

COMPLAINTS ADJUDICATOR REPORT TO COUNCIL
JANUARY 18, 2024
RE: COUNCILLOR HANSON

I received a complaint on October 29, 2023, alleging that Councillor Hanson had breached section 22 of the *Council Code of Conduct Bylaw*, (the “*Code of Conduct*”), by disclosing confidential information in a public forum. I performed my initial assessment and determined the complaint should be investigated. This is my decision regarding the complaint.

The Complainant’s identity is protected pursuant to section 56 of the *Code of Conduct*.

Section 22 of the Code of Conduct states:

Councillors must not disclose confidential information, even after their term of office as Councillor has concluded, on all matters discussed in closed sessions unless authorized to disclose the information by council.

THE COMPLAINT

The Complainant alleged that on October 19, 2023, at meeting held to introduce the audit firm BDO to Council Members, Councillor Hanson made statements about a confidential matter discussed in a closed session of Council. Three specific statements were allegedly made, which formed the basis for my investigation. They are as follows.

Allegation 1

- A) *On October 10, 2023, at meeting of council and BDO, regarding their RFP for Rocky View County’s auditor, Councillor Hanson allegedly made statements about the termination of an employee, who he named, including the use of the word “firing”.*
- B) *Councillor Hanson allegedly made statements at the same meeting about Rocky View County’s inability to complete its budget since the employee’s termination.*

Allegation 2

On October 10, 2023, at the same meeting, Councillor Hanson allegedly accused another former employee of stealing time and money from Rocky View County and mentioned figures of \$60,000-\$70,000, which was false. The matter had been discussed in closed session and the discussion was confidential.

Allegation 3

On August 1, 2023, at a public meeting, Councillor Hanson released confidential information concerning the termination of a named employee.

In the Notice of Investigation I sent to the Complainant and Councillor Hanson, I advised that allegation 3 was dismissed as Council had already addressed it by issuing an official warning to Councillor Hanson for a breach of confidentiality. However, I will consider it in my analysis as to the appropriate sanction recommendation.

INVESTIGATION

I investigated the complaint following the procedures set out in Sections 65 to 69 of the *Code of Conduct*. I reviewed and considered the statements and documents of both parties and gave each of them the opportunity to respond to the other's position. At the Councillor Hanson's request, I viewed a video recording of the July 11, 2023, Governance Committee meeting. I reviewed a legal opinion letter dated September 5, 2023, provided by the Complainant. I asked follow-up questions of both parties and considered their responses. I did not seek additional information from other Councillors who attended the BDO meeting, as I determined that it was not necessary, because the evidence provided by the parties was sufficient for the purposes of completing this Report to Council.

THE STANDARD OF PROOF

The standard of proof I must apply to my analysis of the complaint is whether, on the balance of probabilities, the allegation has been proven. In other words, is it more likely than not that the alleged breach occurred. This differs from the criminal standard of proof, for example, which is whether the conduct occurred 'beyond a

reasonable doubt', which requires evidence close to certainty, and that there is no other reasonable explanation.

ANALYSIS

I consider each allegation individually below.

Allegation 1 (A)

On October 10, 2023, at meeting of council and BDO, regarding their RFP for RVC auditor, Councillor Hanson allegedly made statements about the termination of an employee, who he named, including the use of the word "firing".

The Complainant alleged that the reasons for the termination were discussed in a closed meeting of Council and were strictly confidential. At the meeting with BDO, Councillor Hanson allegedly made several statements regarding the employee's termination, including a reference to his firing, and identified him by name.

Councillor Hanson did not deny that, in the meeting with BDO, he named the employee, and that he used the term "firing" in relation to his termination. Councillor Hanson stated that in his view, the terms "firing" and "termination" are synonymous. His position was that the information was already public in any event based on the motion put to council at the Aug 1, 2023, Special Meeting of Council. The motion stated in part that council decided "to terminate his appointment and employment with Rocky View County without cause" and they were "moving on to a different style of leadership". Councillor Hanson's position was that he provided details that could have been deduced from Council's motion and that this allegation was groundless.

In my opinion, the terms "firing" and "termination" are not synonymous. When an employee is said to be "fired" that indicates wrongdoing, implying bad behavior, a negative attitude, unethical conduct, or poor performance. The employee does not typically agree to be fired.

An employee can be terminated for multiple reasons, including furlough, redundancy, job performance, restructuring, or downsizing. Termination may also be without cause and by mutual agreement.

I do not agree that a reasonable person would necessarily conclude from the public information released on the motion before Council, that the employee had been ‘fired’. The public motion stated the employee was terminated “without cause”, and in my opinion, when Councillor referred to his dismissal as a “firing” in the meeting with BDO, he implied wrongdoing, and he was on the balance of probabilities, in breach of section 22 of the *Code of Conduct*. The allegation is proven.

Allegation 1(B)

Councillor Hanson allegedly made statements at the same meeting about Rocky View County’s inability to complete its budget since the termination, linking the reasons to the former employee.

The Complainant alleged that Councillor Hanson brought up financial information that was not appropriate, including the inability of the county to have the budget completed since the employee was terminated, linking him to the delay, and undermining Rocky View County staff and auditors’ abilities in the eyes of BDO.

Councillor Hanson did not deny making the statements but considered them to be public knowledge and considered that, as BDO was bound by a confidentiality requirement under their own code of conduct, the information he gave was protected by that requirement. Councillor Hanson stated he raised the concern about the timeliness of staff meeting obligations in the financial statement and budget processes. He did not recall tying the statements to the employee.

As evidence that the information was public, Councillor Hanson provided the portions of agenda for the April 25, 2023, Council meeting as follows:

Item 3) Financial Statements, under comments is this paragraph:

The timing of the audit was pushed back due to receipt of information being delayed. In addition, the following difficulties were encountered in completing our audit procedures.

- Unavailability of information and extensive unexpected effort required to obtain audit evidence, including in the areas of:
 - 1) Blazer Acquisition Water licenses.
 - 2) Accounts payable balances
 - 3) Updated financial statements, with new adjusted entries, were provided on April 14, 2023.

Based on this April 25, 2023, agenda item, it is my opinion that the reasons for the delay in completing the financial statements were public information. However, if Councillor Hanson suggested the reason for the delay was caused by the terminated employee, this would be considered a breach of the employee's right to confidentiality under section 22 of the *Code of Conduct*.

Councillor Hanson did not deny making the statements in relation to the employee, only that he did not recall linking them to the delayed audit. "Not recalling" is not the same as a denial. It does not mean he did not make the statements. The Complainant was clear and unequivocal in his allegation and given Councillor Hanson's admissions and the other comments made, it is my opinion, based on the balance of probabilities, that Councillor Hanson did make the link between the employee and the delayed audit in his statements as alleged.

I turn back to Councillor Hanson's position that he thought that since BDO was bound by client confidentiality, he could discuss the confidential aspects of the matter with them and be under the umbrella of their duty of confidentiality.

I am surprised that Councillor Hanson took this approach to excuse any breach of confidentiality on his part. He was one of the parties in *Kissel v Rocky View (County), 2020 ABQB 406*. The case involved three councillors, including Councillor Hanson, who provided confidential information to a 'third party lawyer' for a legal opinion. The Court found that this was a breach of the confidentiality provisions of the *Code of Conduct*. Solicitor Client privilege did not protect him in that case from the confidentiality provisions of the *Code of Conduct*. Providing the confidential information to a third-party lawyer has been found to be a breach of the *Codes of Conduct*, not only in *Kissel*, but in multiple other court cases. It was, in my view, unreasonable for Councillor Hanson to think BDO's duty of confidentiality was any different than a lawyer's duty of confidentiality. It was a breach of the confidentiality provisions to make the statements in the meeting with BDO, regardless of their duty of confidentiality.

It is clear the Agenda for April 25, 2023, disclosed the financial issues with respect to the delay in the audit. However, it does not indicate that this was related to the termination of the employee, which would have implied poor performance or dismissal for cause. It is my opinion, based on the balance of probabilities, that Councillor Hanson made the comments as alleged, and that in doing so he provided confidential information to BDO without permission, and was therefore in breach of section 22 of the *Code of Conduct*. The allegation is proven.

Allegation 2

On October 10, 2023, at the same meeting, Councillor Hanson allegedly accused another former employee of stealing time and money from Rocky View County and mentioned figures of \$60,000-\$70,000, which was false. The matter had been discussed in closed session and the discussion was confidential.

The Complainant alleged that this employee information was confidential, that the issue that gave rise to the termination of this employee was related to vacation accrual policies at Rocky View County and that it was an organizational issue.

Councillor Hanson submitted that the matter of vacation pay liability being high was discussed in closed session. He stated that the former employee's name was mentioned pertaining to the portion of the discussion focused on vacation reporting.

Councillor Hanson did not deny mentioning the former employee himself. However, he did not recall attributing a dollar amount to him. He stated that another councillor 'over-spoke' him, stating that he could not say names, and Councillor Hanson was drowned out by this voice when he tried to explain himself.

Councillor Hanson stated that the Complainant appears to have no concerns about discussing the former employee (by this I assume he means mentioning the name in this complaint).

Councillor Hanson provided calculations for Rocky View County's vacation liability, and provided a portion of the agenda for a meeting that took place on April 26, 2022, referring to the outstanding vacation liability and its reduction. I observe that the agenda does not mention the former employee, and therefore it does not free Councillor Hanson from his duty of confidentiality.

In my opinion, the submissions and documents Councillor Hanson provided did not address the heart of the allegation, being the disclosure of the name of a former employee and an amount allegedly wrongfully claimed by that person. This information was confidential and revealing it had the potential to damage the person's reputation. The Councillor who interjected when he named names was correct in doing so.

It is my opinion, on the balance of probabilities, that Councillor Hanson made the statements, that they were confidential, and that it was a breach of section 22 of the *Code of Conduct* to share this information in the meeting with BDO. The allegation is proven.

SANCTION RECOMMENDATIONS

Pursuant to section 79 and 80 of the *Code of Conduct*, it is the responsibility of Council to impose an appropriate sanction when violations of the *Code* have been reported to it.

In the *Bellamy Inquiry Report 2005*, Justice Bellamy stated: “Council should consider the integrity commissioner’s recommendations very seriously and depart from them only where they are manifestly unfit.”

Pursuant to Section 71 (3) of the *Code of Conduct*, in my Report to Council I must include my recommendations as to the appropriate sanctions to be imposed on the Councillor.

In considering which recommendations to make to Council, I have considered the aggravating and mitigating factors that apply to this set of circumstances. The factors that are relevant to this complaint are as follows:

Aggravating factors

Councillor Hanson has been on the Rocky View County Council since 2017 and is in his second term of office. He is not new to the role. He has knowledge and experience with respect to confidentiality matters and should have been aware of and followed the confidentiality requirements of the *Code of Conduct*.

There have been at least two previous incidents of a breach of confidentiality by Councillor Hanson: one that led to the court decision mention above, and the other, wherein he was issued an official warning by Council. (Allegation 3 that was dismissed).

Councillors are expected to meet the highest standards of privacy and confidentiality, especially with respect to the employees of Rocky View County. Revealing confidential employee information to a third party is a considered a

serious breach of the *Code of Conduct* and may have been a breach of the *Freedom of Information and Protection of Privacy Act*.

In the October 10, 2023, meeting, Councillor Hanson breached the confidentiality of two former employees. There were 3 breaches found, namely allegations 1(a) 1(b) and 2.

Mitigating factors

A systemic problem has, in my opinion, contributed to the breaches that occurred. There appears to be a lack of understanding among some Council Members as to the parameters and extent to which confidentiality applies to information obtained in closed meetings. For example, the legal opinion dated September 5, 2023, that was obtained by a sole Council Member in their name, a copy of which was provided to me by the Complainant, was a breach of the confidentiality of the employees in question unless sharing the employees' names and information with the lawyer was first approved by council resolution. The opinion specifically mentions the name of the terminated employee the Council Member provided.

The retention of a lawyer for a legal opinion on the alleged misconduct should have been obtained following a resolution of Council to proceed in this fashion. Council can only act by resolution or bylaw under the *Municipal Government Act*.

It appears that in obtaining a legal opinion rather than making a complaint under the *Code of Conduct*, which was the proper procedure, the legal opinion route circumvented the *Code of Conduct* process, thus denying Councillor Hanson the ability to participate and respond to the allegations. Indeed, the opinion refers to the investigation process that should have occurred pursuant to the *Code of Conduct*, following the alleged breach.

The legal opinion advised that sanctions can be imposed by a resolution passed at a council meeting if there is an investigation and a Report to Council. This was the proper procedure to follow. Instead, Council, without an investigation and report, issued an official warning to Councillor Hanson.

Similar circumstances arose in *Rocky View (County) v Wright 2021 ABQB 422*. In that case when some council members challenged Councillor Wright in a special meeting on short notice, without advising her of the subject of the meeting, in an attempt to disqualify her from office, the Court found that the conduct of the

meeting fell below the expected standards of fair procedure and the democratic process. The Council Member was caught by surprise and had no opportunity to defend herself. Had the complaint process been followed, and had there been procedural fairness, the outcome could have been different. The procedure followed by the Council Member regarding allegation three against Councillor Hanson, in this case, had similar shortcomings.

Lastly there is some evidence that Council removed Councillor Hanson from four committees against his wishes, at the October 2023 Organizational meeting. Councillor Hanson stated that this led to a loss of financial compensation for participating in those committees. The Complainant advised that Council considered the committee appointments as part of a rebalancing of the workload. I do consider the organizational meeting process and the fact that these decisions were approved by Council. This was democratic and procedurally sound.

I conclude that the aggravating and mitigating factors in this case balance each other out, and that the serious nature of the breaches in this case is the overriding factor here, warranting a serious sanction.

Recommended Sanctions

The sanctions that may be imposed are set out in Section 80 of the *Code of Conduct* and reflect the sanctions set out in the *Municipal Government Act*. This is not an exhaustive list, as subsection 13 adds “and any other sanction that Council deems reasonable, proportionate and appropriate in the circumstances”.

The proportionality principle of sanctioning requires that the seriousness of the breach is reflected in the sanction, and that the sanction does not exceed what is required to correct the behavior. The appropriateness principle requires that there be a logical connection between the nature of the breach, and the type of sanction imposed. The goal of the sanction must be remedial and not punitive.

The sanction imposed must be reasonable. Pursuant to the *Municipal Government Act*, it must not hinder Councillor Hanson’s ability to perform his duties and fulfill his obligations as a Council Member.

Based on these principles, I recommend that Council impose the following sanctions:

- a) That Councillor Hanson obtain professional training on the nature and extent of his confidentiality obligations under the *Code of Conduct* and the *Freedom of Information and Protection of Privacy Act*, within 60 days. The Councillor must provide the Complaints Adjudicator with details of the training and advise when the training is completed.
- b) That Councillor Hanson is not permitted to bring any electronics into closed meetings, that he may not take notes, and that he must return any material provided in the closed meetings when they are adjourned.
- c) No conclusions are drawn in this decision regarding the reasons for removing Councillor Hanson from four committees in October 2023. Nonetheless I recommend that the reduction in committee participation which has occurred be made part of the sanction herein, (as removal is a sanction listed in the *Code*), and that Council consider reappointing Councillor Hanson to committees as appropriate, at the October 2024, organizational meeting, provided that no further confidentiality breaches have occurred.

This Report and Sanction Recommendation dated January 18, 2024, is final. As there is no right of appeal, it may be subject to judicial review in the Alberta Court of King's Bench.

"Ellen-Anne O'Donnell"
Interim Complaints Adjudicator
Rocky View County