

ADVISORY BULLETIN No. 1

ISSUED: 23 DECEMBER 2011

CONFIDENTIAL INFORMATION

1. Article VI of the **CODE OF CONDUCT** of the City of Windsor provides: “No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.”
2. Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* or other legislation. Such information includes information of a corporate, commercial, scientific, or technical nature received in confidence from a third party, personal information, and information that is the subject of solicitor-client privilege.
3. Article VI of the **CODE OF CONDUCT** provides examples of the types of information that a member of Council **must** keep confidential: items under litigation, negotiation, or personnel matters; information that infringes the rights of others; price schedules in contract tender or Request for Proposal submissions if so specified; information deemed “personal information” under the *Municipal Conflict of Interest Act*; and statistical data that, by law, is required not to be released. **This list is not exhaustive. (Example:** In a decision on May 11 and 12, 2010, the Toronto City Council, reprimanded then Councillor Rob Ford for disclosing confidential pricing information concerning the purchase of a house by the City on the floor of Council.)
4. Open democratic debate is the hallmark of municipal governance in our Canadian polity. However, we recognize that, for the effective and efficient running of our municipal government, there will be times when the affairs of the City need to be conducted away from the “public eye”. According to the *Municipal Act, 2001*, section 239, the following matters may be the subject of *in camera* (closed) meetings of Council: the security of the property of the City or a local board; personal matters about an identifiable individual; proposed acquisition or distribution of land by the municipality or local board; labour relations or employee negotiations; litigation or potential litigation; advice that is the subject of solicitor-client privilege; and other matters whose confidentiality is authorized by other legislation. The very existence of a provision for closed meetings indicates that the matters conducted at such *in camera* meetings are confidential until such time as they are discussed at an open meeting.

5. Further, according to the City of Windsor Procedural By-law, confidential information includes matters discussed during *in camera* (closed) meetings. The **CODE OF CONDUCT** is very specific on this: “No member shall disclose the contents of any such matter, or the substance of deliberations, of the *in camera* meeting until Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.”
6. Nor is it a defence to a charge of violating Article VI of the **CODE OF CONDUCT** that the matter should not have been taken *in camera*. (**Precedent:** In a Report to Toronto City Council on June 14, 2006, the Integrity Commissioner noted: “Councillors cannot find justification for releasing confidential information to the Press in their own conviction that their colleagues have erred in going *in camera*.”)
7. In my opinion, three propositions flow from Article VI of the **CODE OF CONDUCT** and from the matters noted above. First, confidentiality resides both in the information and the source of the information. Consequently, it will be a violation of **CODE OF CONDUCT** if a member discloses information obtained during an *in camera* meeting even if he or she claims it came from a different source.
8. Second, it will be a violation of the **CODE OF CONDUCT** for a member of Council to confirm the substance of a report where the member’s basis for confirming the report is the confidential information obtained during an *in camera* meeting.
9. Third, as noted explicitly in Paragraph 5, the members’ obligation to maintain confidentiality continues “until Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.” Therefore, it will be a violation of the **CODE OF CONDUCT** for a member to disclose confidential information even where the information has been released by another member or a third party. In such an instance, Council may want to release the information prior to an open meeting in order to free members from their obligation of confidentiality.
10. Two final propositions should be obvious: (1) Members shall not use confidential information for personal or private gain or for the gain of any relatives or any person or corporation; and (2) Members should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and is not prohibited by Council policy.

Bruce P. Elman
Integrity Commissioner