



May 30, 2019



This letter is further to the telephone conversation you had with Early Resolution Officers (EROs) Nick Continelli and Juan de Villa on May 8, 2019 concerning the complaints you raised to our office. Further to this telephone conversation, I am acknowledging receipt of your email to me on the same day expressing your dissatisfaction with our review in which you complained that you were not afforded the opportunity to clarify your concerns regarding the Township of South Glengarry (the Municipality).

I have reviewed your file, including our previous responses to you from 2016 and 2018. In the course of my review of your complaints I have focussed the issues for our review as the following:

- How the Municipality handled your December 2018 complaint under its Corporate Complaint Policy regarding the conduct of the CAO/Deputy Clerk and the Clerk in relation to access to records
- Your dissatisfaction with the Integrity Commissioner's (the "IC") response to the Code of Conduct complaint against the Mayor and Deputy Mayor
- The Municipality's court proceeding to have you declared as a vexatious litigant

For the reasons discussed below, our Office will not be taking further steps regarding your complaints at this time.

Background

According to your information and the documents reviewed, you had submitted a Freedom of Information Request requesting to inspect election records and other municipal public records. This request was subsequently denied by the Clerk on February 16, 2018 as frivolous and vexatious under the *Municipal Freedom of Information and Privacy Protection Act* (MFIPPA).

On June 19, 2018 on the advice of counsel, the Municipality reversed its decision granting access pursuant to the *Municipal Elections Act*. You indicated to our office that you had filed several FOI requests concerning election records that were initially denied, but then later overturned. There are some FOI requests; however, that were not overturned.

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In the fall of 2018, you sent a request to the Clerk to present to Council; however, this was denied due to ongoing litigation. The Clerk also requested that you direct your communications through solicitor Ed Holden while litigation was ongoing. According to information that we received from you, as well as the Municipality, the Municipality is asking the court to declare you a vexatious litigant. Rather than directing your communication to the solicitor, you wrote to the Mayor complaining about the Clerk's denial of your request to present at Council. The Mayor's response directed you to the solicitor.

On November 27, 2018 you asked the CAO whether you will be charged lawyers fees for directing your communication to the solicitor and asked the CAO who you could complain to. The CAO responded, indicating that the Clerk has provided you with the appropriate direction to pose your questions to the solicitor, and that if you had a complaint about the Township to go through the Township's complaint policy.

Further to this referral from the CAO, on December 6, 2018 you filed a formal complaint about the CAO and the Clerk citing that they were denying you access to public records.

The Municipality's Council dismissed your complaint about the CAO and Clerk during a December 17, 2018 closed session meeting. Subsequently, on January 10, 2019 you filed a Code of Conduct complaint with the Municipality's Integrity Commissioner against the Mayor and Deputy Mayor and the manner in which your formal complaint was handled.

Your complaint

Municipality's Formal Complaint Process and Decision

On January 11, 2019 you spoke to the EROs complaining that the Municipality was refusing to respond to your December 6, 2018 complaint. You said that you filed the formal complaint due to the CAO and the Clerk denying you access to information under MFIPPA which were subsequently overturned. You indicated to the EROs that you filed formal FOI requests for election related records, even though you know you weren't required to. You raised concerns that it was not clear how your formal complaint was dealt with, and why it was dismissed by Council during a closed session on December 17, 2018.

Complaint about the Integrity Commissioner's Process and Decision

You stated that the Municipality's Clerk did not provide all of your materials to the IC when you filed your Code of Conduct complaint and this caused the IC to make a decision without the complete factual context. You also disagreed with the IC dismissing your Code of Conduct complaint against the Mayor and Deputy Mayor as without merit.

The Municipality's Pursuit to Declare you a Frivolous and Vexatious Litigant

You complained that the Municipality has applied to the courts to have you declared a vexatious litigant. We have confirmed with the Municipality that this matter is still ongoing, and as these decisions are ones that are made by the courts, our office cannot review this matter.

More Recent FOI Request

You also raised concerns about a recent FOI request you made of the Municipality. Please note that the Information and Privacy Commissioner (IPC) is the appropriate avenue to raise your complaints regarding FOI requests. You may reach the IPC at 1-800-387-0073 or info@ipc.on.ca.

The Role of Our Office

The Ombudsman is an independent and impartial Officer of the Ontario legislature with authority to review and investigate complaints about the administrative conduct of municipalities, universities, school boards, and provincial government organizations and to issue remedial recommendations.

The Ombudsman Act gives the Ombudsman the discretion to decide whether or not to review a complaint, based on several factors, including whether there is another adequate remedy available. We are intended to be an office of last resort. This means that citizens are normally expected to first address complaints to existing complaints processes and appeal mechanisms before our Office will intervene.

Under the *Municipal Act, 2001, S.O. 2001, c. 25*, an Integrity Commissioner may perform the duties assigned by council with respect to the application of a Code of Conduct for members of council or a local board. An Integrity Commissioner may also perform assigned duties with respect to the application of "any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them".

The Ontario Ombudsman is not intended to stand in place of a local accountability officer, and does not act as an Integrity Commissioner for municipalities.

The Ombudsman's Office is not an appeal body and the Ombudsman does not substitute his decision for that of a local Integrity Commissioner. When we review an Integrity Commissioner's decision, we look at factors such as whether the Integrity Commissioner:

- Acted in accordance with the relevant legislation, terms of reference, and policy;
- Considered the issues before them;
- Followed a fair practice;
- Obtained and considered relevant information; and
- Provided sufficient reasons to support his or her decision based on the available evidence.

Our review

The Corporate Complaint Policy Complaint

Our Office spoke to the Clerk regarding the question of why your complaint under the Corporate Complaint Policy was discussed by Council in closed session. The Clerk explained that the reason the complaint went to Council is because the former Chief Administrative Officer ("Former CAO") and the Clerk were the subject of the complaint. The CAO reports to Council, and therefore Council has the authority to consider complaints about the CAO.

According to the Clerk, due to the above-noted circumstances, the Former CAO made the decision to delegate the handling of the complaint in its entirety to Council, which according to the Corporate Complaint Policy is allowed. The Clerk has confirmed that section 11.1 of the Corporate Complaint Policy delegates the authority to the CAO to make decisions regarding the processing of a complaint "having regard for the nature of the complaint".

Council communicated its decision to you in a letter from the Mayor dated December 18, 2018. In that letter, the Mayor states that Council determined that your complaint was frivolous and vexatious pursuant to section 4.8 of the Corporate Complaint Policy and that, as a result, no investigation would occur.

Our Office was provided with the Municipality's rationale in dismissing your complaint. We have suggested; however, that in future, the Municipality provide more fulsome reasons when communicating its decisions.

The IC's Code of Conduct Complaint Decision

Our office reviewed the decision and also spoke with IC to clarify the process for making Code of Conduct complaints.

Regarding the Code of Conduct complaint process, the IC confirmed that residents submit their complaint and accompanying materials to the Clerk, who then forwards the materials to the IC. The IC then reviews the complaint using the Code of Conduct as the terms of reference.

Our office raised your concern about missing complaint materials and the IC forwarded a substantial record of correspondence with you addressing this issue to our Office. This correspondence includes emails in which the IC sent you scanned copies of all materials the Clerk forwarded on two separate occasions. Further, the correspondence illustrated that the IC allowed you to resubmit any missing documents, and that the IC revisited your Code of Conduct complaint in light of these documents.

Turning to the decision itself, the IC explained that the content of your complaint did not fall under the Code of Conduct and was thus outside the IC's jurisdiction. Overall, the IC noted your complaint about the Mayor and Deputy Mayor appeared to focus on the Mayor and Deputy Mayor condoning the actions of the Clerk and CAO in denying your access to documents under several provincial statutes. You also submitted an additional complaint that the Mayor and Deputy Mayor failed to recuse themselves from the assessment of your formal complaint of December 2018 to the Municipality.

The IC explained that the Code of Conduct applies to mayors, councillors and local board members, but not to municipal staff. In his letter dated January 24, 2019, the IC provided you with a preliminary review of your complaint outlining his authority, and that many of your complaints related to matters that could not be reviewed by his office. Specifically, the IC explained that he could not review staff conduct, nor matters that were under the municipal ombudsman's jurisdiction or the jurisdiction of the Information and Privacy Commissioner. The IC also explained that he could not review violations of your Charter Rights, matters involving conduct prior to his appointment or discretionary decisions made by Council.

You disagreed with the IC's assessment and initially tried to resolve your concerns with him directly. Specifically, the IC reviewed his decision again at your request, and on February 19, 2019 communicated

with you, advising that his decision remains unchanged. In his letter, he specifically reiterated the concerns you raised that the Mayor and Deputy Mayor “condoned, encouraged and failed to act” regarding the Clerk and the CAO’s denials of access to public records, as well as the Mayor and Deputy Mayor’s failure to recuse themselves regarding your complaint against the Clerk and the CAO.

The IC remarked that this review did not change the initial decision not to proceed with an investigation. The IC reiterated that he does not have authority over matters under the *Municipal Elections Act*, and that there was no basis under the Code of Conduct for the Mayor or the Councillor (now Deputy Mayor) to recuse themselves in considering your December 2018 complaint as neither member had a personal conflict of interest in the matter.

Under the *Ombudsman Act*, our office has the discretion not to proceed with a complaint when having regard to all the circumstances of the case, no further investigation is warranted. In this case, our Office is satisfied that the IC considered your Code of Conduct complaint, including the accompanying materials you submitted to the Clerk and to the IC directly.

We are further satisfied that the IC provided reasons to support his decision that your complaint was without merit under the Code of Conduct and provided you with opportunities to clarify your complaint and submit any documentation that may have been missing. In light of the foregoing, there is no further role for our office.

I hope that the above information is helpful to you. Given the above-noted information, our Office will not be taking further steps to address your complaints at this time.

Thank you for contacting the Office of the Ontario Ombudsman.

Sincerely,


Andrea Dobi
Manager, Early Resolutions