

*Chronicling the Use of Transparency and Accountability as  
Political Buzzwords, and as Drivers Ensuring the Standard of  
Access to Public Records in Canada is Best Practice*

**Interim Report 18.**  
**Invoking the Code of Conduct to Publicly Oblige  
City of Ottawa Politicians to Demonstrate Due  
Regard for Transparency and Accountability**

**Barry Wellar**

Professor Emeritus, University of Ottawa  
President, Information Research Board Inc.  
[wellar.barry@gmail.com](mailto:wellar.barry@gmail.com)

**January 17, 2020**

## **A. Introduction**

The title of this interim report emerged after completing interim reports 2 and 3, and wondering, How many politicians at all levels of government would simply ignore surveys asking them about transparency and accountability?

And, continuing that vein, What are the odds that majorities on councils or the leaders of political parties pay any actual heed to citizens' concerns about transparency and accountability?

After all, it appears fair to say that the history of politics in Canada since Confederation is that if politicians do not impose transparency and accountability conditions on themselves, it is very difficult for citizens to oblige them to do so.

Moreover, and as we learn with great regularity, even hand-on-heart, electorate-pleasing promises of any kind made by individual politicians and political leaders as core parts of election campaign platforms are readily dropped with no hint of regret or remorse.

From a practical research perspective, then, it seemed highly likely from the early stages of the pilot study that a number of politicians could simply choose to ignore this work, even though regard for transparency and accountability is widely held to be a central feature of a free and democratic society.

As part of the research design, therefore, it was presumed that politicians do not actually embrace transparency and accountability; and, it was further presumed that they would not be forthcoming in responses to a survey which openly and explicitly tests their regard for transparency and accountability.

Two interim reports confirm the decision to build these presumptions into the research design:

[Interim Report 14. Asking the Question: Is Freedom of Information Legislation a Citizens' Conduit to Public Records, or an Institutional Barrier to Public Records?](#); and,

[Interim Report 15. Identifying Tactics Used By Politicians to Restrict Citizens' Access to Public Records](#)

A parallel research design task, therefore, is to search for institutional means which could be brought to bear on politicians, and might cause transparency and accountability considerations to become paramount in their thoughts and deeds involving matters of public interest.

In section 2 we briefly recall the findings which establish the need to look to institutional means that might oblige City of Ottawa politicians to provide citizens proper access to public records.

Then, in section 3 we discuss the institutional means already available through the City of Ottawa which direct members of council to have due regard for the principles of transparency and accountability.

And, in section 4 we report on communications to date with the Ontario Ministry of Municipal Affairs about the perceived need for provincial legislation to deal with what appear to be limitations of Code of Conduct statements.

## **B. Summary of Evidence to Move Beyond Surveys of City of Ottawa Politicians and Look for Institutional Means to Oblige Mayor and Councillors to Ensure that Citizens Have Proper Access to City of Ottawa Public Records**

Before moving into the evidence discussion, it may be useful to briefly recall the history of the terms *free*, *easy*, *timely*, *direct*, and *online* which modify access in the survey question sent to City of Ottawa politicians.

The rationale for including these terms to characterize a standard of access to public records which is best practice was in the public domain prior to the start of the Chronicling pilot study, including several items in the Ottawa Citizen in 2018.

Other publications containing the rationale for the terms include:

“With election ahead, we need to make public records truly public”, in *The Conversation*. January 2, 2019 6.55pm EST (<http://theconversation.com/with-election-ahead-we-need-to-make-public-records-trulypublic-107645>);

“Building the case that a free and democratic society means free, easy, timely, and direct online access to public records”, in *The GIS Professional*, <https://www.urisa.org/clientuploads/directory/Documents/The%20GIS%20Professional/2019/JanFeb2019.pdf>; and, the initial pilot study publication,

*Chronicling the Use of Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring the Standard of Access to Public Records in Canada is Best Practice*, March 20. 2019  
<http://wellar.ca/informationresearch/CHRONICLING%20ACCESS%20TO%20PUBLIC%20RECORDS%20STATEMENTS.pdf>

As indicated, the terms proposed for inclusion in a standard of access to public records which is best practice were initially “put out there” more than a year ago, and in the interim have been widely circulated, including hundreds of mentions in pilot study reports published prior to survey three.

The three surveys asking City of Ottawa politicians, ***Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?*** have been completed, and the results are contained in interim reports 2, 3, 8, 9, 16, and 17.

[Interim Report 2. Responses of City of Ottawa Mayor and Councillors to the Question: Do You Agree that Citizens Are Entitled to Free, Easy, Timely, and Direct Online Access to the Public Records Held by the City of Ottawa?](#)

[Interim Report 3. Using Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring Access to Public Records in Canada Is Best Practice, Ottawa Council Score: Political Buzzwords, 87.5%; Drivers, 12.5%](#)

[Interim Report 8. Second Survey Asking City of Ottawa Mayor and Councillors, Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?](#)

[Interim Report 9. Using Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring Access to Public Records in Canada is Best Practice: Ottawa Council Rating after the Second Citizen Access Survey–Political Buzzwords, 79%; Drivers, 21%](#)

[Interim Report 16. Third Survey Asking City of Ottawa Mayor and Councillors, Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?](#)

[Interim Report 17. Using Transparency and Accountability as Political Buzzwords, and as Drivers Ensuring Access to Public Records in Canada is Best Practice: Ottawa Council Rating after the Third Citizen Access Survey–Political Buzzwords, 79%; Drivers, 21%](#)

Interim reports 16 and 17 confirm the pattern set in interim reports 2, 3, 8, and 9, namely, that the mayor and a majority of councillors have not agreed that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records.

And, it is not even close; Survey three finds that only 5/24 or 20% of City of Ottawa politicians agree that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records.

By definition then, since a majority of council do not agree that citizens are entitled to have proper access to City of Ottawa public records, citizens are denied the level of access needed to establish the veracity of claims by City of Ottawa politicians that they respect the principles of transparency and accountability.

Or, to re-phrase, City of Ottawa politicians' claims about embracing transparency and accountability ring hollow when these politicians do not ensure that citizens have the level of access necessary to ascertain whether politicians are telling the truth about their statements and actions.

And, those claims ring hollower yet when politicians do not agree that citizens are entitled to the kind of access which is needed by citizens to properly examine municipal records.

What to do, one might ask, if after three surveys only 5 of 24 City of Ottawa politicians – **Councillor Riley Brockington, Councillor Theresa Kavanaugh, Councillor Rawlson King, Councillor Catherine McKenney, and Councillor Shawn Menard** – agree that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records, and 19 of 24 City of Ottawa politicians – Mayor Jim Watson and Councillors Steven Blais, Rick Chiarelli, Jean Cloutier, George Darouze, Diane Deans, Laura Dudas, Eli El-Chantiry, Mathieu Fleury, Glen Gower, Jan Harder, Allan Hubley, Jeff Leiper, Matt Luloff, Carol Anne Meehan, Scott Moffatt, Jenna Suds, and Tim Tierney – have not agreed that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records?

As indicated by the title of section 2, the research design involved taking what might be termed a step sideways by seeking out alternative institutional means that could cause the NO group of City of Ottawa politicians to actually give transparency and accountability their due regard in thought and deed.

The sideways step was successful, in that it led us to consider the City of Ottawa **Code of Conduct for Members of Council and Related Policies** as the institutional means to consider in this report.

### **3. City of Ottawa Code of Conduct for Members of Council and Related Policies as a Means for Citizens to Obtain Free, Easy, Timely, and Direct Online Access to City of Ottawa Public Records**

The Code of Conduct was previously discussed in interim report 16 and 17, because it provides the institutional rationale for conducting a survey of City of Ottawa politicians in which they are asked if they agree that citizens are entitled to have free, easy, timely, and direct online access to City of Ottawa public records.

The pertinent body of documentation is **Code of Conduct for Members of Council, By-law 2018-400: A by-law of the City of Ottawa to establish a code of conduct for Members of Council**. (<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/code-conduct-members-council-and-related-policies/code-conduct-and-related-policies#code-conduct-members-council>)

As noted in interim reports 16 and 17, the section of interest is General Integrity and there are four clauses which are relevant to the pilot study because references to transparency and accountability are prominent features in the City of Ottawa Code of Conduct.

Four pertinent General Integrity clauses are repeated here. Readers may click on the Code of Conduct link for more clauses, as well as more details about the purpose of the Code of Conduct and the procedures for requesting that the Integrity Commissioner launch a formal investigation of politicians whose behaviour is seen to fail one or more conditions of the Code of Conduct.

### **Code of Conduct for Members of Council and Related Policies**

#### ***General Integrity***

- 1. Members of Council are committed to performing their functions with integrity, accountability and transparency.*
- 2. Members of Council are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official.*
- 3. Members of Council recognize that the public has a right to open government and transparent decision-making.*
- 4. Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.”*

<https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/code-conduct-members-council-and-related-policies>

As previously noted in interim report 17, “.... the pilot study interest in the quality of citizens’ access to City of Ottawa public records is fully consistent with the declared interest of City of Ottawa politicians and their staff, as well as that of City of Ottawa staff, in providing citizens the highest order of access to City of Ottawa records.” (p. 7)

The next several pages discuss the connection between the General Integrity clauses and the access characteristics of “free”, “easy”, “timely”, “direct”, and “online” which are contained in the survey question, ***Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?***

***Clause 1. Members of Council are committed to performing their functions with integrity, accountability and transparency.***

**Clause 1** is basically a one-sentence job description for City of Ottawa politicians.

Four concepts in clause 1, ***functions, integrity, accountability, and transparency*** are directly relevant to the pilot study because citizens have an abiding interest in each of the four concepts.

And, in particular, citizens have an interest in how the concepts are operationalized because, as they stand, the concepts are words without directive or enforceable meaning. Or, to re-phrase, a mission statement is only as powerful as its means of implementation.

It could be an informative exercise to ask City of Ottawa politicians how they define each of the concepts, but that would be another survey, and we do not want to go there during this research component.

Instead, for this report several questions are asked about each concept to illustrate how obligations imposed on politicians by the Code of Conduct could be the means to oblige politicians to provide pertinent, verifiable, and timely responses to citizens which satisfy the conditions of transparency and accountability.

It is emphasized that the questions are for preliminary, illustrative purposes, and are intended to outline the basis of an appeal or a complaint to an Integrity Commissioner or other official about a City of Ottawa politician’s failure to have due regard for transparency and/or accountability, which are the core principles of the pilot study.

**i) Functions**

Q1 What functions do you perform as a Member of Council?

What municipal records attest to your performance of functions?

What are the links to records documenting your performance of functions?

Q2. What activities comprise those functions?

What municipal records attest to your performance of functional activities?

What are the links to records documenting your performance of functional activities?

**ii) Integrity**

Q3. What procedures are in place to ensure that functions are performed with integrity?

What municipal records attest to your regard for integrity?

What are the links to records documenting your regard for integrity?

Q4. What procedures are in place to ensure that functional activities are performed with integrity?

What municipal records attest to your regard for integrity?

What are the links to records documenting your regard for integrity?

Q5. What procedures are in place to ensure that your expenditure of public funds is done with integrity?

What municipal records attest to your regard for integrity?

What are the links to records documenting your regard for integrity?

Q6. What procedures are in place to ensure that time spent by you as a Member of Council or by your appointed staff is spent with integrity?

What municipal records attest to your regard for integrity?

What are the links to records documenting your regard for integrity?

Q7. What procedures are in place to ensure that time spent by your appointed staff is spent with integrity?

What municipal records attest to staff's regard for integrity?



What are the links to records documenting staff's regard for integrity?

### **iii) Accountability**

Q8. What procedures are in place to ensure that you are accountable for your functions?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q9. What procedures are in place to ensure that you are accountable for your functional activities?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q10. What procedures are in place to ensure that you are accountable for your time spent on functions?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q11. What procedures are in place to ensure that you are accountable for your time spent on functional activities?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q12. What procedures are in place to ensure that citizens can hold you accountable for your time spent on functional activities?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q13. What procedures are in place to ensure that you are accountable for your office expenditures on functions?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q14. What procedures are in place to ensure that citizens can hold you accountable for your office expenditures on functions?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q15. What procedures are in place to ensure that you are accountable for your office expenditures on functional activities?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q16. What procedures are in place to ensure that citizens can hold you accountable for your office expenditures on functional activities?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q17. What procedures are in place to inform constituents of your interactions with community groups?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q18. What procedures are in place to inform constituents of your interactions with vested interests?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q19. What procedures are in place to inform constituents of your interactions with special interests?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q20. What procedures are in place to inform constituents of your interactions with personal interests?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

**iv) Transparency**

Q21. What procedures are in place to ensure transparency in conducting your activities?

What municipal records attest to your regard for transparency?

What are the links to records documenting your regard for transparency?

Q22. What procedures are in place to ensure transparency in conducting your functional activities?

What municipal records attest to your regard for transparency?

What are the links to records documenting your regard for transparency?

Q23. What procedures are in place to ensure transparency of time spent on functions?

What municipal records attest to your regard for transparency?

What are the links to records documenting your regard for transparency?

Q24. What procedures are in place to ensure transparency of your time spent on functional activities?

What municipal records attest to your regard for transparency?

What are the links to records documenting your regard for transparency?

Q25. What procedures are in place to ensure transparency of your office expenditures on functions?

What municipal records attest to your regard for accountability?

What are the links to records documenting your regard for accountability?

Q26. What procedures are in place to ensure transparency of your office expenditures on functional activities?

What municipal records attest to your regard for transparency?

What are the links to records documenting your regard for transparency?

There could be many hundreds of questions associated with clause 1, and it is possible and perhaps likely that any citizens who file appeals or complaints are going to follow the links and examine the records provided by politicians in response to questions posed by citizens, including citizen members of community associations.

In my experience this kind of active engagement by citizens in cities with populations greater than 25,000 to 30,000 requires all of the following access conditions;

- Free access to records,
- Easy access to records,
- Timely access to records,
- Direct access to records, and
- Online access to records.

And, no surprise here, these are precisely the access conditions which comprise the survey question asked three times of City of Ottawa politicians: *Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?*

Consequently, what we have established by relating the survey results and clause 1 of the City of Ottawa Code of Conduct for Politicians, is a flat-out contradiction on the parts of a majority of City of Ottawa politicians.

That is, the Code itself, which is the product of City of Ottawa politicians, can only be operationalized by citizens if the access to records capability level provided to citizens meets the conditions of the survey question.

However, the survey question asking City of Ottawa politicians if they agree that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records, received YES responses from only 5/24 or about 20% of the members of council.

And as for the remaining 19/24 or about 80% of City of Ottawa politicians, perhaps they believe that a lesser level of access can suffice.

That being the case, then I expect that numerous citizens as well as staff throughout the City of Ottawa who are responsible for assembling, compiling, storing, updating, maintaining, and disseminating City of Ottawa text, numeric, and graphic records would welcome workshops and webinars demonstrating how a lesser access capability adequately enables citizens to validate a politician's responses to the kinds of questions posed above and below.

As for workshop and webinar instructors, perhaps all 19 NO members of council could work as teams demonstrating how a lesser level of access to records does the job.

***2. Members of Council are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official.***

This clause is applicable to the engagement of the Ontario Ministry of Municipal Affairs, and is discussed in part 4.

***3. Members of Council recognize that the public has a right to open government and transparent decision-making.***

As done with clause 1, several preliminary remarks are made for context purposes, and then questions are asked to indicate how duty of care obligations and standard of care responsibilities imposed on politicians by the Code of Conduct could be the means to 'persuade' politicians to provide pertinent, timely, and verifiable answers to questions posed by citizens.

**i) Right to Open Government**

The principle of citizens having the "right to open government" has a long history, but limited progress has been made in putting this principle into practice where it really counts.

That is, citizens require proper access to records to validate that what is said and done in meetings, interviews, releases, pronouncements, and other public productions are accurately represented by the record of legislative, policy, program, planning, administrative, operational, and other processes and products of government.

Many questions can be put to municipal politicians about what they have done to ensure that citizens experience the right to open government by having proper access to all municipal public records.

The following questions are illustrative of those which contribute to ascertaining whether a City of Ottawa politician's actions are consistent with providing citizens proper access to public records, so that citizens experience the right to open government.

Q27. What have you done to bring the principle of open government to your constituents?

What municipal records attest to your regard for open government?

What are the links to records documenting your regard for open government?

Q28. What practices have you employed so that your constituents can experience open government?

What municipal records attest to your regard for open government practices?

What are the links to records documenting your regard for open government practices?

Q29. What have you done to ensure that what you do as an elected official is on the public record?

What municipal records attest to your regard for public access to your activity file?

What are the links to records documenting your regard for public access to your activity file?

Q30 What have you done to ensure that what your staff members do is on the public record?

What municipal records attest to staff members' regard for public access to their activity files?

What are the links to records documenting your regard for public access to your activity file?

Q31. What have you done to enable citizens to have free access to City of Ottawa public records?

What municipal records attest to your regard for free access?

What are the links to records documenting your regard for free access?

Q32. What have you done to enable citizens to have easy access to City of Ottawa public records?

What municipal records attest to your regard for easy access?

What are the links to records documenting your regard for easy access?

Q33. What have you done to enable citizens to have timely access to City of Ottawa public records?

What municipal records attest to your regard for timely access?

What are the links to records documenting your regard for timely access?

Q34. What have you done to enable citizens to have direct access to City of Ottawa public records?

What municipal records attest to your regard for direct access?

What are the links to records documenting your regard for direct access?

Q35. What have you done to enable citizens to have online access to City of Ottawa public records?

What municipal records attest to your regard for online access?

What are the links to records documenting your regard for online access?

Q36. What have you done to enable citizens to have direct access to consultants engaged by the City of Ottawa?

What municipal records attest to your regard for citizens having direct access to consultants engaged by the City of Ottawa?

What are the links to records documenting your regard for citizens having direct access to consultants engaged by the City of Ottawa?

Q37. What have you done to enable citizens to have direct access to LRT contractors engaged by the City of Ottawa?

What municipal records attest to your regard for citizens having direct access to LRT contractors engaged by the City of Ottawa?

What are the links to records documenting your regard for citizens having direct access LRT contractors engaged by the City of Ottawa?

## **ii) Right to Transparent Decision-Making**

Travelling companions of open government include open doors, open contact lists, open meetings, open discussions, open invitations, open microphones, open newsletters, open communications, open minds, open networks, open files, and open records, all of which are part-and-parcel of a transparent decision-making process.

And, conversely, travelling companions of closed, restrictive, biased, cone of silence government include closed doors, closed, restrictive, and biased contact lists, closed meetings, closed, restrictive, and biased discussions, closed, restrictive, and biased invitations, closed and dis-connected microphones, closed, restrictive, and biased newsletters, closed, restrictive, and biased communications, closed minds, closed networks, closed files, and closed records, all of which are part-and-parcel of a politician not having due regard for the public right to open government and transparent decision-making.

Again, there are hundreds of pertinent questions that could be asked, but the following questions appear sufficient to illustrate how the Code of Conduct serves as a means to ascertain whether a politician properly recognizes that the public has a right to open government and transparent decision-making.

Q36. Have you ever engaged in any of the following as part of your elected duties and, if yes, what records are there, and what are the links to records of the following departures from open government and transparent decision-making:

Closed meetings

Closed files

Closed records

Closed communications

Closed discussions

Restricted contact lists



Restricted invitation lists

***4. Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.***

Following the pattern established above, several key passages from clause 4 are elaborated by questions which demonstrate how the Code of Conduct could be a means to oblige City of Ottawa politicians to actually give transparency and accountability their due regard in thought and deed.

**i) Serve the interests of constituents**

Q39. In what ways do you ascertain the interests of your constituents on the following matters, and what are the records and links to records which confirm your service to them is performed in a conscientious and diligent manner?

*Policy*

*Planning*

*Zoning*

*Light rail transit*

*Bus transit*

*Transportation*

*Traffic surveys*

*Traffic enforcement*

*Snow removal*

*Right-of-way maintenance*

*Budget*

*Representation on committees*

*Neighbourhood priorities*

**ii) Be seen to serve the interests of constituents in a conscientious and diligent manner**

Q40. Since the start of this term, what are the records and links to records that you have circulated to constituents on the following subjects?

Planning

Development

Zoning

Intersection modifications

Traffic count surveys

Traffic incidents

Criminal Activity

Q41. Since the start of this term, what are the records and links to records on other functions and activities which confirm your efforts to be seen by constituents as serving their interests *in* a conscientious and diligent manner?

Q42. Have you provided information to constituents about how you serve their interests and those of the City in a conscientious and diligent manner? If yes, what records and links to records contain the statements?

Q43. Have you provided statements to constituents about how you **serve** their interests and those of the City in a conscientious and diligent manner? If not, how do you satisfy clause four of the Code of Conduct?

Q44. Which records and links confirm that funds from your office account are distributed in a conscientious and diligent manner?

**iii) Approach decision-making with an open mind**

Q45. Which records and links to records demonstrate that you approach development applications with an open mind?

Q46. Which records and links to records demonstrate that you approach plan amendment applications with an open mind?

Q47. Which records and links to records demonstrate that you approach re-zoning applications with an open mind?

Q48. Which records and links to records demonstrate that you approach up-zoning applications with an open mind?

Q49. Which records and links to records demonstrate that you approach down-zoning applications with an open mind?

Q50. Which records and links to records demonstrate that you approach responding to surveys from constituents with an open mind?

Q51. Which records and links to records demonstrate that you approach responding to emails from constituents with an open mind?

Q52. Which records and links to records demonstrate that you approach responding to requests to attend community meetings with an open mind?

Q53. Which records and links to records demonstrate that you approach responding to requests to participate in all-candidates meetings with an open mind?

Based on my experiences, and experiences that others have shared, numerous citizens have posed similar questions and many others, and not received responses.

Further, in many cases where responses are received, the responses are casual, dismissive, flippant, superficial, lack substance, etc., and often employ one or more of the tactics listed in interim report 15 to avoid or delay providing the requested records.

However, it appears fair to suggest that there could be a major shift in attitude among some and perhaps a majority of City of Ottawa politicians at the prospect of dozens and perhaps hundreds of citizens invoking the Code of Conduct to publicly oblige City of Ottawa politicians to demonstrate due regard for transparency and accountability.

That is, since the questions are based on directives in the Code of Conduct, it seems clear that by definition a Member of Council is obligated *de facto* to respond as per clauses 1, 2, 3, and/or 4 of the General Integrity section of the Code of Conduct.

And, in the event of a member of council's failure to respond, a case is in place to file a formal complaint with the Integrity Commissioner asking the Commissioner to investigate the named member of council for failing to satisfy one or more conditions of the Code of Conduct.

What we appear to have established, therefore, is that the Code of Conduct is a viable means of obliging members of council to do a number of things, such as answering survey questions which are pertinent to their duties and functions as members of council.

In addition, it appears fair to say, we have simultaneously built a clear and decisive argument in support of citizens having free, easy, timely, and direct online access to City of Ottawa public records.

Applying a few numbers to the materials presented above in the discussion of Code of Conduct clauses may assist in making the argument about the very good reasons for citizens having best practices access to City of Ottawa records.

In brief, the clauses of the Code of Conduct could be used by one person to generate, let us say, a first round of 100 questions for a member of council and, let us say, follow-on rounds of 50 questions per week for 40 weeks based on events at council, committee, in the community and the city, and reports in broadcast and social media.

Doing the numbers, what we would have are 2100 questions in a year from one person, with all the questions based on the directives in the Code of Conduct.

Further, if 50 constituents per member of council became involved, it is fully imaginable that well over 10,000 communications requiring answers could be asked of a member of council per year by just 50 constituents, all of whom could expect their questions, comments, etc., to receive responses in accordance with and as prescribed by Code of Conduct clauses.

Moreover, upon failing to receive satisfactory responses, constituents could request the Integrity Commissioner to consider formal investigations.

Once this capability becomes more widely known and takes root, the number of engaged citizens could increase dramatically, which brings us back to the question put to City of Ottawa politicians in three surveys,

*Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa?*

The fact is, truth be told, that after three surveys, 19/24 or about 80% of City of Ottawa politicians have not yet said YES to the survey question.

However, to paraphrase Everett Dirksen, the late, great U.S. Senator from Illinois from I have learned much about dealing with politicians,

**“Perhaps they have not yet seen the light  
because they have not yet felt the heat.”**

In this case the potential for applying considerable heat to City of Ottawa politicians lies in the Code of Conduct, which in principle puts significant pressure on City of Ottawa politicians to conscientiously, diligently, and openly perform their duties on behalf of citizens with due regard for accessibility, integrity, accountability, and transparency.

However, applying considerable heat in practice requires that citizens have the means which enable them to confirm to their satisfaction that the performances of politicians comply with the Code of Conduct.

And the means to that end is of two parts:

- Citizens having free, easy, timely, and direct online access to City of Ottawa public records; and,
- A complaint process through the Office of the Integrity Commissioner, City of Ottawa, which could be used to oblige politicians to provide citizens free, easy, timely, and direct online access to the records which citizens need to verify whether politicians are in compliance with the City of Ottawa Code of Conduct.

As a final comment on Code of Conduct matters for this report, citizens who believe that City of Ottawa politicians are not conducting themselves in accordance with the Code of Conduct can file a formal complaint with the Integrity Commissioner, City of Ottawa.

The link to the procedure is: <https://ottawa.ca/en/city-hall/accountability-and-transparency/accountability-framework/code-conduct-members-council-and-related-policies#how-request-investigation>

#### **4. Communications with the Ontario Ministry of Municipal Affairs and Housing (MMAH) About the Need for Provincial Legislation to Address Municipal Politicians’ Conduct Issues**

Three communications are pertinent to this report, and they are self-contained so there is no need to discuss the contents in detail.

Rather, what is needed for pilot study purposes is to tie the communications to the 19 City of Ottawa politicians who did not reply YES to the citizen access survey, and the much larger concern about best practices being put in place so that citizens have free, easy, timely, and direct online access to public records at all levels of government.

The first email, “Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty”, dated October 25, 2019, is copied to all City of Ottawa politicians regarding a Code of Conduct concern involving City of Ottawa Councillor Rick Chiarelli which was expressed to Steve Clark, Minister of Municipal Affairs and Housing (MMAH).

The second email Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty; Rick Gibbons column, Ottawa Sun, dated November 5, 2019, is a reminder to Mr. Clark that a response had not been received regarding the email of October 25, 2019, and that the conduct matter has received media attention.

The third email, “From The Office of the Honourable Steve Clark, Minister of Municipal Affairs and Housing” dated November 19, 2019, states that municipal governments have the capability to deal with conduct issues involving members of council.

The three emails between Barry Wellar and Steve Clark follow.

**Email 1: Barry Wellar to Steve Clark**

From: Barry Wellar [mailto:wellar.barry@gmail.com]

Sent: Friday, October 25, 2019 2:47 PM

To: steve.clark@pc.ola.org

Cc: lisa.macleodco@pc.ola.org; Matt.Luloff@ottawa.ca; Laura.Dudas@ottawa.ca; jan.harder@ottawa.ca; Jenna.Sudds@ottawa.ca; Eli.El-Chantiry@ottawa.ca; Glen.Gower@ottawa.ca; Theresa.Kavanagh@ottawa.ca; Rick.Chiarelli@ottawa.ca; Keith.Egli@ottawa.ca; Diane.Deans@ottawa.ca; Tim.Tierney@ottawa.ca; Catherine.Mckenney@ottawa.ca; Riley.Brockington@ottawa.ca; capitalward@ottawa.ca; Jean.Cloutier@ottawa.ca; Stephen.Blais@ottawa.ca; George.Darouze@ottawa.ca; Scott.Moffatt@ottawa.ca; Carolanne.Meehan@ottawa.ca; Allan.Hubley@ottawa.ca; 'shawn.menard'; Rawlson.King@ottawa.ca; Mathieu.Fleury@ottawa.ca; Jim.Watson@ottawa.ca; wellar.barry@gmail.com; doug arnold; george neville; le hibou; Chris Maziarski 58; Joanne Chianello; jwilling@postmedia.com; tspears@postmedia.com; Janice Brown  
Subject: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty

Steve Clark,  
Minister Municipal Affairs and Housing  
Government of Ontario

Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty

Dear Minister Clark,

You may be aware of the perplexing situation in which City of Ottawa politicians and residents in College ward find themselves as a result of numerous allegations of sexual misconduct involving Councillor Rick Chiarelli.

If you are not aware of the situation and its serious implications for governance in the city of Ottawa, I am sure that your staff can bring you up to speed in short order by reviewing area broadcast and social media reports.

The purpose of this note is not to discuss the sexual misconduct allegations, nor to elaborate concerns arising due to lack of responses to emails sent to Mr. Chiarelli since the beginning of this term of office on duty of care and standard of care matters.

What I do want to call to your attention is the absence of remedies available to councils and citizens to effectively and efficiently deal with elected municipal officials who cease doing the job for which they were elected by such failings as:

- Showing up for council meetings once every three months;
- Playing the medical leave card one day and going on vacation the next;
- Hiring staff without confirming whether they have the credentials to properly serve constituents;
- Failing to hold public meetings;
- Failing to meet with constituents;
- Failing to communicate with constituents via responses to emails;
- Failing to communicate with constituents via newsletters;
- Using her or his office budget for personal purposes;
- And, in general, becoming enmeshed in self-inflicted or self-authored situations of sexual, financial, criminal, social, drug addiction, gambling addiction, or of other natures which materially affect the proper carrying out of one's duties as an elected official.

Mr. Clark, there have been municipal governments in the Province of Ontario for more than 100 years, and it seems to me to be bizarre that in all that time no provincial government appears to have anticipated the need for legislation to deal with these kinds of local governance situations.

In the event that there is legislation which addresses how to deal the dereliction of duty problem on the part of municipal politicians, I will be most grateful to have it called to my attention via the pertinent link or links.

Conversely, if the dereliction of duty issue is as unattended and as messy to address as I believe it to be in the absence of provincial legislation, then I look forward to learning at

the earliest moment about your intentions to take or to not take corrective action via appropriate legislative measures and/or other means.

I recall for your consideration that as a consequence of the current situation involving Mr. Chiarelli, some 50,000 residents of College ward, City of Ottawa, are without proper municipal representation.

In my experience this perplexing situation warrants immediate corrective action by you, your Ministry, and your government. Further, communications with citizens in Ottawa and elsewhere in Ontario confirm that other citizens join me in seeking prompt action to achieve a remedy which addresses dereliction of duty on the part of municipal politicians.

I note in closing that this communication and your response may be of interest to those copied, including the mayor and councillors, City of Ottawa, so I am requesting that the *Reply All* button be used to transmit your response.

Sincerely.

Dr. Barry Wellar,  
Professor Emeritus, University of Ottawa  
President, Information Research Board Inc.  
133 Ridgfield Crescent  
Nepean, ON K2H 6T4  
CANADA  
<http://wellar.ca/informationresearch/>

### **Email 2: Barry Wellar to Steve Clark**

From: Barry Wellar [mailto:wellar.barry@gmail.com]  
Sent: Tuesday, November 5, 2019 4:28 PM  
To: steve.clark@pc.ola.org; doug.ford@pc.ola.org; ahorwath-qp@ndp.on.ca  
Cc: rick.gibbons@outlook.com; le hibou; george neville; doug arnold; Janice Brown; jwilling@postmedia.com; Joanne Chianello; tspears@postmedia.com; Matt.Luloff@ottawa.ca; Laura.Dudas@ottawa.ca; jan.harder@ottawa.ca; Jenna.Sudds@ottawa.ca; Eli.El-Chantiry@ottawa.ca; Glen.Gower@ottawa.ca; Theresa.Kavanagh@ottawa.ca; Rick.Chiarelli@ottawa.ca; Keith.Egli@ottawa.ca; Diane.Deans@ottawa.ca; Tim.Tierney@ottawa.ca; Catherine.Mckenney@ottawa.ca; Riley.Brockington@ottawa.ca; capitalward@ottawa.ca; Jean.Cloutier@ottawa.ca; Stephen.Blais@ottawa.ca; George.Darouze@ottawa.ca; Scott.Moffatt@ottawa.ca; Carolanne.Meehan@ottawa.ca; Allan.Hubley@ottawa.ca; 'shawn.menard'; Rawlson.King@ottawa.ca; Mathieu.Fleury@ottawa.ca; Rawlson.King@ottawa.ca;



Jim.Watson@ottawa.ca; wellar.barry@gmail.com

Subject: Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty; Rick Gibbons column, Ottawa sun

Steve Clark,  
Minister Municipal Affairs and Housing  
Government of Ontario

Dear Mr. Clark,

The column by Rick Gibbons, Ottawa Sun, November 04, 2019, Council virtually powerless to deal with 'Invisible Man' Chiarelli, refers to my communication to you of October 25, 2019, "Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty".

I have not received an acknowledgement of receipt of "Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty", much less the requested reply, so it is appropriate to ask, "What is the status of your reply to my communication of October 25, 2019, "Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty"?

It is possible that the column by Mr. Gibbons is already part of the file, "Re: Need for Legislation Enabling the Timely Removal of Municipal Officials from Office for Dereliction of Duty", but the link is provided in the event of oversight:

<https://ottawasun.com/opinion/columnists/gibbons-council-virtually-powerless-to-deal-with-invisible-man-chiarelli>.

I repeat in closing, and as emphasized by Mr. Gibbons, and very possibly in communications to you from Mayor Jim Watson as well as councillors, City of Ottawa, that time is increasingly of the essence for a number of good governance reasons.

Sincerely,

Barry Wellar

Dr. Barry Wellar, C.M.,GISP  
Professor Emeritus, University of Ottawa  
President, Information Research Board Inc.  
133 Ridgefield Crescent  
Nepean, ON K2H 6T4  
CANADA  
<http://wellar.ca/informationresearch/>

### **Email 3. Steve Clark to Barry Wellar**

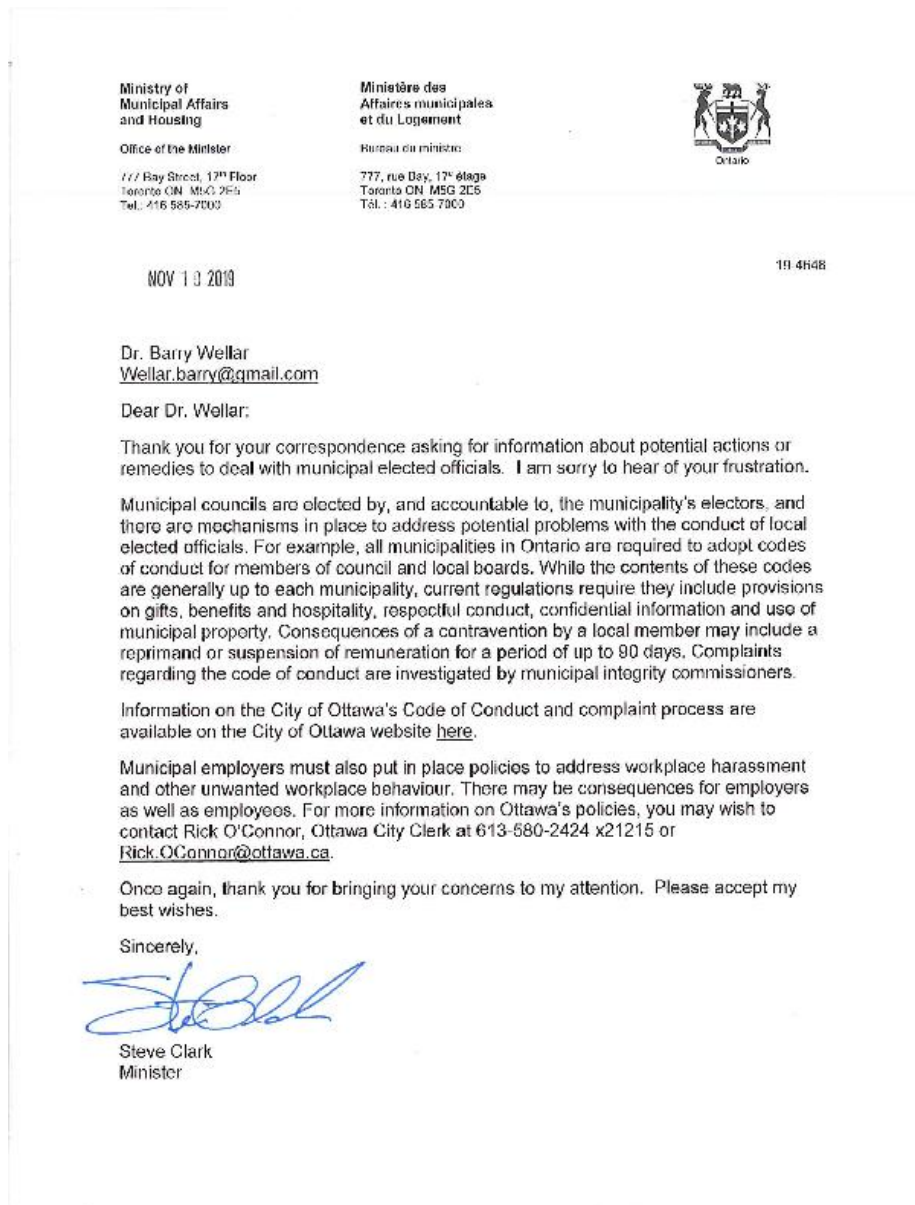
**From:** Minister (MMAH) [mailto:minister.mah@ontario.ca]

**Sent:** Tuesday, November 19, 2019 1:53 PM

**To:** Wellar.barry@gmail.com

**Subject:** From The Office of the Honourable Steve Clark, Minister of Municipal Affairs and Housing

Please see attached.



No doubt Minister Clark and his advisors did their due diligence in drafting the letter and, quite possibly the due diligence extended to the Chronicling project, since Minister

Clark was twice sent the pilot study survey as Minister of Municipal Affairs and Housing in which he is asked.

*Do you agree that citizens are entitled to free, easy, timely, and direct online access to the public records held by municipal governments in Ontario?*

**Interim Report 6. Responses of Ontario Premier Doug Ford and Selected Cabinet Ministers to the Question: Do You Agree that Citizens Are Entitled to Free, Easy, Timely, and Direct Online Access to the Public Records Held by Municipal Governments in Ontario?**

**Interim Report 12. Second Survey of Ontario Premier Doug Ford and Selected Cabinet Ministers: Do You Agree that Citizens Are Entitled to Free, Easy, Timely, and Direct Online Access to the Public Records Held by Municipal Governments in Ontario?**

As part of that extended diligence by the Minister's office, it seems reasonable to suggest, anyone in the Ministry who examined the posted publications would have readily seen that the majority of City of Ottawa politicians do not agree that *citizens are entitled to free, easy, timely, and direct online access to the public records held by the City of Ottawa*.

And, further in that extended diligence vein, it seems reasonable to suggest that it should have been realized very quickly that the survey question was being sent to the Minister because of the NO access position of a majority of City of Council members.

Which brings me back full circle to the communication to Minister Clark regarding the need for legislation enabling the timely removal of municipal officials from office for dereliction of duty.

It is one thing if the conduct issue involves just one or even several City of Ottawa politicians, and a sufficient number of members of council remain untarnished to deal with any recommendation(s) from the Integrity Commission.

However, what happens if a majority of the members of council are named in the complaint sent to the Integrity Commissioner, and the Integrity Commissioner finds for the complainant(s)?

If a majority of council is named in the complaint, then the Integrity Commissioner sends the results of his investigation to all of council including those named, to all of council excepting those named, or ....?

Whether a Code of Conduct complaint is lodged against 19 of 24 City of Ottawa politicians for conduct that restricts citizens' access to public records is a matter under consideration.

In the meantime, Minister Clark will be informed that he is mentioned in interim report 18, and he will be invited to offer an opinion as to whether municipal governments have the capability to deal with the disposition of a Code of Conduct complaint submitted by the Integrity Commissioner in which the majority of members of council are named in the complaint.

## **5. Conclusion**

The three pilot study surveys apparently revealed beyond a shadow of a doubt that 19 of 24 members of Ottawa council can generously be referred to as 'lost causes' when it comes to demonstrating their actual regard for transparency and accountability.

After all, these 19 politicians who are elected to represent the public's interest apparently failed to pass a fundamental test of a free and democratic society, that is, they do not accept the proposition that citizens are entitled to free, easy, timely and direct online access to City of Ottawa public records.

Long story short, however, is that City of Ottawa politicians who do not agree that citizens are entitled to free, easy, timely, and direct online access to City of Ottawa public records could find themselves in a self-authored quandary.

That is, interim report 18 introduces the City of Ottawa Code of Conduct for Politicians into the Chronicling project pilot study, and the clauses in the Code of Conduct are shown to be the basis of potentially innumerable questions, comments, and requests for records from citizens.

Moreover, and as examination of the Code of Conduct makes clear, if politicians are perceived by citizens as not performing with due regard for transparency, accountability, integrity, openness, fairness, conscientiousness, and other specifications of the Code of Conduct, then citizens can file a complaint with the Integrity Commission and request a formal investigation.

In addition to introducing the City of Ottawa Code of Conduct for Politicians into the Chronicling pilot study, reference is also made in interim report 18 to communications with the Ontario Ministry of Municipal Affairs and Housing.

The question at issue for the Ministry is what happens to the Integrity Commissioner's report intended for City of Ottawa council if the complaint involves a majority of the members of City of Ottawa council?