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**In the matter of a  
INVESTIGATION PURSUANT TO THE CODE OF CONDUCT BYLAW NO. 53, 2023  
COMPLAINT NO. 2024-0019**

**Submitted by Reece Harding  
Young, Anderson (the "Investigator")  
November 7, 2024**

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## INVESTIGATION REPORT re File 2024-0019

## INTRODUCTION

1. On March 22, 2024, Young, Anderson was retained as an investigator under the City of Kamloops Code of Conduct Bylaw No. 53 (the “Code”) in relation to a privacy complaint that was submitted by Councillor Dale Bass (the “Complainant”). Specifically, the breach was alleged to have occurred through the sharing of photographs of individuals in downtown Kamloops (the “Photographs”). The complaint alleges that Mayor Hamer-Jackson forwarded the Photographs to **S.22(1) Personal Information** [REDACTED] – who is not a City employee – for the purpose of preparing a slideshow for a Chamber gala dinner at which the Mayor was scheduled to speak.

2. This investigation report has been prepared for the purpose of determining whether the Mayor’s sharing of the Photographs constitutes a breach of section 3.15(a) of the Code and a breach of the statutory obligations under section 25.1 of the *Freedom of Information and Protection of Privacy Act* (“FIPPA”) related to the collection, use, and disclosure of “personal information” pursuant to FIPPA.

3. This investigation report is prepared and submitted pursuant to section 4.32 of the Code, as I have determined that Mayor Hamer-Jackson has breached the Code. I have also determined that the breaches are not trivial, inadvertent or made in good faith as per section 4.32(c). As I have made these determinations, this report also contains a recommendation with respect to the appropriate remedy, as per section 4.32(b). Of note, I have not used names in the body of the report and purposely redacted from the Attachments to this report personal information (e.g., email addresses, staff names, phone numbers) where this information is not necessary to support my conclusions.

## THE COMPLAINT

4. As noted above, the complaint alleges that the Mayor’s sharing of the Photographs constitutes a breach of the Code and FIPPA. More particularly, the complaint, which is at Attachment A, alleges:

- (i) The Mayor was scheduled to present at a dinner gala hosted by the Kamloops Chamber of Commerce (the “Gala”) on March 14, 2024;
- (ii) On multiple occasions prior to the Gala, City staff reached out to the Mayor to work with him in preparing a speech and slideshow for this purpose, which the Mayor ignored;
- (iii) Days before the Gala, the Mayor contacted **S.22(1) Personal Information** to seek assistance in preparing a slideshow for the Gala, and forwarded **S.22(1) Personal Information** the Photographs for this purpose;
- (iv) The **S.22(1) Personal Information** refused to prepare a slideshow for the Mayor using the Photographs, on the basis that it fell outside of **S.22(1) Personal Information** and

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that the Photographs were inappropriate and breached the privacy of unhoused individuals.

Although Councillor Bass cited sections 2.1(c), 3.10(a) and 3.11(b) of the Code as the basis of this complaint, it is clear that section 3.15(a) of the Code is engaged. This section reads:

3.15 A Member must:

(a) comply with the provisions of the *Freedom of Information and Protection of Privacy Act* and all policies and guidelines established by the City;

It was on the basis of this Code provision (and by reference, section 25.1 of FIPPA) that this complaint was accepted and investigated.

### THE INVESTIGATION

5. In this section of the report, I summarize the facts that I have gathered by way of written statements, interviews and access to City records. I will summarize our findings at the end of this section.

#### a. Kamloops Central Business Improvement Association

6. On August 26, 2024, I contacted **S.22(1) Personal Information** to obtain information regarding the Photographs and the manner in which the Mayor obtained them. In response, **S.22(1) Personal Information** provided us with a written statement in which **S.22(1)** advised us of the following:

- (i) The Mayor called **S.22(1) Personal Information** sometime in February 2024 to request photographs of “crime and social disorder” in Kamloops Central. At the Mayor’s request, **S.22(1)** emailed the Photographs to the Mayor. He was not aware of the purpose for which the Mayor intended to use the Photographs at that time.
- (ii) After the Gala, **S.22(1) Personal Information** double-deleted the Photographs from all of **S.22(1)** devices and accounts at the request of the City, **S.22(1) Personal Information**

7. **S.22(1) Personal Information** written statement is attached as Attachment B.

8. As will be noted below, **S.22(1) Personal Information** forwarded five separate emails to the Mayor on February 29, 2024. Each of these five emails contained a series of photographic images.

#### b. **S.22(1) Personal Information**

9. On June 3, 2024, I emailed **S.22(1) Personal Information** to request that **S.22(1)** participate in this investigation. **S.22(1) P** initially agreed to participate, and we had a preliminary telephone call on June 10, 2024,

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during which [REDACTED] confirmed that [REDACTED] had received the Photographs via email from the Mayor. This was not a formal interview, and I agreed to follow up with [REDACTED] in detail once [REDACTED] had received direction from the [REDACTED]. Because the City had already ensured that all of the Photographs had been deleted, I saw [REDACTED] participation in the investigation as imperative, as [REDACTED] was the only individual (aside from the Mayor) who could speak to the content of the Photographs that [REDACTED] received.

10. On June 18, 2024, [REDACTED] advised me via email that [REDACTED] would not participate in this investigation, at the direction of [REDACTED]. As a result, I do not have any direct evidence from [REDACTED]. Of course, I have no legal authority to force [REDACTED] to participate in this investigation so I was accepting of [REDACTED] position.

**c. City Database Search**

11. On August 27, 2024, I contacted the City [REDACTED] and [REDACTED] via email to seek an electronic record of the Mayor's email activities in relation to this complaint. The reason for this request, as noted above, was [REDACTED] had been directed not to participate in my investigation and I needed to obtain the emails between the Mayor and [REDACTED] to review the content.

12. On August 28, 2024, [REDACTED] instructed, at my request, [REDACTED] restore from the City's digital backup the emails and attachments that were received by the Mayor from [REDACTED], as well as emails and attachments forwarded by the Mayor to [REDACTED].

13. On August 28, 2024, [REDACTED] provided my office with the five emails sent to the Mayor by [REDACTED] on February 29, 2024, and the two emails forwarded by the Mayor to [REDACTED] on March 11, 2024. These emails are attached as Attachment C.

14. The five emails sent by [REDACTED] contained a total of 49 photographs. The Mayor's two emails forwarded 20 images to [REDACTED], which constitute the Photographs for the purposes of this complaint. The Photographs (with identifiable features redacted by my office), are attached as Attachment D, and are numbered in the upper right-hand corner for ease of reference later in this report.

15. I am satisfied, given the expertise of [REDACTED], that I can rely on these restored Photographs for this investigation.

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d. S.22(1) Personal Information

16. On September 17, 2024, I interviewed S.22(1) Personal Information. The purpose of this interview was to understand the training that the City has provided to the Mayor regarding his obligations under FIPPA and S.22(1) Personal Information role in responding to the discovery that the Photographs had been emailed to S.22(1) Personal Information.

17. Prior to my interview with S.22(1) Personal Information gave me a list of the privacy training opportunities that were provided to all council members before the Complaint and a PowerPoint presentation that S.22(1) P and the City Solicitor delivered to Council regarding FIPPA obligations and S.14 information protected. These are attached as Attachments E and F.

18. During S.22(1) P interview, S.22(1) Personal Information provided detail regarding the privacy training that was delivered to Council prior to the Complaint, explained the steps that the City took to address the potential privacy breach posed by the Photographs, and described the City's interactions with the Office of the Information and Privacy Commissioner ("OIPC") following the Gala.

19. S.22(1) Personal Information evidence is summarized below:

- (i) There were five training opportunities regarding privacy obligations under FIPPA that were delivered to council members, including the Mayor, which were delivered between November 2022 and November 2023. The training varied in specificity and level of detail, and on at least one occasion was optional for council members.
- (ii) In November 2023, S.22(1) P delivered a presentation along with S.22(1) P and the City Solicitor (the "November 2023 Session"). It was during the November 2023 Session that the PowerPoint presentation attached as Attachment F, which specifically discussed the fact that photographs could constitute "personal information" under FIPPA and that recording or disclosing photographs of individuals without their consent could constitute a breach of FIPPA, was delivered. The Mayor was present for the November 2023 Session.
- (iii) On March 12, 2024, S.22(1) P cc'd S.22(1) P on an email to S.22(1) P to inform S.22(1) P that the Mayor had sent the Photographs to S.22(1) Personal Information. This email is attached as Attachment G.
- (iv) On March 13, 2024, S.22(1) Personal Information emailed a letter to S.22(1) Personal Information to inform S.22(1) P that the Photographs constituted a privacy breach, and required S.22(1) P to securely destroy and delete any copies of the Photographs in S.22(1) P possession. S.22(1) Personal Information confirmed via email later that day that the Photographs in S.22(1) P possession had been deleted.

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- (v) On March 14, 2024, [S.22(1) Personal Information] emailed and hand-delivered a letter to the Mayor, advising him that the Photographs cannot be displayed at a public event, and requiring him to securely destroy and delete them. This letter is attached as Attachment H.
- (vi) On March 21, 2024, while [S.22(1) Personal Information], the Mayor emailed [S.22(1) P] a screenshot of a google search regarding the legality of taking photographs in public spaces, and stated that he would not have “displayed sexual activity or identifiable images”. He also requested a copy of the City’s policy in relation to photographs. This email is attached as Attachment I.
- (vii) On March 25, 2024, [S.22(1) Personal Information] sent a demand notice to the Mayor, requiring him to destroy and double-delete the Photographs from all of his City-issued and personal devices and accounts. This letter is attached as Attachment J. [S.22(1) P] also sent demand notices to [S.22(1) Personal Information] and [S.22(1) P].
- (viii) On April 2, 2024, [S.22(1) Personal Information] called the Mayor to see whether he would like to schedule a time for the following day for [S.22(1) P] to oversee his deletion of the Photographs from his City-issued and personal devices and accounts, in accordance with the demand notice that was sent on March 25, 2024. [S.22(1) P] also explained to him that taking photographs in public is illegal unless consent is obtained pursuant to the requirements of FIPPA. During this conversation, the Mayor stated that he was not in contravention of either FIPPA or City policy.
- (ix) On April 2, 2024, following their telephone conversation, [S.22(1) Personal Information] emailed the Mayor to reiterate the need for him to comply with the demand notice by April 3, 2024, and provided times during which [S.22(1) P] would be available to witness him deleting the Photographs. This email is attached as Attachment K.
- (x) On April 22, 2024, [S.22(1) Personal Information] received a letter from the Mayor’s legal counsel, in which he denied that a privacy breach had occurred and stated that the Mayor had deleted the Photographs from all of his City-issued devices.
- (xi) On May 28, 2024, [S.22(1) Personal Information] acknowledged receipt of the letter from the Mayor’s legal counsel dated April 22, 2024, and reiterated the need for the Mayor to delete the Photographs from his personal devices under [S.22(1) P] supervision. [S.22(1) P] set a deadline for compliance on June 11, 2024. The Mayor did not schedule a meeting with [S.22(1) Personal Information] to delete the Photographs from his personal devices on or before June 11, 2024. [S.22(1) Personal Information] also stated that despite claims to the contrary in the letter dated April 22, 2024, it was the City’s IT Department that deleted the

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Photographs from the Mayor's City-issued devices and accounts, not the Mayor. This letter is attached as Attachment L.

20. The views of S.22(1) Personal Information communications with the Mayor are noted in my investigation for factual background only. I have not been influenced by S.22(1) Personal Information views, or any other City official, in any of my conclusions below.

e. S.22(1) Personal Information

21. On September 19, 2024, I interviewed S.22(1) Personal Information. The purpose of this interview was to understand the manner in which the City typically works with external organizations when preparing for events such as the Gala, to better understand the relationship between the City and S.22(1) Personal Information, and to ascertain the details of all communications exchanged between the City and S.22(1) Personal Information prior to and following the Gala.

22. In my interview with S.22(1) Personal Information provided details regarding conversations that S.22(1) Personal Information had with S.22(1) Personal Information in relation to the Photographs and the Gala event. S.22(1) Personal Information is summarized below:

- (i) On March 7, 2024, S.22(1) Personal Information met with S.22(1) Personal Information to ensure proper preparations had been made for the Gala. S.22(1) Personal Information informed S.22(1) Personal Information that S.22(1) Personal Information and S.22(1) Personal Information had offered to assist the Mayor in preparing presentation materials. S.22(1) Personal Information offered to give advice to the Mayor regarding his presentation if he reached out to her.
- (ii) On March 12, 2024, S.22(1) Personal Information called S.22(1) Personal Information and informed S.22(1) Personal Information that S.22(1) Personal Information had received the Photographs in emails from the Mayor. S.22(1) Personal Information explained that S.22(1) Personal Information had met with the Mayor on March 8, 2024 to discuss his presentation for the Gala. During that conversation, the Mayor requested that S.22(1) Personal Information assist him in preparing a "revolving photo slide" for the Gala. S.22(1) Personal Information declined, explaining that S.22(1) Personal Information did not have the time on such short notice and that the Mayor could rely on city staff for assistance. Then, on March 11, 2024, the Mayor forwarded the Photographs to S.22(1) Personal Information.
- (iii) On March 12, 2024, following S.22(1) Personal Information conversation with the S.22(1) Personal Information, S.22(1) Personal Information emailed S.22(1) Personal Information to summarize what S.22(1) Personal Information had told S.22(1) Personal Information and to express S.22(1) Personal Information concerns regarding the Photographs. Then, S.22(1) Personal Information emailed S.22(1) Personal Information.

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██████████ to inform ██████ of the situation. These emails are attached as Attachment G.

*f.* ██████████

23. On September 24, 2024, I interviewed ██████ **S.22(1) Personal Information**. The purpose of this interview was to obtain further details regarding the City's privacy training, as well as ██████ correspondence with the Mayor, the OIPC, and other individuals in the Kamloops business community in relation to the Photographs. ██████ evidence is summarized below:

- (i) The November 2023 Session was provided to Council in part because the City had received freedom of information requests under FIPPA that involved records including photographs in the Mayor's personal cell phone. The possibility that photographs could constitute "personal information" under FIPPA was specifically discussed at this meeting with Council and the Mayor.
- (ii) On the recommendation of an OIPC investigator who was working with the City to manage the Photographs, ██████ **S.22(1) Personal Information** reached out to the Mayor on April 8, 2024, via email to offer him supplemental training regarding his obligations in relation to personal information under FIPPA. They followed up to repeat that offer on April 12, 2024. The Mayor did not respond to these training offers. These emails are attached as Attachment M.

*g. Mayor Hamer-Jackson*

24. On May 13, 2024, after performing a lengthy preliminary assessment of the complaint, I concluded that this complaint warranted further investigation and, as required by the Code, I disclosed that fact to the Mayor through his then legal counsel. In our notification letter, I informed the Mayor that the complaint alleged that he had solicited and distributed photographs of individuals, and that this allegation engaged the prohibition within FIPPA against public bodies and their officers collecting, using, or disclosing personal information except in accordance with FIPPA.

25. On May 23, 2024, pursuant to section 4.23 of the Code, I received the Mayor's initial response to the complaint.

26. In his response, the Mayor took the position that he did not collect the Photographs, hold them in confidence, or disclose them to the public, and that the Photographs did not constitute "confidential information" pursuant to the Code.

27. The written response further characterized the complaint as a "thinly veiled attempt to unfairly target and harass the Mayor," and stated that the Photographs were not captured by the Mayor, nor did

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the Mayor direct that the Photographs contain “nudity, sexual acts, or identifying information of any of the individuals captured.”

28. The written response also states that the Mayor “had no intention to use such photographs for any purpose, let alone any City-related purpose.”

29. The Mayor’s initial response did not address the issue of whether the Photographs constituted “personal information” that would be subject to the provisions of FIPPA.

30. I scheduled an interview with the Mayor for October 3, 2024, and confirmed his availability for that date via emails with his legal counsel on August 30, 2024, and September 11, 2024. In scheduling this interview, I provided Mayor-Hamer-Jackson with a detailed letter setting out the allegations against him, including the fact that the specific matter I was considering was an alleged breach of FIPPA, rather than a breach of confidence. I attach this letter as Attachment N.

31. On September 19, 2024, the Mayor’s legal counsel informed me that he was withdrawing from this matter. In a follow up email with his legal counsel, I confirmed that the Mayor was aware of the interview scheduled for October 3, 2024, and that he had confirmed his availability for that date.

32. On September 20, 2024, I emailed the Mayor directly to confirm his availability for the interview scheduled on October 3, 2024. The Mayor replied later that day via email and stated that he did not need an interview.

33. On September 23, 2024, I emailed the Mayor to request that he reconsider and attend the interview scheduled for October 3, 2024. The Mayor replied later that day, but did not clearly state whether he would participate in an interview, instead stating that “councillor O’Reilly and others have made a [sic] Error [sic] in judgment”. I responded seeking clarification, and presented the Mayor with the option of preparing a written response to the complaint instead. The Mayor responded, but did not clearly indicate whether he would attend an interview or whether he would be willing to provide a written response.

34. On September 24, 2024, the Mayor sent text messages to me containing screenshots of other conversations with me. He also sent text messages regarding other Code of Conduct investigations.

35. On September 25, 2024, I emailed a letter to the Mayor requesting that he either attend the interview scheduled for October 3, 2024, or provide a written response by October 10, 2024. I further advised him that if he did not participate in an interview and refused to provide a written response, I would be completing the investigation without him. The Mayor replied and stated that he would not be able to attend the interview.

36. On September 26, 2024, I confirmed the cancellation of the interview, and reiterated our request that the Mayor provide us with a written response by October 10, 2024. The Mayor replied, stating that

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once the investigation was completed, he would consider legal advice. I wrote to confirm that I would proceed on the assumption that he would not be providing a written response, but that in any case I would accept written submissions on or before October 10, 2024, should he change his mind.

37. On September 26, 2024, the Mayor also sent us an email in which he indicated that “culprits” had “abolished” his slideshow that he had planned to present for the Gala. He indicated that he hoped I would uncover this in our investigation.

38. On September 27, 2024, the Mayor sent me another email in which he stated that he would never present a slideshow including identifying information of people engaged in sexual activity, addiction, or struggling with mental health issues, but that the Complainant would. I replied to confirm our receipt of this email and the one that we received on September 27, 2024, and to repeat my request that he provide a written response by October 10, 2024. In a responding email, the Mayor stated that he believed I would find that he had been “sabotaged.”

39. On September 27, 2024, I sent an email to the Mayor seeking to summarize and clarify our communications with him up until that point. I explained that I would take what he had said into consideration, but that I did not fully understand his position in relation to the complaint and the investigation. I reminded the Mayor that the investigation was confined to the Photographs and their distribution, and once again requested that he provide written submissions by October 10, 2024.

40. On October 8, 2024, I emailed the Mayor a letter to inform him that I was extending the deadline for submitting this report pursuant to section 4.29 of the Code of Conduct. I advised the Mayor that I was taking this action, in part, because I wanted to ensure that if he decided to provide us with written submissions on or before October 10, 2024, I would have sufficient time to consider them as part of our investigation. I also reiterated that if I did not receive any feedback from him, I would finalize this report without his complete evidence.

41. I have set out these interactions with the Mayor in detail to demonstrate that, on multiple occasions, I requested that the Mayor attend an in-person interview or provide a written response to the complaint. I am disappointed that the Mayor has not provided me with a more fulsome understanding of his position in this complaint. That being said, the Mayor did not want to be interviewed, and has not provided us with a written response to the date of this report. Further, he has not provided any other evidence regarding the events that constitute this complaint beyond his initial response, emails and texts to me. As such, I have had to complete this investigation without the Mayor’s full input. I will do my best to use the content of the Mayor’s preliminary response, emails and texts later in this report.

42. Attached as Attachment O are the above-referenced emails and text messages between myself and the Mayor.

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### ***h. Media Reports***

43. In the days immediately following the March 14, 2024 Gala, multiple news media outlets published articles regarding the Gala and the Mayor's presentation materials. Several of these are discussed in detail below.

44. On March 15, 2024, Castanet published an article in which the Mayor is quoted as saying that he had been working on a slideshow "to show the realities of the street disorder in Kamloops", but that he was informed that "there is a policy that prevents the mayor of today to carry that out on his own direction". This article is attached as Attachment P.

45. On March 18, 2024, infonews.ca published an article in which the Mayor is quoted as saying the following:

I wanted to have (a slideshow) that showed positive things we've done in the community and actually show the reality of what's happening to people on the streets... I never got a chance to show my pictures because I was told they had to be professional.

46. The story also reports that the Mayor obtained pictures from **S.22(1) Personal Information**. This article is attached as Attachment Q.

47. On March 20, 2024, Castanet published a second article in which the Mayor is quoted as saying the following: "I forwarded them to the chamber – I didn't even look at the photos at that time." This article is attached as Attachment R.

### **SUMMARY OF EVIDENCE**

48. As will be noted below, one issue in this investigation is whether the Mayor had a valid purpose for which he obtained the Photographs and forwarded them to **S.22(1) Personal Information**. However, there is limited direct evidence regarding that purpose, largely because the Mayor has refused to clarify, elaborate, or provide further information regarding this complaint. I am therefore left to make a determination regarding that purpose based on the other facts that I have been able to glean in my investigation and the general circumstances surrounding the forwarding of the Photographs.

49. I note that the Mayor has never directly told me why he obtained the Photographs, nor has he explained why he forwarded them to **S.22(1) Personal Information**. However, in his written response to our preliminary assessment, the Mayor's legal counsel did state that the Mayor "had no intention to use the photographs for any purpose, let alone any City-related purpose."

50. The Mayor has made statements to the contrary in news media. He is directly quoted as saying that he "wanted to have (a slideshow)... actually show the reality of what's happening to people on the

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streets... I never got a chance to show my pictures because I was told they had to be professional.” He is also quoted as saying that he forwarded pictures “to the chamber,” despite not having looked at them.

51. S.22(1) Personal Information also told S.22(1) Personal Information that the Mayor had asked S.22(1) Personal Information to help him prepare a “revolving photo slide” for the Gala before he sent the Photographs to S.22(1) Personal Information.

52. On the one hand, the Mayor’s legal counsel has stated that the Mayor had no intention to use the Photographs for any purpose, while on the other hand, the Mayor has told media sources that he wanted to prepare a slideshow but was prevented from showing pictures at the Gala, and that he forwarded pictures to the chamber. S.22(1) Personal Information also says that the Mayor asked that S.22(1) Personal Information help him prepare a slideshow for the Gala merely days before sending the Photographs S.22(1) Personal Information.

53. I cannot accept that the Mayor did not intend to use the Photographs for any purpose. If the Mayor did not obtain the Photographs for any purpose, then why obtain them at all? The notion that the Mayor solicited the Photographs for no reason at all stretches credulity, and begs the question of why he requested that S.22(1) Personal Information send them to him in the first place.

54. In my view, the answer to this question is most clearly revealed by what the Mayor actually did with the Photographs: on March 11, 2024, three days before the Gala, he forwarded them to S.22(1) Personal Information. I will also note that three days before that, on March 8, 2024, he asked S.22(1) Personal Information to help him prepare a slideshow.

55. Both the Mayor’s actions and his statements to the media indicate that he obtained the Photographs and forwarded them to S.22(1) Personal Information for the purpose of creating a slideshow for the Gala. Additionally, S.22(1) Personal Information has informed us that S.22(1) Personal Information the Mayor forwarded S.22(1) Personal Information the Photographs to serve as a “revolving photo slide” during the Gala.

56. I can only conclude that the Mayor obtained and forwarded the Photographs for the purpose of creating a slideshow for the Gala. As I will note below, it does not matter which of the Photographs, if any, actually made it into the Gala slideshow – only that the Mayor forwarded them to S.22(1) Personal Information for that purpose.

57. I also note one last matter. Due in part to the lack of participation of the Mayor and S.22(1) Personal Information our investigation has not revealed information that directly demonstrates the Mayor sent the Photographs to S.22(1) Personal Information. The available evidence shows that the Mayor

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<sup>1</sup> I note that though this evidence is hearsay, the law is clear that an administrative body is entitled to admit and rely upon hearsay evidence provided it is reliable and admissible: *552197 B.C. Ltd. v. City of Abbotsford*, 2003 BCSC 304. S.22(1) Personal Information evidence on this point was clear during our interview with S.22(1) Personal Information, and it is consistent with S.22(1) Personal Information written correspondence with other City employees. As such, I am confident relying on S.22(1) Personal Information evidence regarding S.22(1) Personal Information statements.

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requested that **S.22(1) Personal Information** forward images to him, and that the Photographs were sent to and from the Mayor's email address. However, I find it significant that in our correspondence with the Mayor, he has never denied sending the Photographs to **S.22(1) Personal Information**, and that the email records provided by **S.22(1) Personal Information** prove the Photographs were sent from the Mayor's City email address. The Mayor's statements in news publications also support the conclusion that he forwarded the Photographs, but was prevented from using them for a presentation. As such, on a balance of probabilities I am comfortable concluding that the Photographs were, in fact, emailed by the Mayor to **S.22(1) Personal Information**. There is simply no other reasonable explanation given the evidence I have been provided.

58. Having resolved these two evidentiary issues, I now wish to summarize my core factual findings:

- (i) Sometime in February, 2024, Mayor Hamer-Jackson contacted **[REDACTED]**, who is not a City employee, to ask **[REDACTED]** for photographs of "crime and social disorder" in Kamloops Central.
- (ii) On February 29, 2024, five emails containing photographs were sent by **[REDACTED]** to the Mayor's kamloops.ca email address.
- (iii) On March 11, 2024, two of these five emails were then forwarded from the Mayor's kamloops.ca email address to **S.22(1) Personal Information**. These are the Photographs that form the basis of this complaint.
- (iv) **[REDACTED]** is not a City employee.
- (v) On March 12, 2024 as confirmed by **[REDACTED]**, **[REDACTED]** contacted **[REDACTED]** to advise **[REDACTED]** had received the Photographs and relayed a concern with the graphic content within several of them.
- (vi) From March 12, 2024 to July 15, 2024, various City staff took steps to ensure the Photographs were not displayed at the Gala and that they were deleted from the **[REDACTED]**, **[REDACTED]**, and City computers.
- (vii) On the basis of the City's efforts, it appears the only person outside of the City that received the Photographs from the Mayor's email account was **S.22(1) Personal Information** **[REDACTED]**.
- (viii) The Mayor obtained the Photographs and forwarded them to **S.22(1) Personal Information** **[REDACTED]** for the purpose of preparing a slideshow for the Gala.

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59. While there is a substantial amount of content detailed above in relation to the events surrounding the Gala, I believe that the eight items above are all that is necessary for me to determine whether a breach of the Code took place.

**CODE, FIPPA PROVISIONS AND FINDINGS**

60. As noted above, this complaint is about whether the disclosure of the Photographs to S.22(1) Personal Information by the Mayor constituted a violation of section 25.1 of FIPPA and, therefore, a breach of section 3.15 of the Code of Conduct.<sup>2</sup> To be clear, in my opinion, it does not matter whether the Mayor used the Photographs at the Gala, only that he forwarded them to S.22(1) Personal Information with that purpose in mind.

**a. Code and FIPPA Provisions**

61. The relevant provisions of the Code are:

2.1 The key statements of principle that underline this Bylaw are as follows:

(c) Members are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

...

3.15 A Member must:

(a) comply with the provisions of the *Freedom of Information and Protection of Privacy Act* and all policies and guidelines established by the City;

62. The relevant provisions of FIPPA are:

“personal information” means recorded information about an identifiable individual other than contact information;

...

---

<sup>2</sup> In the course of our investigation, it came to our attention that the Mayor’s decision to forward the Photographs to S.22(1) Personal Information may have engaged the *Intimate Images Protection Act* (the “IIPA”), in addition to FIPPA. However, at that time I determined not to include the IIPA in our investigation. I made this determination largely because the IIPA was not cited in the complaint – or in any of our subsequent correspondence with the Complainant – and is not directly referenced in the relevant Code of Conduct provisions. As a result, our processing of the complaint until that time, which included multiple notifications to the Mayor and his legal counsel, did not include any notice or assessment of whether the IIPA was breached. Given all of these factors, and a procedural fairness concern of late notice, I choose not to include the IIPA in this investigation.

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**25.1** An employee, officer or director of a public body must not collect, use or disclose personal information except as authorized by this Act.

...

**26** A public body may collect personal information only if

...

(c) the information relates directly to and is necessary for a program or activity of the public body;

(d) with respect to personal information collected for a prescribed purpose,

(i) the individual the information is about has consented in the prescribed manner to that collection, and

(ii) a reasonable person would consider that collection appropriate in the circumstances,

...

(e) the information is necessary for the purposes of planning or evaluating a program or activity of a public body,

...

**27.1** Personal information that is received by a public body is not collected by the public body for the purposes of FIPPA if

(a) the information does not relate to a program or activity of the public body, and

(b) the public body takes no action with respect to the information other than to

(i) read all or a part of it and then delete, destroy or return it

...

**32** A public body may use personal information in its custody or under its control only

(a) for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose;

(b) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the use, or

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- (c) for a purpose for which the information may be disclosed to the public body under section 33.

...

**33** (1) A public body may disclose personal information in its custody or under its control only as permitted by subsections (2) to (9) or by section 33.3

(2) A public body may disclose personal information in any of the following circumstances:

...

- (c) if the individual the information is about has identified the information and has consented, in the prescribed manner, to the disclosure;

- (d) for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose within the meaning of section 34;

...

**34** For the purpose of section 32(a) or 33 (2)(d) ... a use of personal information is consistent with the purpose for which the information was obtained or compiled if the use

- (a) has a reasonable and direct connection to that purpose, and

- (b) is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses that information.

63. As an important starting point, I will note that for the purposes of section 25.1 of FIPPA, the courts have determined that both elected and appointed officials of a municipality are considered “officers” of a public body.<sup>3</sup> As such, it is beyond doubt that the Mayor is an “officer” and is subject to the requirements established by that section.

64. In order to find a breach of the Code, I am to consider the definition of “personal information” and the grounds for collecting, using, and disclosing personal information pursuant to FIPPA.

65. If the Photographs fall within the definition of personal information, I must determine whether the Mayor collected the Photographs. If the Mayor did collect, or use, or disclose the Photographs, then I must determine whether he did so in a manner that is authorized by the statute.

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<sup>3</sup> *R. v. Skakun*, 2014 BCCA 223

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66. In making my determination, I am to apply the balance of probabilities test with respect to the standard of proof. This means that I must find that it is more likely than not that a breach occurred.<sup>4</sup> I also take note that issues of witness credibility were not engaged in this investigation. Further, and of note, all City staff were extremely diligent and helpful in the process of this investigation.

67. There is little dispute regarding the eight key facts that are summarized. What remains to be determined is whether the Mayor breached the relevant provisions of FIPPA and the Code by receiving the Photographs and then distributing them from his City email account to **S.22(1) Personal Information**.

### **b. The Photographs as “personal information”**

68. As noted above, “personal information” is defined under FIPPA as “recorded information about an identifiable individual other than contact information.” The Photographs are recorded information, and they are not “contact information” as defined in Schedule 1 of FIPPA. Therefore, the key issue here is whether the Photographs are “about an identifiable individual”.

69. The OIPC has repeatedly held that information is about an identifiable individual when it is reasonably capable of identifying an individual alone or when combined with other sources of information.<sup>5</sup> The information need not identify the individual to everyone who receives it. It is sufficient for the purposes of the statute if the information reasonably permits identification of the individual to those seeking to collect, use, or disclose it.

70. It is well established that images that clearly depict an individual’s physical image is about an identifiable individual. If a photograph of an individual is blurry or partially obstructed, but nevertheless reveals some combination of their facial features, bodies and clothing, location, who they are with, or what they are doing, that photograph may also be “about an identifiable individual” if the photograph is sufficiently clear that an observer familiar with the individual could identify them.<sup>6</sup>

71. Relying on the emails provided to our office by the City’s **S.22(1) Personal Information**, the Photographs at Attachment D consist of 20 separate images that were forwarded to **S.22(1) Personal Information** by the Mayor from his City email account. Many of them do not contain information that is about an identifiable individual. For example, Photographs #2 and #6 depict cardboard boxes and other litter in otherwise unoccupied outdoor spaces, and Photograph #8 depicts an individual who is completely covered by a blanket. Having reviewed the Photographs, I am of the opinion that Photographs #2 - #8, #10, and #12 - #15 do not contain any personal information.

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<sup>4</sup> *F.H. v. McDougall*, [2008] 2 SCR 41.

<sup>5</sup> *Kelowna (City) (Re)*, 2018 BCIPC 14, para 32; *Vancouver (City) (Re)*, 2019 BCIPC 15 at para 16; *Fraser Health Authority*, 2024 BCIPC 97 at para 32.

<sup>6</sup> *Metro Vancouver Transit Police (Re)*, 2024 BCIPC 14.

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72. Photograph #16 depicts an individual who is seated in a corner, covered by plastic wrapping. While it is possible to make out the general shape and posture of the individual as well as the colour of their clothing, in my opinion the image does not contain enough information for a viewer to identify the individual within the Photograph.

73. However, in my opinion, Photographs #1, #9, #11, and #17 through #20 all could contain enough detail to constitute “personal information” pursuant to FIPPA. These images are attached as Attachment D in redacted form, so I will briefly describe my reasoning in relation to each of the images:

### *Photograph #1*

This image depicts a portion of an individual’s face. Combined with the clothing, the location, and the presence of specialized equipment for individuals with disabilities within the image, I am of the view that this image could constitute personal information under FIPPA.

### *Photograph #9*

This image is blurry, but depicts an individual’s face, as well as the back of another individual’s head and hair. Combined with the hat and jacket that is worn by the individual in the image, I am of the view that this image could constitute personal information under FIPPA.

### *Photograph #11*

This image clearly depicts a side profile of an individual’s face, and I am of the view that this image likely constitutes personal information under FIPPA.

### *Photograph #17*

This image clearly depicts a portion of an individual’s face. Combined with the fact that the image clearly shows their shoes, pants, jacket, and headwear, I am of the view that this image constitutes personal information under FIPPA.

### *Photograph #18*

This image depicts side profiles of two individuals’ faces. Combined with the fact that the image shows one individual’s hair, and the other individual’s hat and a ring worn on their little finger, I am of the view that this image could constitute personal information under FIPPA.

### *Photograph #19*

This image depicts a portion of two individuals’ faces. It also shows the hair length and colour of one of the individuals, and a tattoo on the finger of the other individual. For these reasons, I am of the view that this image could constitute personal information under FIPPA.

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### *Photograph #20*

This image depicts a portion of two individuals' faces, as well as their clothing. It also shows the hair length and colour of one of the individuals, and the headwear of the other individual. For these reasons, I am of the view that this image could constitute personal information under FIPPA.

74. While some of these images are blurry, or the individuals within them are partially obstructed, in my view they are sufficiently clear to be considered "about an identifiable individual", such that an observer who is familiar with the individuals who are depicted would be able to identify them. As such, I conclude that these seven Photographs contain "personal information."

### **c. Were the Photographs "collected" in accordance with FIPPA?**

75. Obligations under FIPPA are triggered when personal information is collected by a public body, or its employee, officer or director – in this case, the Mayor. Section 25.1 of FIPPA states that:

An employee, officer or director of a public body or an employee or associate of a service provider must not collect, use or disclose personal information except as authorized by this Act.

76. Therefore, an officer of a public body, such as the Mayor, may only collect, use or disclose personal information, such as the Photographs, where explicitly authorized to do so by FIPPA.

77. Section 26 of FIPPA sets out the limited circumstances in which the collection of personal information is authorized. If the purpose for the collection of personal information does not fall under one of the purposes listed in section 26, that collection is unauthorized. Examples of the circumstances where personal information may be collected include where the information relates directly to and is necessary for a program or activity of the public body, where the individual has consented to the collection, and where the information is necessary for the purposes of planning or evaluating a program or activity of the public body.

78. In my opinion, the Mayor's receipt of the Photographs clearly constitutes collection of personal information under FIPPA. As discussed above, seven of the Photographs contained personal information, and were sent to the Mayor at his request. Personal information received by a public body is considered not to have been "collected" for the purposes of the Act if, per section 27.1, if it does not relate to a program or activity of the public body, and the public body takes no action in relation to the information other than to review it and then either delete, destroy, or return it. Section 27.1 does not apply in these circumstances: the Mayor did not deal with the Photographs pursuant to section 27.1 – instead of deleting, destroying, or returning them, he forwarded them to **S.22(1) Personal Information**.

79. As the receipt of the Photographs by the Mayor was a collection of personal information under FIPPA, the purpose for this collection must fall within the grounds of section 26 of FIPPA. If the collection

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was not for a purpose expressed in section 26, then it was an unauthorized collection of personal information per section 25.1.

80. According to [REDACTED] written statement, the Mayor requested that [REDACTED] forward him the Photographs. He then forwarded them to [REDACTED] S.22(1) Personal Information. He did this for the purpose of preparing a slideshow for the Gala at which he was to be a speaker.

81. I am of the opinion that this is not a valid purpose for the collection of personal information pursuant to section 26 of FIPPA. I find it significant that the Gala is an event that is hosted and organized by the Kamloops and District Chamber of Commerce, an organization that is independent from the City. While the Mayor participated in his official capacity, [REDACTED] S.22(1) Personal Information was involved in preparations for the Gala in order to ensure that the Mayor's presentation was consistent with the tone and content for the event that was envisioned by [REDACTED] S.22(1) Personal Information. This suggests that this is not a City program or activity, but an event that is put on by the Kamloops and District Chamber of Commerce in which representatives from the City are invited to participate.

82. As such, the Photographs are not directly related to any particular City program or activity, and the individuals depicted within them did not consent to the collection of their personal information. The collection of the Photographs was for the purpose of preparing a slideshow for the Gala and sending them to [REDACTED] S.22(1) Personal Information is simply not authorized by the statute.

83. Furthermore, section 27 of FIPPA establishes rules for how personal information is to be collected. The collection of the Photographs did not comply with the rules for collection under section 27. Section 27(1) requires that personal information must be collected directly from the individual the information is about, unless certain listed exceptions apply. None of the listed exceptions in section 27(1) apply, therefore the collection of personal information was required to come from the identifiable individuals in the seven Photographs discussed above. Similarly, under section 27(2), the individual from whom the public body collects the personal information from must be told (1) the purpose for the collection (2) the legal authority for the collection, and (3) contact information for the individual at the public body who can answer questions about the collection. Based on the facts before me, the requirements for how the personal information in the Photographs were to be collected were not met in this instance.

### **d. Were the Photographs used or disclosed in accordance with FIPPA?**

84. Under FIPPA, personal information in the custody or control of a public body, (in this case, the Photographs, which are in the custody and control of the City via their collection by the Mayor), may only be used in three specific circumstances pursuant to section 32. Likewise, personal information in the custody or control of a public body may only be disclosed as pursuant to section 33 of FIPPA. Use or disclosure of personal information that does not comply with sections 32 or 33 is unauthorized, per section 25.1 of FIPPA.

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85. Section 32(a) provides that personal information may be used for the purpose for which the information was obtained or compiled, or for a use that is consistent with that purpose. Section 34 provides that if a public body intends to use information pursuant to section 32(a), a use of personal information is consistent with the purpose for which it was collected if the use has a reasonable and direct connection to that purpose, and the use is necessary for performing the statutory duties of, or for operating a program or activity of, the public body that uses or discloses the information.

86. In other words, the use of the information must have a reasonable and direct connection to the purpose of the use, and it must be necessary for the use.

87. As noted above, I have already concluded that the Mayor sent the Photographs to S.22(1) Personal Information for the Gala, as part of his presentation. This is not, in my view, a use that is consistent with a lawful purpose for using personal information under FIPPA.

88. The Mayor did, in email correspondence, indicate that he would not have shown photographs depicting sexual activity in a presentation. In my view, whether the Mayor intended to use only some of the Photographs in a slideshow for the Gala, or whether he intended to only use those Photographs that do not contain personal information, is irrelevant. Even if I were to assume that Mayor Hamer-Jackson intended to use none of the Photographs in his presentation, or only some of them, I still would not be able to positively conclude that the Photographs were obtained or compiled for a use consistent with a valid purpose under FIPPA, or that their use was necessary for that purpose. The key fact is that the Photographs were collected and forwarded to S.22(1) Personal Information for the purpose of preparing a slideshow for the Gala – whether or not the Photographs were actually used for the slideshow is not relevant. As soon as the Mayor sent the Photographs, he used and disclosed personal information in a manner that is inconsistent with section 25.1 of the statute.

89. It is also irrelevant whether the Mayor was aware of the content of the Photographs when he forwarded them to S.22(1) Personal Information. The statute is clear that his obligations in relation to personal information are triggered as soon as they are collected, used, or disclosed. As such, I can only conclude that the Mayor's use of the Photographs does not meet the requirements of section 32(a) of FIPPA.

90. Section 32(b) provides that if the individual the information is about has identified the information and has consented to the use, a public body may use it. There is absolutely no evidence to suggest that any of the individuals in the seven Photographs identified the Photographs or consented to their use. Any potential argument that the individuals in the seven Photographs provided oral consent, or that their consent could be inferred, is bound to fail. For an individual to validly consent to the use or disclosure of their personal information, that consent must be in accordance with the requirements of section 11 of the FIPPA Regulation, which includes the requirement that consent be provided in writing.

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91. The final ground on which the Mayor could have used the Photographs is under section 32(c). This section provides that a public body may use personal information for a purpose for which it may be disclosed to the public body pursuant to section 33. The disclosure of the personal information (which occurred in this instance when the Mayor disclosed the Photographs to **S.22(1) Personal Information** over email) likewise must be authorized under section 33.

92. Section 33 of FIPPA sets out numerous grounds on which personal information may be disclosed by a public body. In my view, the only two which merit discussion are subsections 33(2)(c) and (d). Under 33(2)(c), section 32(b) is replicated – a public body is permitted to disclose personal information if the individual it is about has identified the information and consented to its disclosure.

93. Section 33(2)(d) is similar in substance to section 32(a). Section 33(2)(d) states that a public body may disclose personal information for the purpose for which the information was obtained or compiled, or for a use consistent with that purpose.

94. Like my conclusions pursuant to sections 32(a) and (b), there is no evidence to indicate that the individuals in the Photographs identified or consented to the Photographs being disclosed, and there is no discernible purpose that for which their disclosure was “necessary” pursuant to section 34.

95. As such, I can only conclude that the Mayor was in breach of section 25.1 when he forwarded the Photographs to **S.22(1) Personal Information**. He collected, used and disclosed the Photographs in a manner that was not authorized pursuant to FIPPA. Accordingly, I find that the Mayor was clearly in breach of both section 3.15(a) of the Code and section 25.1 of FIPPA. I would further note that, pursuant to section 65.4(1) of FIPPA, an individual commits an offence if they willfully collect, use or disclose personal information except as authorized by Part 3 of FIPPA. Although it is not my place to comment on whether an offence was committed, this is a clear indication that the Legislature considered a breach of s. 25.1 a serious matter.<sup>7</sup>

## RECOMMENDATIONS

### *a. Section 4.32*

96. As I have found a breach of the Code of Conduct, I am guided by section 4.32, which states that I must:

- a. Consider whether the Respondent took all reasonable steps to prevent the breach, or whether the breach was trivial or done inadvertently or because of an error in judgment made in good faith, in which case I am to recommend no sanctions; and

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<sup>7</sup> See sections 65.4, 65.6 and 65.7 of FIPPA for more detail.

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- b. If I do not make the determination above, make recommendations as to the appropriate censure, sanctions, corrective actions, and/or other measures to address the breach.

97. In my opinion, having considered the circumstances through which Mayor Hamer-Jackson breached the Code of Conduct, I cannot find that he took reasonable steps to prevent the breach, that the breach was trivial or inadvertent, or that the breach occurred because of an error in judgment made in good faith. In addition, the Mayor was given many opportunities to participate in this investigation and refused to do so. As such, I have limited evidence to conclude anything other than he took no steps to avoid this breach.

98. In relation to the Photographs, there was a clear act by Mayor Hamer-Jackson that he should have known would constitute a breach of the Code. He received the Photographs from **S.22(1) Personal Information** after having requested them. At that point, he either reviewed the Photographs and forwarded them to **S.22(1) Personal Information**, or he did not review them and forwarded them despite not knowing their contents. For the purposes of FIPPA, whether the Mayor knew what the Photographs depicted or not is irrelevant – he collected and disclosed records that contained personal information. This reflects one of the many principles that FIPPA is intended to reflect. Local governments and their elected officials are required to adhere to certain standards when they collect, use or disclose personal information. The Mayor has fallen well below those standards in these circumstances.

99. I do wish to note that the duty placed on elected officials by FIPPA in relation to personal information may be complicated for some to understand. Mayor Hamer-Jackson has never, in any of his correspondence to me, indicated that he has a detailed understanding of FIPPA. However, in my view, he should at this stage in his term have some understanding of FIPPA. As confirmed by **S.22(1) Personal Information** he has received training from City staff on his obligations under FIPPA, including an offer of individualized training. Furthermore, regardless of Mayor Hamer-Jackson's familiarity with the specifics of FIPPA at the time he received and forwarded the Photographs, he was informed that he was not in compliance with the Act by **S.22(1) Personal Information** March 14, 2024 correspondence (at Appendix H), but nevertheless did not take steps to militate or remediate his contravening actions. Ultimately, even if the Mayor was not aware of the scope or specifics of FIPPA, absence of awareness of the law does not excuse its contravention. As an officer of a public body, the Mayor is bound to certain legal obligations under FIPPA, which are not contingent on whether or not he has engaged with privacy training.

100. Whether or not he was aware that his actions would breach FIPPA, I find that the Mayor ought to have known that the Photographs contained personal information and that, as such, he should not have collected them from and transmitted them to persons who are external to the City.

### ***b. The Recommended Remedies***

101. Under section 4.35 of the Code of Conduct, the following remedies are available to Council:

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- a. a letter of reprimand from Council addressed to the Member;
- b. a request from Council that the Member issue a letter of apology, in a form and with content acceptable to Council;
- c. the publication of the letters contemplated in subsections (a) and (b), along with the Member's written response, if any;
- d. directions to the CAO or Corporate Officer regarding the terms and conditions upon which the Member may receive Council or other City documents including documents containing Confidential Information;
- e. mandatory training on City business, the *Community Charter*, or this Bylaw;
- f. mandatory training on respectful workplace communications or other interpersonal skills;
- g. restrictions or conditions on access to certain City facilities;
- h. in accordance with the *Community Charter*, suspension or removal of the Member from some or all Committees and bodies to which the Member was appointed;
- i. prohibition from representing the City at events and/or being reimbursed for attending conferences and seminars;
- j. suspension or removal of the appointment of a Council Member as deputy mayor;
- k. the remuneration to which a Council Member would be otherwise entitled under Council Policy No. GGL -3, Remuneration, Travel Expenses, Insurance, and Communications Allowance be reduced in an amount and for a period considered to be reasonable in the circumstances;
- l. referral to a prosecutor or police;
- m. public censure of a Member; and
- n. any other sanctions, corrective actions, and other measures recommended by the Investigator or considered appropriate by Council, so long as those sanctions, corrective actions, and other measures are within Council's authority.

102. In my view, in recommending an appropriate remedy, I ought to look to the circumstances and nature of the breach and its severity. Reviewing these factors, I then must recommend a remedy that is proportionate to the degree of the wrongdoing. I am mindful of the words of the BC Supreme Court in *Skakun v. Prince George (City)*, 2011 BCSC 1796:

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[44] I think it reasonable to think in certain cases council need to state the standard of expected conduct, but I note this: it is a power to be exercised with great care and great discretion. Far too easily, this could turn into an abuse of process for cheap political gain, and any council that sets out in this direction must be careful in what it is doing.

103. As an investigator under the Code, I need to ensure that I take care to recommend a remedy that is proportionate to the breaches that I have found, not only because doing so is consistent with the purposes of the Code, but because of the Court's warning to municipal councils generally. I acknowledge that my recommendation will likely have a substantial effect on Council's ultimate decision when considering this investigation report.

104. My recommendation is informed by foundational principle 2.1(c), noted above, and by the fact that the office of Mayor carries with it certain responsibilities that are distinct from those given to other members of council. Section 116 of the *Community Charter* sets out the Mayor's responsibilities. I will not reproduce the whole section, but I note specifically subsections (2) (a) and (h):

(2) In addition to the mayor's responsibilities as a member of council, the mayor has the following responsibilities:

(a) to provide leadership to the council, including by recommending bylaws, resolutions and other measures that, in the mayor's opinion, may assist the peace, order and good government of the municipality;

...

(h) to carry out other duties assigned under this or any other Act.

105. I highlight these subsections because they reflect the significance of the Mayor's role as the elected leader of council and the community of Kamloops. That role imposes a duty on the Mayor to uphold the obligations placed upon him by provincial statutes and local bylaws in the interest of peace, order and good government.

106. In this case, FIPPA prohibits the collection of personal information except for certain prescribed purposes, and requires personal information that is collected to only be used or disclosed under certain circumstances. The Mayor was not authorized to collect the Photographs, nor was he permitted to use or disclose them. According to **S.22(1) Personal Information**, there were five training opportunities regarding obligations pursuant to FIPPA that were made available to the Mayor prior to the Gala. One of these training opportunities, the November 2023 Session, expressly dealt with the possibility that photographs could contain personal information. Nevertheless, the Mayor forwarded the Photographs to **S.22(1) Personal Info** despite these opportunities to familiarize himself with the extent of his obligations under FIPPA. Given this training, I can only conclude that he was either willfully blind to those obligations or intentionally disregarded them. I will also note that on April 8, 2024, **S.22(1) Personal Information** offered to meet

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with the Mayor for a one-on-one training opportunity with [S.22(1) Personal Information] and [S.22(1) Personal Information] regarding his obligations pursuant to FIPPA. [S.22(1) Personal Information] reiterated this offer on April 12, 2024. The Mayor did not accept [S.22(1) Personal Information] offer and even though such training would have been after the Gala, I would have considered this a mitigating factor in this recommendation. Unfortunately, the Mayor did not accept this training offer.

107. It is significant that the Photographs contained personal information relating to individuals who appear to be facing substantial hardship and are likely already marginalized members of society. The statutory protections relating to their personal information should be given particular care, but instead they were ignored by the Mayor. It is also significant that the Photographs showed these individuals in various states of intoxication and during a sex act.

108. However, it is also significant that the actual harm caused by the Mayor's failure to comply with FIPPA was limited. As a result of City staff who worked diligently to ensure that the Photographs were deleted by individuals who had sent and received them, they appear to have been seen by one individual, [S.22(1) Personal Information]. As such, the extent of the privacy breach that resulted from the Mayor's actions was minimal.

109. I note that the Mayor has implied that this complaint was submitted as a result of an error in judgment on behalf of one or more of the other Council members, and has suggested that others interfered with the creation of his slideshow. He has also stated that he would never have shown the Photographs.

110. I cannot accept these submissions. The Mayor has provided limited evidence to substantiate these statements, despite numerous efforts on my behalf to conduct an interview or obtain a written statement from him over the course of this investigation. I further note that in the extensive interview notes and documentary record that I have collected during this investigation, I have seen no evidence to support the Mayor's position. Instead, the evidence leads to the opposite conclusion: the Mayor clearly breached section 25.1 of FIPPA, and as a result breached the Code.

111. Finally, as I noted above, to the extent that the Mayor might argue that he does not understand his obligations under FIPPA, that objection would carry with it no air of reality. He has been provided with substantial training on the subject. While I do acknowledge that some elected officials may not fully understand the nuances of FIPPA, I do not find that any lack of understanding is a mitigating factor in this case as regards my recommendation of a remedy.

112. Accordingly, I recommend to Council that:

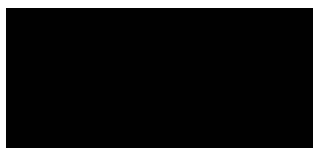
- a. As per s. 4.35(b) of the Code, that the Mayor be requested to provide letters of apology to both [S.22(1) Personal Information] and [S.22(1) Personal Information];

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- b. As per section 4.35(e) of the Code, the Mayor be required to take personalized mandatory training on his obligations regarding personal information under FIPPA;
- c. As per section 4.35(m) and (n) of the Code, that the Mayor be censured and that this investigation report or a summary of it be published, with redactions necessary to protect personal information and privacy as per FIPPA (including the removal or redactions of Attachments where appropriate); and
- d. As per section 4.35(k) and 4.38 of the Code, should the Mayor refuse or fail to participate and complete mandatory training as noted above within 60 days, Council reduce the Mayor's remuneration by 5% for a period of 12 months. I stress that this measure should only be implemented as a result of the Mayor's failure to complete the recommended training.

All of which is respectfully submitted this 7<sup>th</sup> day of November, 2024 for Council's consideration.



Investigator