in breach of the Confidentiality provisions of the County’s Code of Conduct.

[2] The Complaint is undated. It was received in my office from the County Clerk on April 15, 2024.

[3] This is the third in a series of Complaints. See paragraphs [1] – [3] of my Report on Complaint re: Simcoe BIA Board of Management Chair, Brian Jones – DGB-Norfolk County ICI-2024-01 for an overview of the nature of the interrelated Complaints.

Complaint

[4] Ms. Ross has alleged that Cllr. Veri violated the Code of Conduct by disclosing Confidential Information as follows:

1. Discussing with third parties deliberations at what she characterizes as a confidential meeting of the Downtown Simcoe BIA Communications Committee on March 4, 2024;
2. “Alluding to” a confidential integrity commissioner investigation concerning her and the BIA Chair by Councillor Veri in emails sent on March 13, 2024;
3. Disseminated a confidential email explicitly listed as not for distribution to those other than the intended recipients.

[5] She provided a Timeline of Events and a series of emails between her and Cllr. Veri on March 13, 2024.

[6] Although she did not identify the particular provision of the Code of Conduct that she believed had been violated, it is clear that she is alleging a violation of Article 10 of the COC, which broadly prohibits disclosure of Confidential Information as defined in the Code.

Information Provided by the Complainant

[7] According to the materials provided by Ms. Ross and further email exchanges I had with her after receiving her complaint, I am satisfied of the following facts:

- On March 4, 2024, the Communications Committee of the BIA met to review and discuss the submissions to its digital management RFP process;
- This meeting was open to all BIA board members, however, only committee members had a vote, should any items require a vote;
- The only BIA board member in attendance who was not a Committee member was Councillor Adam Veri;
- At the beginning of the meeting, Ms. Ross stated that the meeting was confidential around the RFP, that nothing we discussed at this meeting was to be discussed with anyone else nor were any materials from this meeting to be taken;¹
- Cllr. Veri did not object to this confidentiality warning;
- Cllr. Veri made a number of pages of notes of what had been discussed at the meeting which he took with him after the meeting ended.
- On March 13, 2024, the BIA Communications Committee sent out a notice to all Board members regarding the Committee's next meeting to discuss the RFP proposals;
- At 1:47 pm on March 13th, having received the notice of the next Committee meeting to discuss the RFP submissions, Cllr. Veri sent an email to the BIA board stating that he had spoken with the County CAO and Clerk and that as a result of these discussions, he and Cllr. Brunton (the other County councillor on the BIA Board) were recommending that any further consideration of the RFP proposals be deferred until certain "procedural issues" were addressed; that the BIA and Committee were required to follow County policies and procedures; and that if

¹ Councillor Veri agrees that Ms. Ross did issue such a warning but was unclear in his Response whether this warning was given at the beginning of the meeting or toward the end, or both. I am satisfied on balance of probabilities that it was likely given at the beginning of the meeting and possibly also again at the end.

municipal policies were not followed, it “could put the BIA and Norfolk County into a potentially litigious situation.”²

- It is apparent from an email Cllr. Veri sent later on March 13th (at 17:00:49) that he had at least discussed his concerns about the process the Committee had followed at its March 4th meeting in considering the RFP proposals with the CAO, Clerk and Cllr. Brunton.
- Ms. Ross sent an email to Cllr. Veri, cc'd to the GM of the BIA and members of the Board of the BIA, on March 13, 2024 at 15:17:31 containing the following header:

PLEASE NOTE THIS EMAIL IS CONFIDENTIAL TO THE PEOPLE IN THIS EMAIL CHAIN, ANY DISTRIBUTION OF THE EMAIL OUTSIDE THE INTENDED RECIPIENTS WILL VIOLATE CONFIDENTIALITY AND RESULT IN POTENTIAL LEGAL ACTION. PLEASE NOTE THIS EMAIL IS BEING SENT FROM MY PROFESSIONAL EMAIL ADDRESS, NOT FROM THE BIA EMAIL ADDRESS. PLEASE NOTE THAT MY RESPONSE IS MY REPSONSE AND NOT OF ANYONE ELSE.

- Cllr. Veri sent an email responding to the above email from Ms. Ross to which he added the County Clerk and the CAO as recipients, thus distributing the original email of Ms. Ross proposing breach of her express caution not to distribute it to those outside the original recipients in the header of her prior email.

Response of Councillor Veri

[8] I sent Cllr. Veri the Complaint by email on April 18, 2024. By email the same day, he provided me with a detailed account of his position, augmented by a series of additional emails responding to questions I posed over the period April 18-22, 2024.

[9] He explained the source of his concern about the process by which the Communications Committee was going about selecting the successful candidate for the digital management contract with the BIA and his particular concern about one of the proponents and the relationship between that proponent's principal, on the one hand, and both the BIA and a particular Board member, on the other. Those concerns, if true, raised legitimate issues with the Committee's RFP process and potential conflict of interest. For confidentiality reasons, I will not disclose any more particulars of these concerns.

² Ms. Ross asserts that this last point represented a threat of a lawsuit by the County against the BIA. After reviewing the context of the statement, Cllr. Veri's explanation of what he meant in a later email to Ms. Ross on March 13th and the fact that, as a matter of law, a municipality could not sue one of its own local boards, I am satisfied that this was not such a threat but rather a warning from Cllr. Veri that the manner in which the Committee was proceeding with the review of the RFP proposals could result in litigation against both the BIA and the County by one or more of the unsuccessful proponents.

[10] I spoke with Cllr. Veri on April 24, 2024. He advised me that after the March 4th BIA Committee meeting, he spoke to Cllr. Brunton, who also sat on the BIA Board, the same day, as well as the County CAO and the County Clerk, all by telephone. The conversations all concerned the same subject-matter but in varying degrees of detail, the conversation with Cllr. Brunton lasting perhaps 5 minutes, the conversation with the CAO lasting perhaps 20-25 minutes and the one with the Clerk lasting an uncertain length of time, but likely not more than 10 minutes. The general topic of each conversation was the irregular, if not non-existent, adherence to basic meeting procedures and the manner in which the proposals were being considered. I specifically asked him if he disclosed to any of these parties the names of the proponents or the content of their RFP submissions. He advised that he did not discuss the content of any of the proponents' submissions and the only proponent he mentioned by name was Shop our Town, the principal of whom, Brian Jones, was the current BIA Chair, and whose company held the current contract with the BIA for digital management services.

Investigation

Interview with Councillor Brunton

[11] I spoke with Cllr. Burton alone on May 1, 2024.

[12] Cllr. Brunton recalled speaking with Cllr. Veri on the same day as, or the day after, the March 4th meeting of the Communications Committee of the BIA. He could not recall if it was just him and Cllr. Veri present when the discussion occurred or whether others were present. He said he missed that meeting due to another conflicting appointment involving Council business. His recollection of the discussion was vague but he thought Cllr. Veri mentioned two of the proponents who had responded to the Social Media Management RFP, one being Shop our Town (Brian Jones) and another by someone out of Delhi (he could not recall the name of that proponent being mentioned). Cllr. Veri did not mention any particulars of any of the proposals. He recalled Cllr. Veri indicating that he had not seen any of the proposals, which were not distributed at the meeting. Ms. Ross was heavily advocating the Shop our Town proposal at the meeting.

Interview with CAO Al Meneses

[13] I spoke with the CAO alone on May 1, 2024.

[14] He spoke with Cllr. Veri about the March 4th Communications Committee of the BIA after the Council meeting on March 5, 2024. He believes that at one point or another in the meeting, Ms. Scharback, the Clerk, and possibly also Cllr. Brunton were also present.

[15] Cllr. Veri pointed out to him that this was his first meeting as a BIA Board member and he was shocked by the lack of adherence to procedural requirements such as the meeting not being called to order, no motion to go into closed session, no minutes being taken, etc. Cllr. Veri did not mention the names of any of the proponents except one, Brian Jones' company, and did not disclose any details of any of the other proposals, or even the number of proponents. Cllr. Veri expressed concern from a conflict of interest standpoint about the fact that Ms. Ross, who chaired the meeting, was obviously pushing the proposal of Mr. Jones' company, which raised conflict of interest concerns. He was also concerned about Ms. Ross' claim that the existing Shop our Town contract made it the owner of the BIA's domain names and website, which he felt, if true, should

have been disclosed to the other bidders as it would adversely affect the competitiveness of their bids.

Interview with County Clerk Genevieve Scharback

[16] I interviewed Ms. Scharback alone on May 1, 2024.

[17] She met with Cllr. Veri on either the afternoon of March 4th or on March 5th. She believes she was called into a meeting already in progress between the CAO and Cllr. Meneses. Her recollection of the meeting was limited. She was certain Councillor Veri did not mention the names of any of the proponents to the BIA's Social Media Management RFP except Shop Our Town and did not mention any particulars of any of the bids (in fact, she recalled him stating that he was not even given any of the proposals to review). He also discussed various procedural irregularities he observed at the March 4th Communications Committee meeting.

Applicable Legislation and By-laws

[18] The relevant legislative provisions are as follows:

Municipal Act, 2001, s. 204

Designation of improvement area

(1) A local municipality may designate an area as an improvement area and may establish a board of management,

(a) to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and

(b) to promote the area as a business or shopping area. 2001, c. 25, s. 204 (1).

Corporation

(2) A board of management is a corporation consisting of the number of directors established by the municipality. 2001, c. 25, s. 204 (2).

Local board status

(2.1) A board of management is a local board of the municipality for all purposes.

Municipal Act, 2001, s. 239

Resolution

(4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

- (a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or
- (b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection. 2001, c. 25, s. 239 (4); 2006, c. 32, Sched. A, s. 103 (2).

Open meeting

(5) Subject to subsection (6), a meeting shall not be closed to the public during the taking of a vote. 2001, c. 25, s. 239 (5).

Exception

- (6) Despite section 244, a meeting may be closed to the public during a vote if,
 - (a) subsection (2) or (3) permits or requires the meeting to be closed to the public; and
 - (b) the vote is for a procedural matter or for giving directions or instructions to officers, employees or agents of the municipality, local board or committee of either of them or persons retained by or under a contract with the municipality or local board. 2001, c. 25, s. 239 (6).

Record of meeting

(7) A municipality or local board or a committee of either of them shall record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not. 2006, c. 32, Sched. A, s. 103 (3).

Same

- (8) The record required by subsection (7) shall be made by,
 - (a) the clerk, in the case of a meeting of council; or
 - (b) the appropriate officer, in the case of a meeting of a local board or committee.

Municipal Freedom of Information and Protection of Privacy Act, ss. 2(2.1) and 32

Business identity information, etc.

2 (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.

County By-law 2023-68 – A By-law Establishing the Simcoe Business Improvement Area Board of Management

The relevant provisions of the By-law are as follows:

- It confirms establishment of the Simcoe Business Improvement Area pursuant to By-law 78-25 (first preamble clause);
- It constitutes a Board of Management of the Business Improvement Area pursuant to s. 204 of the *Municipal Act, 2001* (By-law, s. 2.1);
- Pursuant to s. 204(2.1) of the *Municipal Act, 2001*, the Board of Management is deemed to be a “local board” of the County for all purposes;
- Section 5.8 of the By-law provides:

Meetings of the Board of Management shall be open to the public, with notice of meetings publicly posted and provided to the County Clerk's Office at least five (5) days prior to the meeting. *The Board of Management may close a meeting, or a part of a meeting, to the public only in accordance with section 239 of the Municipal Act and in accordance with the above noted notice provisions. [emphasis added]*

- Section 5.11 of the By-law provides that proper minutes and records of every meeting of the board shall be kept and shall forward board-approved copies of the minutes and records to all directors and to the County Clerk to be included in a Council agenda for Council's information.

County By-Law 2018-34 - Code of Conduct for Members of Council and Local Boards of the Corporation of Norfolk County

2. DEFINITIONS

2.6 "Confidential Information" includes information in the possession of the County that the County is prohibited from disclosing under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56, the *Personal Health Information Protection Act*, 2004, S.O. 2004, Chapter 3, Schedule A, and other applicable legislation. Confidential Information also means any information that is of a personal nature to County employees or clients or information that is not available to the public and that, if disclosed, could result in loss or damage to the County or could give the person to whom it is disclosed an advantage. Confidential Information includes items disclosed or discussed at closed sessions of Council and Committee meetings.

PART 10: CONFIDENTIAL INFORMATION

10.1 Members shall hold in strict confidence all Confidential information concerning matters dealt with in-camera. No Member shall release, make public or in any way divulge any such Confidential information or any aspect of the in-camera deliberations unless expressly authorized by Council or required By-Law.

10.2 No Member shall release, make public or in any way divulge any such Confidential Information acquired by virtue of his or her office unless expressly authorized by Council or required by law. The capacity to release Confidential Information can only be made by a majority of Council, and no individual member of Council has authority to waive this privilege.

Findings

[19] My findings are organized in accordance with the manner and order in which Ms. Ross framed her Complaint.

1. Discussing with third parties deliberations at what is characterized as a confidential meeting of the Downtown Simcoe BIA Communications Committee on March 4, 2024

Was the March 4th Committee Meeting “confidential”?

[20] The first sub-issue is whether there was in fact a “confidential” meeting. I find there was not.

[21] S. 204(2.1) of the *Municipal Act, 2001* provides that the Board of Management of a BIA is a Local Board of Council. As such, in order for that Board or a committee of it³ to properly go into a meeting that is closed to the public, s. 239(4) of the *Municipal Act, 2001* requires a resolution to be passed stipulating the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting. This is also expressly stated in s. 5.8 of By-law 2023-58 Establishing the Simcoe BIA Board of Management.

[22] In this case, no such resolution was passed; indeed, no minutes were even kept of the meeting. The mandatory requirements of the *Municipal Act, 2001* for an in camera meeting were simply not met. The fact that the Chair of the Committee verbally stated words to the effect that this meeting is confidential or anything said is not to leave the meeting fails to satisfy the stringent test for constituting a proper closed meeting, which is intended to be a rare exception to an open, public meeting.

[23] Cllr. Veri therefore did not breach any confidentiality in disclosing the deliberations of the Communications Committee in its meeting on March 4, 2024, per se.

³ Where, as here, the membership of a sub-committee of a local board is comprised of at least 50% members of the board, the same rules apply to that committee: see s. 238, *Municipal Act, 2001*.

[24] Even if I found that he had, I would recognize an exception to the bar against disclosure of such information on the grounds of necessity. A former Toronto Integrity Commissioner, Lorne Sossin (former Dean of Osgoode Hall Law School and currently a Justice of the Ontario Court of Appeal, the highest court in Ontario) recognized a common law exception which allows for disclosure based on “necessity”.⁴ In this case, I find that Cllr. Veri’s genuine and justified concern about the lack of procedural compliance by the BIA Communications Committee and conflict of interest with respect to the Social Media Management contract deliberations justified his disclosure of the proceedings of the Committee to senior staff and fellow Council-appointed BIA Board member. The BIA is, after all, a board under the control of the County and the latter has an obligation to ensure that its local board and sub-committees thereof are in compliance with applicable legal requirements. I would therefore have found that it was necessary for Cllr. Veri to have disclosed information about the Committee’s deliberations to these individuals as there was no other way for the County to exercise appropriate oversight of the BIA and its Committee had he not done so.

Did Cllr. Veri Improperly Disclose Confidential Information as defined in the COC to Third Parties?

[25] Notwithstanding that the March 4th meeting in general was not properly closed and therefore its deliberations were not entirely confidential, this does not mean that an attendee was free to disclose true “confidential information” as defined in s. 2.6 of the Code of Conduct to the extent that such “confidential information” was discussed at the meeting. Given that the meeting concerned a review of confidential responses to an RFP for social media communications services, it is clear that information was shared and discussed at the meeting which could constitute “confidential information”, pursuant to s. 2.6 of the Code, the dissemination of which would violate s. 10.1 of the Code of Conduct. This would include, for example, particulars of the manner in which the proponents carried on business and proposed to service the BIA, not to mention pricing of the services offered.

[26] Subsection 2(2.1) of the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”) states:

Business identity information, etc.

(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. [emphasis added]

[27] A number of decisions of the Office of the Privacy Commissioner Ontario have held that under the MFIPPA, “personal information” about a person prohibited from being disclosed does

⁴ *Walker (Re)*, 2009 ONMIC 2 (CanLII). IC Sossin conditioned the availability of this defence on the Member having first cleared the disclosure with the Integrity Commissioner. I do not see any rational basis for this requirement – either “necessity” was present or it was not and whether that is determined before or after the disclosure should not be relevant to whether there was a breach of the Code of Conduct.

not include “professional” or “business” information, such as the identity of a person’s employer or a company through which a person carries on business.⁵

[28] In the present case, the evidence of Cllr. Veri, corroborated by Councillor Brunton and the County’s CAO and Clerk, is that the latter only disclosed to the former the identity of one or possibly two of the proponents of the RFP and the principal of one of them, and the relationship between that principal and the BIA and with one of its Board members. I specifically find that he did not disclose to any third party particulars of any of the proponents’ bids or other sensitive business information relating to any of the proponents.

[29] I therefore find that Cllr. Veri did not commit a breach of s. 10 of the Code of Conduct because he did not disclose any Confidential Information learned as a result of his attendance at the March 4th Committee meeting.

2. “Alluding to” confidential integrity commissioner investigation.

[30] I have reviewed the emails Ms. Ross sent me in support of her complaint and I do not see any direct or indirect reference to an integrity commissioner investigation in them. The closest I see to such a reference is a sentence in an email sent by Cllr. Veri on March 13, 2024 at 17:00:49 wherein he states “...I recognize the attempt to shift the discussion away from the conduct issues and turn this into me...attacking the BIA volunteers.” I fail to see how a reasonable reader would assume this ties into any Code of Conduct complaint or investigation, as opposed to the conduct Cllr. Veri witnessed at the March 4th meeting, which was not at the time the subject of any Code of Conduct complaint.

[31] In any event, there is no requirement of confidentiality in respect of a Code of Conduct Complaint, except on the part of the Integrity Commissioner, subject to his or her determining in his/her exclusive discretion to disclose the fact of the complaint and the identity of a Complainant in a report on that Complaint, as is the case here.⁶ Where, as here, Council initiates a COC Complaint, the resolution to do so is a matter of public record and is thus free to be reported in the media and discussed freely amongst the public. It is not uncommon, in the case of private complainants, for them to issue a press release announcing the making of a COC Complaint. None of this is improper. There is simply no obligation of confidentiality on the part of a complainant, or anyone else for that matter, other than the Integrity Commissioner, in relation to the filing of a Complaint.

[32] Cllr. Veri thus did not breach any confidentiality in acknowledging or “alluding to” the COC Complaint that Council had lodged against Ms. Ross and the BIA Chairperson. To the extent Ms. Ross was advised otherwise by her legal counsel, this is mistaken.

⁵ See, for example, Order P-157, p. 17; Order PO-2877, [2010] O.I.P.C. No. 38, at para. 49; and Order P-813, [1994] O.I.P.C. No. 401, p. 1.

⁶ See ss. 233.5(1) and (2.3)(c) of the *Municipal Act, 2001*.

3. Disseminated a confidential email explicitly listed as not for distribution to those other than the intended recipients.

[33] Ms. Ross sent an email to Cllr. Veri, cc'd to the GM of the BIA and members of the Board of the BIA, on March 13, 2024 at 15:17:31 containing the following header:

PLEASE NOTE THIS EMAIL IS CONFIDENTIAL TO THE PEOPLE IN THIS EMAIL CHAIN, ANY

DISTRIBUTION OF THE EMAIL OUTSIDE THE INTENDED RECIPIENTS WILL VIOLATE CONFIDENTIALITY AND RESULT IN POTENTIAL LEGAL ACTION. PLEASE NOTE THIS EMAIL IS BEING SENT FROM MY PROFESSIONAL EMAIL ADDRESS, NOT FROM THE BIA EMAIL ADDRESS. PLEASE NOTE THAT MY RESPONSE IS MY REPSONSE AND NOT OF ANYONE ELSE.

[34] In replying to this email, Cllr. Veri added the County's CAO and Clerk to the list of recipients.

[35] Simply by indicating "THIS EMAIL IS CONFIDENTIAL TO THE PEOPLE IN THIS EMAIL CHAIN" does not thereby render the content of the document "Confidential Information" as defined in s. 2.6 of the Code of Conduct.

[36] I have carefully reviewed the contents of the subject email and find that it contains no information that falls within the definition of "Confidential Information" as defined in the COC.

[37] I therefore find that disseminating the subject email did not constitute a breach of the Code of Conduct related to Confidential Information disclosure.

Conclusions Regarding the Complaint

[38] I find no breach of the Code of Conduct on the part of Councillor Veri as alleged. I therefore dismiss the Complaint.

[39] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner,
Norfolk County