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FILE NO: 51103-1000

**BY EMAIL**

May 30, 2019

Mr. Jock Climie  
Emond Harnden  
707 Bank Street  
Ottawa, ON K1S 3V1

Dear Mr. Climie:

**Re: Scott Reid - Tay Valley Township**

We are the lawyers for Scott Reid in this matter. He has instructed us to respond to the letter that you sent to him, on behalf of Tay Valley Township, dated April 9, 2019.

In your letter you concluded that Ms. Amanda Mabo, the Clerk of Tay Valley Township ("the TVT") has acted lawfully in processing our client's access to information requests, pursuant to her exercise of powers under the *Municipal Freedom of Information and Protection of Privacy Act* ("the MFIPPA").

In our very respectful view, your conclusion is mistaken and overlooks the mandatory provisions of the *TVT Employee Code of Conduct*. That *Code* explicitly prohibits any TVT employee from exercising decision-making powers that might directly impact the personal interests of any of her TVT colleagues.

The prohibitions articulated in the *TVT Employee Code of Conduct* are binding on all employees of the TVT. That *Code* is therefore an important document, that has significant legal impact on what Ms. Mabo, and other TVT staff, can and cannot do. We presume that neither Ms. Mabo, nor anyone else at the TVT, disclosed that key document when they instructed your firm to write to Mr. Reid. For that reason, a copy of that *Code*, and its important provisions, are attached hereto for your immediate review.

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As you can see from the attached *TVT Employee Code of Conduct* (“the “*TVT Code*”):

- Pursuant to Subsection 7.1 of the *TVT Code*, Ms. Mabo, and all TVT employees, are forbidden to “*participate in any decision...where they have a Conflict of Interest*”; [Emphasis added]
- Pursuant to Subsection 7.2 of the *TVT Code*, a “*Conflict of Interest*” is broadly defined as any situation “*where an informed and reasonable person, upon reviewing and thinking the matter through, could conclude that a Personal Interest exists...that ...could reasonably influence [the Employee] in the exercise of their duties*”; [Emphasis added]
- Pursuant to Subsection 4.0 of the *TVT Code* defines “*Personal Interest*” as “*any benefit or advantage to a ... colleague*” of Ms. Mabo, on the staff of the TVT; [Emphasis added]
- Pursuant to Subsection 7.2 of the *TVT Code*, a “*Conflict of Interest*” exists even if it is only “*apparent in nature*”, and even no real conflict of interest actually exists (“*A Conflict of Interest may be real or apparent in nature*”); [Emphasis added]
- Pursuant to Subsection 7.3 (b) of the *TVT Code*, the courts, and the TVT itself, are explicitly required to “*interpret the phrase “Conflict of Interest” broadly*” [Emphasis added]

Needless to say, the records that Mr. Reid has requested from the TVT, regarding the actions and remuneration of Mr. Donaldson (the CAO of the TVT) could well contain information that would have the *potential* to assist Mr. Reid in his current dispute with Mr. Donaldson and the TVT. It is not inconceivable that they might even prejudice Mr. Donaldson’s image and professional standing at the TVT. In such circumstances, Ms. Mabo is in a clear conflict of interest because her situation falls squarely within the definition of “*Conflict of Interest*” as set forth in the *TVT Code*.

By application of the aforementioned provisions of the *TVT Code*, it is obvious that any “*informed and reasonable person*” (be it Mr. Reid or anyone else) “could conclude”:

- (i) that it might be of considerable potential “*benefit or advantage*” to Mr. Donaldson for Mr. Mabo to *refuse* Mr. Reid access to those requested documents that relate to the latter’s actions and remuneration, in order to shield him from further embarrassment and public denunciations of his actions and remuneration by Mr. Reid (It being well-known that Mr. Reid has made many such denunciations of him, using such information, in the recent past);
- (ii) that Mr. Donaldson is a supervising “*colleague*” of Ms. Mabo, at the TVT, and as such the decision of which of those records, regarding him, *not* to disclose to Mr. Reid is a clearly “*decision*” that could be of “*benefit or advantage*” to him, as her colleague and supervisor.

In our respectful view, no one can reasonably deny that Ms. Mabo is in a conflict of interest, real or apparent, (as that term is defined in the *TVT Code*) if *she herself* determines which records, relating to the conduct of her colleague, the TVT’s CAO, and/or relating to the use and development of Blueberry Creek (collectively, the “*Requests*”), are to be disclosed to Mr. Reid and/or his wife.

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By further application of the *TVT Code*, no “*informed and reasonable person*” could possibly deny that Ms. Mabo’s exercise of discretion under the *MFIPPA* might possibly “*benefit*” her colleague Mr. Donaldson. And no such person could possibly deny that there was therefore at least an “*apparent*” conflict of interest in her doing so, *even if no actual conflict of interest really existed*.

A further reason why this is so is your statement that, in your client’s view, Mr. Reid’s actions have “*caused Township staff unnecessary and undue stress*” and have “*made staff feel unsafe and targeted*.” If what you say is true, then by the TVT’s own admission, it would be inherently conflictual, and thus highly inappropriate, for those same TVT staff to be assigned to process *any* Requests from someone whom they feel is “*unnecessarily... targeting*” them in their work, and against whom they could therefore reasonably be expected to be prejudiced.

For these reasons, we are confident that Ontario’s Privacy Commissioner, and/or Superior Court of Justice, would not fail to conclude (a) that there is at the very least an *apparent*, if not a real, conflict in Ms. Mabo responding to Mr. Reid’s Requests and therefore (b) that the TVT now has a very clear legal duty, pursuant to section 7.1 of the Code of Conduct, to appoint someone *other than Ms. Mabo* (or someone reporting to her or Mr. Donaldson) to review, and decide on, those Requests. We note that Ontario’s Information and Privacy Commissioner has repeatedly held that a conflict of interest may exist “*where a public official knows that he or she has a private interest that is sufficiently connected to his or her public duties*” (Order M-457).

We also respectfully point out that *The Freedom of Information and Privacy Manual* published by Ontario’s Ministry of Government and Consumer Services (June 27, 2018) states as follows:

*“In some instances, the conflict of interest may be more apparent than real. It is recommended that delegations of the head’s powers reflect the possibility of conflict of interest and provide for alternate decision-makers in those instances.”* (Emphasis added)

Accordingly, and in order to avoid the appearance of a conflict of interest we insist that the TVT immediately appoint one or more alternate decision-makers to process Mr. Reid’s Requests. In particular, we suggest that effective immediately, those Requests be processed not by Ms. Mabo, but rather by a group of alternate decision-makers, namely the *TVT Council as a collective entity*. As you know, the TVT Council is the default “*head*” under subsection 3(3) of *MFIPPA* and its reclamation of authority is therefore not *ultra vires* of the Township, but is actually *encouraged* by the Province in circumstances such as this.

We therefore request that effective immediately, the TVT Council handle all outstanding requests and appeals with the Information and Privacy Commissioner, including revisiting, on a record-by-record basis, any decisions made to date by Amanda Mabo to withhold any requested records. Such would serve the interests of both our clients by ensuring that future Requests be processed without the taint of actual or perceived conflict of interest.

Accordingly, we look forward to your immediate confirmation that going forward, the Requests of Mr. Reid and Robyn Mulcahy will be handled *by Council itself*, including a record-by-record review of all records fully or partly withheld from Mr. Reid and Ms. Mulcahy in response to the MFIPPA requests (labelled by TVT as MFIPPA Requests 2018-02, 2018-06, 2018-08, 2018-09, 2018-10, 2018-12 and 2018-13), failing which Mr. Reid will have no choice but to start proceedings on this.

Thank you for your consideration of this important matter.

Yours very truly,



Alan M. Riddell  
AMR/sw  
Encl.



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**SUBJECT: EMPLOYEE CODE OF CONDUCT**

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**1.0 PURPOSE**

Employees of the Municipality shall be committed to carrying out their duties in a manner that maintains and enhances public confidence and trust in the integrity, objectivity and impartiality of the Municipality. Trust and mutual respect are the cornerstones of a relationship between the public and municipal government. In serving the public interest, Employees are entrusted with access to a wide range of information, resources and responsibilities, and shall operate with a sense of honesty and accountability.

**2.0 LEGISLATIVE AUTHORITY**

Section 11(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a lower-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public.

**3.0 APPLICATIONS**

This Employee Code of Conduct (the "Code") applies to all Employees of the Municipality.

**4.0 DEFINITIONS**

**"Chief Administrative Officer"** – shall mean the Chief Administrative Officer (CAO) or designate duly appointed by the Municipality as prescribed in Section 229 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

**"Child"** - includes a child born within or outside of marriage and includes an adopted child and a person to whom the Member has demonstrated a settled intention to treat as a child of his or her family.

**"Closed Session (In-Camera Meeting)"** – shall mean a meeting or part of a meeting closed to the public as prescribed in Section 239 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

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**“Confidential Information”** - includes information in the possession of, or received in confidence by the Municipality, that the Municipality is prohibited from disclosing, that the Municipality is required to refuse to disclose, or that the Municipality chooses not to disclose, under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, or other legislation or policy of the Municipality. Without limiting the generality of the foregoing, Confidential Information also includes all information concerning matters dealt with at closed meetings, information that is marked as "confidential", information obtained by the Employee by virtue of their employment that is not in the public domain, or information that is otherwise determined to be confidential by the Chief Administrative Officer, Clerk or as specifically declared by Council.

**“Conflict of Interest”** – means seeking to advance a Personal Interest, whether or not it is detrimental to the Municipality.

**“Council”** – shall mean the Council of the Municipality in accordance with the Council Composition By-Law in effect.

**“Employee”** – shall include, all union and non-union employees of the Municipality and volunteers (in accordance with the *Municipal Act, 2001*, Council Members are not considered employees of the Municipality).

**“Family Member”** includes:

- a) a Spouse of the Employee;
- b) a Child of the Employee;
- c) a Parent of the Employee;
- d) a Sibling of the Employee, whether by birth, marriage or adoption;
- e) a Grandchild, grandparent, aunt, uncle, niece or nephew of the Employee;
- f) a Parent-in-law of the Employee; and
- g) any person who lives with the Employee on a permanent basis.

**“Gift”** – shall mean any cash or monetary equivalent, commission, fee, object of value, service, personal benefit, travel and accommodation or entertainment. A gift does not include remuneration.

**“Harassment”** – shall include, but is not limited to, engaging in a course of vexatious or unwanted comment or conduct that is known or ought reasonably to be known to be unwanted and includes Sexual Harassment as defined in the *Occupational Health and Safety Act*, as amended from time to time.

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**“Member”** – shall include a Member of Council and all Members of Local Boards and Committees of the Municipality.

**“Municipality”** – shall mean the Corporation of Tay Valley Township.

**“Parent”** – shall include those persons who demonstrated a settled intention to treat as a child the Employee, whether or not the Employee is their natural child.

**“Personal Interest”** means:

- a) a financial interest of an Employee or the financial interest of a Family Member of an Employee;
- b) a financial interest of a friend or colleague of the Employee;
- c) any benefit or advantage to the Employee, the Employee’s Family Member, friend or colleague.

**“Spouse”** – shall mean a person to whom the Employee is married or with whom the Employee is living in a conjugal relationship outside of marriage.

## 5.0 GENERAL RESPONSIBILITIES

- 5.1 Every Employee has a duty and responsibility to treat members of the public, members of Council and each other in a respectful manner, without abuse, bullying, Harassment or intimidation.
- 5.2 Employees shall adhere to the standards outlined in this Code, and shall seek clarification from their Supervisor if unsure about any responsibilities or information contained in this Code.
- 5.3 If an Employee feels he or she may violate or already has violated this Code, he or she shall follow the disclosure and compliance requirements set out in section 13 of this Code.
- 5.4 Employees shall consult with their Supervisor for guidance if they suspect a potential breach by another Employee of this Code.
- 5.5 Employees shall review and sign this Code.

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## 6.0 CONFIDENTIALITY

- 6.1 Employees shall hold in strict confidence all Confidential Information acquired as a direct or indirect result of their employment with the Municipality.
- 6.2 Confidential Information shall not be disclosed except when required by law and the policies and procedures of the Municipality.
- 6.3 Particular care must be exercised before releasing information relating to the following matters:
  - a) items under litigation;
  - b) personnel matters;
  - c) information which infringes on the right of privacy of others;
  - d) sources of complaints about a variety of matters where the identity of the complainant is given in confidence;
  - e) information supplied to obtain various municipal approvals where such information is not part of the public documentation; and
  - f) schedule of prices in quotations or tenders for the supply of goods and/or services.

Please note that these items do not constitute an exhaustive list and have been included for emphasis.

- 6.4 Employees shall safeguard and protect Confidential Information of the Municipality and of others to which the Employee becomes privy as a result of their employment with the Municipality. Where an Employee is unsure of the status of information requested for release by a member of the public, he or she shall consult with their Supervisor and/or the Chief Administrative Officer prior to releasing such information.
- 6.5 Employees are strictly forbidden from using any information available only to Employees to attempt to secure financial gain from any investment in real estate or other business dealings, whether by direct means or indirectly through others.
- 6.6 The obligation to keep information confidential applies even if the Employee ceases employment with the Municipality.

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## 7.0 CONFLICT OF INTEREST

- 7.1 No Employee shall participate in any decision, project or process where they have a Conflict of Interest in such matter. Employees shall avoid Conflicts of Interest and comply with the disclosure and compliance requirements where such Conflicts of Interest occur.
- 7.2 A Conflict of Interest may be real or apparent in nature:
- a) a “real” Conflict of Interest exists where a Personal Interest exists and that interest is:
    - i) known to the Employee; and
    - ii) has a connection to the Employee’s duties that is sufficient to influence the exercise of those duties.
  - b) an “apparent” Conflict of Interest exists where an informed and reasonable person, upon reviewing and thinking the matter through, could conclude that a Personal Interest exists, and that the Personal Interest is sufficiently connected to the Employee’s duties that it could reasonably influence the exercise of their duties.
- 7.3 Employees must perform their duties impartially, such that an objective, reasonable observer would conclude that the Employee is exercising their duties objectively, without undue influence and in a manner that does not create a Conflict of Interest. Employees shall govern their actions using the following as a guide:
- a) in making decisions, always place the interests of the taxpayers and the Municipality first and, in particular, place those interests before your Personal Interests and the interests of friends, business colleagues and Family Members;
  - b) interpret the phrase "conflict of interest" broadly and with the objective of exercising your duties impartially and objectively;
  - c) if there is doubt about whether or not a Conflict of Interest exists, seek the advice of your Supervisor;
  - d) do not make decisions or attempt to influence a decision that creates an obligation to any other person or business that will benefit from the decision;

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- e) do not make decisions or attempt to influence any other person for the purpose of benefitting yourself, friends, business colleagues or Family Members, or any organization that might directly or indirectly benefit such individuals;
- f) do not put yourself in a position where a decision you make or your actions would give preferential treatment to friends, business colleagues or Family Members, or any organization that might directly or indirectly benefit such individuals;
- g) do not approve or attempt to influence the approval of any license, permit, contract, agreement or other document on behalf of the Municipality for your own personal use or benefit, or for the use of a Family Member, friend or colleague;
- h) do not make any decision or participate in the process of hiring, transferring, promoting, demoting, disciplining or terminating any Family Member or friend;
- i) do not participate in any property matter involving your property or the property of any Family Member, friend, or colleague; and
- j) do not promise or hold out the prospect of future advantage through your influence in return for a direct or indirect Personal Interest.

## 8.0 INTERACTION WITH MEMBERS

- 8.1 Over the past number of years the Municipality has worked diligently at creating a positive working relationship between Members and Employees. To a large degree this has been successful due to a mutual respect for each other's' roles and responsibilities.
- 8.2 Employees shall not maliciously or falsely injure the professional or ethical reputation of Members.
- 8.3 Operational inquiries received from Members will be addressed by Employees as follows:
  - a) Employees who are approached by Members regarding operational matters shall follow up on the inquiry with respect and professionalism, and provide feedback on the inquiry to their Supervisor;
  - b) Employees shall follow up on inquiries from Members with the Chief Administrative Officer as needed.

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8.4 Employees shall recognize and respect that Members are bound by the Code of Conduct for Members of Council and Local Boards and applicable legislation including the *Municipal Act* and the *Municipal Conflict of Interest Act*, and that their purpose is to act in the best interests of the Municipality and within the requirements of their positions as Members.

8.5 Employees who have concerns about operational issues shall:

- a) address the concerns with their Supervisor; and
- b) if they still have concerns about such issues after addressing them with their Supervisor, shall address them with the Chief Administrative Officer and shall not address such issues with Members.

## 9.0 USE OF MUNICIPAL PROPERTY

9.1 No Employee shall for personal purposes or profit, use or permit the use of any Municipal property, equipment, services, or supplies other than for purposes connected with the discharge of their employment duties unless the use is a reasonable and incidental personal use of equipment such as computers, fax machines, cell phones, blackberries, etc., where the Municipality incurs no additional costs relating to such use, and the use is of limited duration and frequency.

9.2 Municipal property and resources, including facilities, vehicles, equipment and materials, shall be used only in the performance of employment duties and shall not be used or converted for personal benefit or use.

9.3 Employees are responsible for exercising care to prevent the abuse, excessive wear of or loss of Municipal equipment and materials used by the Employee in the course of their Employment.

9.4 Computer system information and procedures and any other information regarding computerized systems are considered Municipal property and may not be shared with the public. Employees are prohibited from using such systems for their personal benefit.

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## 10.0 GIFTS, HOSPITALITY AND OTHER BENEFITS

10.1 Employees shall carry out their employment duties free from influence of Gifts.

10.2 Employees are prohibited from soliciting, accepting, offering or agreeing to accept any Gifts or benefits of any kind, personally or through a Family Member or associate (business or otherwise), that is connected directly or indirectly with the performance of their employment duties or could reasonably be construed as being given in anticipation of future, or recognition of past, special consideration by the Employee.

10.3 The above policy does not preclude Employees from accepting:

- a) token gifts, souvenirs, mementoes or hospitality of minimal or no value received in recognition for service, for speaking at an event or for representing the Municipality at an event;
- b) food and beverages at meetings, banquets, receptions, ceremonies or similar events;
- c) food, lodging, transportation, entertainment provided by other levels of governments, by other local governments or by local government boards or commissions;
- d) reimbursement of reasonable expenses incurred in the performance of their employment duties; or
- e) Gifts of a nominal value that are received as an incident of protocol or social obligation.

10.4 Where it is not possible to decline unauthorized Gifts hospitality or other benefit, Employees shall report the matter to the Chief Administrative Officer. The Gift shall become the property of the Municipality and the Chief Administrative Officer may require that the Gift be retained by the Municipality or be disposed of for charitable purposes in the Chief Administrative Officer's sole discretion.

## 11.0 COMMUNICATIONS AND MEDIA RELATIONS

11.1 Only the Chief Administrative Official or his or her designate shall comment to the media on matters concerning staff operations, actions and functions of the Municipality.

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- 11.2 Employees, when communicating with the public and media, will accurately and adequately communicate the attitudes and decisions of the Council, Board or Committee, even if an Employee disagrees with a majority decision, so that there is respect for and integrity in the decision making process.
- 11.3 It is not the intent of this Code to restrict the ability of an Employee to express a personal opinion on matters of general interest. In such cases, the Employee must make it clear that the comment is being made in their capacity as a private citizen, and not as a representative of the Municipality. At no time shall an Employee express a position that is disrespectful of the decision of the majority of Council, a Board or a Committee.
- 11.4 Any use of social media in any form by an Employee constitutes communication with the public that is governed by this section. Employees shall identify in any social media communication that the views expressed by the Employee are the views of that Employee personally, and do not represent the views of the Municipality.
- 11.5 If Council has taken a position in a Local Planning Appeals Tribunal, or other tribunal or court, and instructed the Municipal Solicitor to appear at a hearing in support of such position, no Employee who disagrees with such position shall give evidence at such hearing or otherwise work against the will of Council expressed in its direction to the Municipal Solicitor in such matter.

## 12.0 DISCLOSURE, INVESTIGATION AND COMPLIANCE

- 12.1 If an Employee suspects he or she has, or may violate this Code he or she shall immediately complete a "Confidential Disclosure Form", attached in Schedule "A" to this Code and submit it to their Supervisor.
- 12.2 Upon receipt of the Confidential Disclosure Form the Supervisor shall investigate and make a determination which shall be set out in the "Determination Regarding Confidential Disclosure" form attached as Schedule "B" to this Code, a copy of which shall be provided to the Employee and the Chief Administrative Officer.
- 12.3 Employees shall comply with their Supervisor's decision and any conditions of that decision.

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## 13.0 REFERENCES

### Forms

Employee Code of Conduct - Confidential Disclosure Form

Employee Code of Conduct - Determination Regarding Confidential Disclosure Form

### Policies and Procedures/Documents

Council-Staff Relations Policy

Election – Employee Involvement Policy

Respect in the Workplace Policy

### Other Resources

Provincial Offences Act, as amended

Ontario Human Rights Code, as amended

Ontario Occupational Health and Safety Act, as amended

Criminal Code of Canada, as amended

\_\_\_\_\_  
Employee Name ID (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Employee Signature

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**SCHEDULE "A"  
EMPLOYEE CODE OF CONDUCT  
CONFIDENTIAL DISCLOSURE FORM**

This form is intended to be used by Employees wishing to disclose a **personal** direct or indirect violation of the Code of Conduct, whether real or apparent. This form, and the information it contains, will be kept confidential. Once completed, please forward to your Supervisor.

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Indicate the real or potential violation of the Code of Conduct that you wish to disclose:

- Confidential Information**
- Conflict of Interest**
- Use of Municipal Property**
- Communications and Media Relations**
- Gifts, Hospitality and Other Benefits**
- Other (explain)**

Provide a brief description of the activity, relationship, or interest that you wish to disclose, along with an indication whether this is a potential violation or one you perceive to have already occurred (attach additional pages if necessary):

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Explain how this activity, relationship, or interest is, or may be perceived to be, a violation of the Employee Code of Conduct (attach additional pages if necessary):

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\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Employee Signature**

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**SCHEDULE "A"  
EMPLOYEE CODE OF CONDUCT  
DETERMINATION REGARDING CONFIDENTIAL DISCLOSURE FORM**

This form is intended to be used by the Employee's Supervisor in response to a disclosure made by an Employee using the Schedule "A" Confidential Disclosure Form.

**Date of Disclosure Form:** \_\_\_\_\_

**Submitted by:** \_\_\_\_\_ (name employee)

**Regarding:** \_\_\_\_\_  
(describe disclosure and date)

I, \_\_\_\_\_ (print full name and title) have considered the particulars of the situation described in the Schedule "A" Confidential Disclosure Form and have consulted with the Chief Administrative Officer. I have made the following determinations:

1. I find that the Employee's disclosure presents a violation or potential violation of the Employee Code of Conduct. \_\_\_\_\_ Yes \_\_\_\_\_ No

2. I recommend that the Code of Conduct violation should be:  
\_\_\_\_\_ Allowed to Continue \_\_\_\_\_ Ceased from Continuing

3. Where I recommend that the Code of Conduct violation be allowed to continue, the Employee must follow the below-noted conditions in order to manage the situation appropriately:

\_\_\_\_\_

4. Where I recommend that the Code of Conduct violation cease from continuing, the Employee must:

\_\_\_\_\_

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Employee Signature**

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