

## CODE OF CONDUCT FOR MEMBERS OF COUNCIL

<i>Approved By:</i>	<b>Council (CS-CLK09—39.1)</b>
<i>Approval Date:</i>	<b>November 23, 2009</b>
<i>Revision Date:</i>	

### INDEX

Section	Title	Page
1.	<b>Key Principles</b>	2
2.	<b>Definitions</b>	2
3.	<b>Application</b>	3
4.	<b>Statutory Provisions Regulating Conduct</b>	4
5.	<b>Adherence to City of Waterloo Policies and Procedures</b>	4
6.	<b>Use of City Property, Services and Other Resources</b>	4
7.	<b>Gifts &amp; Benefits</b>	5
8.	<b>Improper Use of Influence</b>	6
9.	<b>Business Relations</b>	7
10.	<b>Conduct While Representing the City</b>	7
11.	<b>Conduct at Meetings</b>	7
12.	<b>Conduct Respecting Staff</b>	7
13.	<b>Confidential Information</b>	8
14.	<b>Election Campaign Work</b>	9
15.	<b>Public Respect for City of Waterloo By-Laws &amp; Policies</b>	10
16.	<b>Integrity Commissioner</b>	10
17.	<b>Complaint Protocol</b>	11
18.	<b>Complaint Classification / Referral</b>	12
19.	<b>Investigation Process</b>	12
20.	<b>Investigation Report</b>	13
21.	<b>Penalties / Recommendations of Integrity Commissioner</b>	14
22.	<b>Council Consideration of Integrity Commissioner's Investigation Report &amp; Recommendations</b>	14
23.	<b>Interim, Annual &amp; Other Reports</b>	14
24.	<b>Integrity Commissioner Vacancy</b>	15
25.	<b>Reprisals and Obstruction</b>	15

## I. **KEY PRINCIPLES**

This Code of Conduct is based on the key principles that members of Council:

- shall serve and be seen to serve their constituents in a conscientious and diligent manner
- are committed to performing the functions of their office with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both real and apparent
- 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;
- shall seek to serve the public interest by upholding both the letter and spirit of the laws of Canada, the Province of Ontario and the laws and policies adopted by City Council
- are responsible for making honest statements and shall not make statements which they know to be false or with the intent to mislead other members or the public.

## 2. **DEFINITIONS**

- 2.1 “BIA” shall mean the UpTown Waterloo Business Improvement Area Board of Directors
- 2.2 “child”, “parent”, “spouse” shall have the meanings ascribed to them in the Municipal Conflict of Interest Act
- 2.3 “Code of Conduct” shall mean this City of Waterloo Code of Conduct for Members of Council
- 2.4 “complaint” shall mean a purported contravention of the Code of Conduct
- 2.5 “Committee” shall mean one of the following existing quasi-judicial and other similar committees that may be established by Council:
- Audit Committee
  - Community Cash Grants Committees
  - Committee of Adjustment
  - Dog Designation Appeal Committee
  - Fence Variance Committee
  - Municipal Heritage Committee
  - Property Standards Committee
  - Sign Variance Committee
  - Site Plan Review Committee

- 2.6 “Integrity Commissioner” shall mean the Integrity Commissioner appointed by the Council of The Corporation of the City of Waterloo to provide independent and consistent complaint investigation and resolution respecting the application of the Code of Conduct
- 2.7 “lobby” shall mean to communicate with a member outside of a public process about matters of interest or benefit to the lobbyist and their client/business/organization, about a by-law or resolution on any matter that requires a decision by Council, a local board or delegated decision maker and includes matters regarding policies or programs, the purchase of goods and services and the award of contracts or approval of applications for a service, grant, planning approval or licence
- 2.8 “lobbyist” shall mean a person who communicates for payment with public office holders, a person who lobbies on a volunteer basis for a business or a not-for-profit professional, business, industry, trade or labour organization, or a consultant or voluntary lobbyist who arranged meetings between a member and any other person for the purpose of lobbying
- 2.9 “member” shall mean a member of Council, the Uptown Waterloo Business Improvement Board of Directors or Committee as defined herein
- 2.10 “private advantage” for the purpose of this Code of Conduct, does not include a matter that:
- a) is of general application or considered to be an interest in common generally with the electors within the jurisdiction of an area; or
  - b) concerns the remuneration or benefits of members of Council.

### **3. APPLICATION**

#### **3.1 Code of Conduct for Members of Council**

This Code of Conduct applies to:

- all Members of Council including the Mayor
- all members of Committees as defined in Section 2 hereof
- all members of the UpTown Waterloo Business Improvement Area Board of Directors

### 3.2 **Code of Conduct for Members of Advisory Committees**

The conduct of members of Advisory Committees established by Council to provide advice and expertise to Council shall be governed by the provisions of the Code of Conduct for Members of Advisory Committees.

## 4. **STATUTORY PROVISIONS REGULATING CONDUCT**

This Code of Conduct operates with and as a supplement to existing Municipal, Provincial and Federal statutes including, but not limited to:

- the *Criminal Code of Canada*
- the *Ontario Human Rights Code*
- the *Municipal Act*
- the *Municipal Conflict of Interest Act*
- the *Municipal Elections Act*
- the *Municipal Freedom of Information and Protection of Privacy Act*
- *City of Waterloo By-Laws*
- any and all other Municipal, Provincial and Federal statutes that may from time to time govern the conduct of members

## 5. **ADHERENCE TO CITY OF WATERLOO POLICIES AND BY-LAWS**

5.1 This Code of Conduct operates with and as a supplement to existing and future City of Waterloo Policies that may from time to time apply to members of Council, including but not limited to:

- Approval of Expenses – Elected Officials’ Office
- Communication Technology Use Policy
- Hiring of Relatives

5.2 Generally, members are required to observe the terms of all City by-laws, policies, and procedures detailed in such policies or otherwise established by Council, however, this provision does not prevent a member from requesting that Council grant an exemption from a policy, other than this Code of Conduct.

5.3 Members shall encourage public respect for the City and its by-laws and policies.

## 6. **USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES**

6.1 No member shall use any City property, equipment, services and/or supplies other than for purposes connected with the discharge of City duties or associated community activities of which City Council has been advised.

6.2 No member shall use information gained in the execution of his or her duties that is not available to the general public for any purposes other than his or her official duties.

- 6.3 No member shall obtain financial gain from the use of City developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter. All such property remains the exclusive property of the City of Waterloo.

## **7. GIFTS & BENEFITS**

- 7.1 No member shall accept a fee, advance, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office, unless permitted by the exceptions listed below.

- 7.2 For these purposes, a fee or advance paid to or a gift or benefit provided with the member's knowledge to a member's spouse, child or parent, or to a member's staff that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.

### **7.3 Exceptions**

The following are recognized as exceptions:

- a) compensation authorized by law;
- b) gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- c) a political contribution otherwise reported by law, in the case of members running for office;
- d) services provided without compensation by persons volunteering their time;
- e) a suitable memento of a function honouring the member;
- f) food, lodging, transportation and entertainment provided by provincial, regional and local governments, or political subdivisions of them, by the Federal government or by a foreign government within a foreign country, or by a conference, seminar or event organization where the member is either speaking or attending in an official capacity;
- g) food and beverages consumed at banquets, receptions or similar events, if:
  - i) attendance serves a legitimate business purpose;
  - ii) the person extending the invitation or a representative of the organization is in attendance; and
  - iii) the value is reasonable and the invitations infrequent;
- h) communication to the offices of a member, including subscriptions to newspapers and periodicals; and
- i) sponsorships and donations for community events organized or run by a member or a third party on behalf of a member.

Except for category c), political contributions allowable by law, these exceptions do not apply where such gifts or benefits are provided by lobbyists or their clients or employers.

#### 7.4 **Disclosure Statement**

If the value of the gift or benefit exceeds \$100, or if the total value received from any one source during the course of a calendar year exceeds \$100, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.

The disclosure statement must indicate:

- 1) the nature of the gift or benefit;
- 2) its source and date of receipt;
- 3) the circumstances under which it was given or received;
- 4) its estimated value;
- 5) what the recipient intends to do with any gift; and
- 6) whether the gift will at any point be left with the City.

Any disclosure statement will be a matter of public record.

7.5 On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the member to justify receipt of the gift or benefit.

7.6 Should the Integrity Commissioner determine that the receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or remit the value of any gift or benefit already consumed to the City.

#### 8. **IMPROPER USE OF INFLUENCE**

8.1 No member of council shall use the influence of his or her office for any purpose other than for the exercise of his or her official duties.

8.2 Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself or one's parents, children or spouse, staff members, friends or associates, business or otherwise, including, for example:

- attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties.
- the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

## **9. BUSINESS RELATIONS**

- 9.1 No member shall act as a lobbyist before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the Municipal Conflict of Interest Act. A member shall not refer a third party to a person, partnership or corporation in exchange for payment or other personal benefit.
- 9.2 No member shall act as a paid agent before Council, its committees or an agency, board or commission of the City except in compliance with the terms of the *Municipal Conflict of Interest Act*.
- 9.3 No member shall allow the prospect of his or her current or future employment by a person or entity to detrimentally affect the performance of his or her duties for the City.
- 9.4 Notwithstanding Section 9.1, members of the Municipal Heritage Committee who own property designated under Part IV or Part V of the Ontario Heritage Act and are seeking consideration of alterations or repairs to such property are permitted to address the Municipal Heritage Committee or Council regarding their application, but are prohibited from taking part in the Municipal Heritage Committee's deliberation and/or voting in that matter.

## **10. CONDUCT WHILE REPRESENTING THE CITY**

Members shall make every effort to participate diligently in the activities of the agencies, boards, commissions and committees to which they are appointed.

## **11. CONDUCT AT MEETINGS**

Members shall conduct themselves with decorum in accordance with the provisions of the Procedure By-Law, show courtesy and respect to delegations, fellow members and staff, and not distract from the business of the City during presentations and when other members have the floor.

## **12. CONDUCT RESPECTING STAFF**

- 12.1 Only Council as a whole has authority to approve budgets, policies, committee processes and other matters. Members are not permitted to individually direct the actions of staff, except as authorized by Council.
- 12.2 Members shall be respectful that staff work for the City as a body corporate and are charged with making recommendations that reflect their professional expertise and corporate perspective, without undue influence from any individual member or group of members.

- 12.3 Member shall be respectful of the fact that staff carry out directions of Council and administer the policies of the municipality and are required to do so without any undue influence from any individual member or group of members.
- 12.4 No member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practices of staff, and all members shall have respect for the professional capacities of the staff of the City of Waterloo.
- 12.5 No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. No member shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

### **13. CONFIDENTIAL INFORMATION**

- 13.1 Confidential information includes information in the possession of, or received in confidence by the City that the City is either prohibited from disclosing, or may refuse to disclose, pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA") or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal and information that is subject to solicitor-client privilege.
- 13.2 The Municipal Act and other Provincial legislation allow Council to consider information related to specific matters in confidence in a closed meeting. For the purposes of this Code of Conduct, "confidential information" includes information received by members for purposes of a closed meeting.
- 13.3 A matter that has been discussed at a closed meeting of Council authorized under Section 239 of the *Municipal Act* remains confidential and no member shall disclose the content of any such matter, or the substance of deliberations of the in camera meeting until Council discusses the information at a meeting that is open to the public or releases the information to the public.
- 13.4 No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, either oral or written, except when required by law and authorized by Council to do so.
- 13.5 No member shall use confidential information for personal or private advantage or gain, or for the gain of relatives or any person or corporation, e.g. no member shall directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or other assets.
- 13.6 Members of Council should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties.



- 13.7 Requests for information will be referred to appropriate staff to be addressed as either an informal request for access to municipal records, or as a formal request under the *Municipal Freedom of Informational and Protection of Privacy Act*.

#### **14. ELECTION CAMPAIGN WORK**

- 14.1 Members of Waterloo City Council who are running for office for any level of government – Federal, Provincial, Regional, Municipal, School Board – or who are supporting a candidate for any office:
- may not undertake campaign-related activities on City property during regular working hours
  - may not use the services of persons during hours in which those persons receive any compensation from the City
  - may not use the following City corporate resources, for any election-related purposes, activities and/or materials:
    - the City crest, corporate seal and/or corporate logo
    - City staff
    - City property, facilities, equipment
    - City funds
    - any photos or videos produced by City staff, including electronic images/videos
    - City mail room and services
    - City information technology systems including but not limited to all computer and telephone networks and applications, including voice-mail, e-mail, internet, and intranet
    - any mailing lists/data files produced by City staff
    - any information, reports, presentations gathered/prepared by City staff for a member of Council as requested by that member in their official capacity as a member of City Council

This does not preclude any candidate for office, including incumbent members of City Council, from accessing and/or using information including reports, pictures, etc, that have been published and are in the public domain and not subject to copyright protection.

- 14.2. For clarification, election related activities and/or materials, in support of any candidate for any election campaign, include but are not limited to:
- events
  - canvassing
  - fundraising
  - media relations
  - public meetings
  - research
  - brochures
  - posters
  - TV and radio commercials
  - newspaper ads
  - websites
  - stationary
  - campaign signs
  - buttons
  - mail outs

- 14.3. Notices, posters, brochures and other election materials in support of any candidate may not be created, displayed or distributed by members of City Council and/or City employees and/or any member of the general public on City worksites or on City property.
- 14.4. Websites or domain names that are funded by the City of Waterloo may not include any election-related campaign materials that support or oppose the candidacy of a specific individual.
- 14.5. Members of City Council are responsible for ensuring that the content of any communications material they distribute in their official capacity as a member of City Council and using the resources and staff of the City of Waterloo, including email and printed materials such as official correspondence or newsletters, is not election related in any way.
- 14.6. Members of Council may not use their City Hall office, or any municipally-provided facilities for any election-related purposes, which includes displaying of any campaign-related signs in the window or on the premises, as well as displaying any election-related material in the office.

## **15. PUBLIC RESPECT FOR CITY OF WATERLOO BY-LAWS & POLICIES**

Members shall encourage public respect for the City of Waterloo and its by-laws and policies.

## **16. INTEGRITY COMMISSIONER**

Pursuant to Section 223 of the *Municipal Act, 2001*, the City of Waterloo shall appoint an Integrity Commissioner who reports to Council and who is responsible for performing the following duties in an independent and consistent manner:

- 1) assessing and investigating formal written complaints respecting alleged contraventions of the Code of Conduct;
- 2) determining whether a member of Council or local board has in fact violated a protocol, by-law or policy governing their ethical behaviour; with the final decision-making authority resting with Council as to whether the recommendation(s) of the Integrity Commissioner are imposed; and
- 3) providing Council, through the City Clerk, with reports resulting from investigations by the Integrity Commissioner and annual and other reports as described in sections 17.2 and 17.3.

## **17. COMPLAINT PROTOCOL**

This complaint protocol shall not apply retroactively to any alleged transgressions occurring prior to the date on which the Code of Conduct was formally approved by Council.

### **17.1 Informal Complaint Procedure**

Individuals or organizations who have identified or witnessed behaviour or an activity by a member of Council, local board or advisory committee that they believe is in contravention of the Code of Conduct could address the prohibited behaviour or activity themselves as follows:

- 1) advise the member that their behaviour or activity appears to contravene the Code of conduct;
- 2) encourage the member to stop the prohibited behaviour or activity;
- 3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- 4) if applicable, confirm to the member that you are satisfied with the response you received, or advise the member of your dissatisfaction with the response;

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. A person is not required to undertake the information complaint procedure prior to pursuing the formal complaint procedure.

### **17.2 Formal Complaint Procedure**

#### **17.2.1 Complaint**

- 1) A request for an investigation of a complaint that a member has contravened the Code of Conduct shall be:
  - a) made in writing, setting out reasonable and probable grounds for the allegation that a member has contravened the Code of Conduct;
  - b) signed by an identifiable individual (which includes the authorized signing officer of an organization), but the identity of the complainant shall be disclosed only to the Integrity Commissioner and the City Clerk;

- c) filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies.

## **18. COMPLAINT CLASSIFICATION / REFERRAL**

- 18.1 If, after reviewing the complaint, the Integrity Commissioner determines that it does not appear to be a complaint with respect to non-compliance with the Code of Conduct, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing that If the complaint is an allegation of:
- a) a criminal nature under the *Criminal Code of Canada*, the complainant must pursue such allegation with the appropriate police force;
  - b) non-compliance with the *Municipal Conflict of Interest Act*, the complainant should review the matter with their own legal counsel;
  - c) non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the matter will be referred to the City Clerk or the Office of the Information & Privacy Commissioner for review;
  - d) non-compliance with a more specific Council or corporate policy with a separate complaint procedure, the matter will be processed under that procedure; or
- 18.2 If the complaint or part of the complaint relates to a matter not within the jurisdiction of the Integrity Commissioner, with any additional reasons and referrals as the Integrity Commissioner considers appropriate, e.g. a complaint regarding the actions of a Waterloo representative serving on Regional Council is not within the jurisdiction of the City's Integrity Commissioner and should be directed to the appropriate Regional official.

## **19. INVESTIGATION PROCESS**

- 19.1 If a complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Integrity Commissioner shall investigate and may attempt to resolve the complaint.
- 19.2 Except where otherwise required by the *Public Inquiries Act*, the Integrity Commissioner shall:
- a) serve the complaint and supporting material upon the member whose conduct is in question with a request that the member file a written response to the allegation with the Integrity Commissioner within ten (10) days of the date of service upon the member;

- b) on receipt of the member's response, serve the complainant with a copy of the member's written response with a request that the complainant provide a written reply within ten (10) days;
- c) interview any individuals or examine any documents relevant to the complaint.

19.3 If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation or shall terminate the investigation if it becomes apparent in the course of an investigation.

## **20. INVESTIGATION REPORT**

20.1 The Integrity Commissioner shall:

- a) report the general findings of his/her investigation to the complainant and the member no later than ninety (90) days after the making of the complaint;
- b) allow the member at least ten (10) days to respond in writing to the Integrity Commissioner on his or her findings and any recommended corrective actions or sanctions;
- c) indicate when the Integrity Commissioner anticipates presenting his or her final report to Council;
- d) file his or her report with the City Clerk.

20.1 Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council, or Council and the BIA, as appropriate, outlining his or her findings and/or recommended corrective action(s).

20.3 If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and recommend that no penalty be imposed.

## **21. PENALTIES/RECOMMENDATIONS OF INTEGRITY COMMISSIONER**

21.1 Subsection 223.4 of the *Municipal Act, 2001* authorizes Council to impose either of two penalties on a member of Council following a report by the Integrity Commissioner that, in his or her opinion, there has been a violation of the *Code of Conduct*:

- a) a reprimand; or
  - b) suspension of the remuneration paid to the member in respect of his or her services as a member of Council, BIA or Committee, as the case may be, for a period of up to 90 days.
- 21.2 Although not expressly authorized by the Municipal Act, the Integrity Commissioner may also recommend, among other things, that Council or a local board take the following actions:
- a) remove the member from a committee or local board
  - b) remove the member as Chair of a committee or local board
  - c) request the member to repay or reimburse monies received
  - d) request the member to return the property or reimburse its value to the provider of the gift or benefit
  - e) request the member to apologize to Council, the complainant or both
- 21.3 In addition to the penalties referred to herein, Council reserves the right to take any other action authorized by law.
- 21.4 Any recommended corrective action shall be designed to ensure that the inappropriate behaviour or activity does not continue.

## **22. COUNCIL CONSIDERATION OF INTEGRITY COMMISSIONER'S INVESTIGATION REPORT & RECOMMENDATIONS**

- 22.1 Within 30 days of receipt of an investigation report from the Integrity Commissioner, the City Clerk shall submit the report to Council for consideration at a public meeting. The Integrity Commissioner's report shall remain confidential until the matter has received complete and final disposition by the Integrity Commissioner and has been submitted to the members of Council by the City Clerk.
- 22.2 Council or a local board shall consider and respond to the report within 90 days after the day the report is submitted to Council.

## **23. INTERIM, ANNUAL & OTHER REPORTS**

### **23.1 Interim Reports**

The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of delay, interference, obstruction or retaliation encountered during an investigation, or as otherwise deemed necessary by the Integrity Commissioner.

### 23.2 **Annual Reports**

The Integrity Commissioner shall report annually to Council on:

- a) complaints not within the jurisdiction of the Integrity Commissioner
- b) complaints deemed to be frivolous, vexatious, not made in good faith, where there are no or insufficient grounds

but shall not disclose information that could identify a person concerned.

Should no complaints be received within a calendar year, the Clerk shall report to Council accordingly and no annual report shall be made by the Integrity Commissioner.

### 23.3 **Other Reports**

In exceptional circumstances, the Integrity Commissioner may report to Council or a local board on complaints described in subsection 17.2 (a) and (b).

## 24. **INTEGRITY COMMISSIONER VACANCY**

Should the Office of the Integrity Commissioner become vacant, the Code of Conduct shall remain in effect and all members shall abide by the provisions set out therein. When a vacancy occurs, all formal complaints shall be held in abeyance until such time as an Integrity Commissioner has been appointed, or an interim measure enacted to enable the complaint to be addressed within a reasonable amount of time.

## 25. **REPRISALS AND OBSTRUCTION**

Members of Council shall respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone else for providing relevant information to the Integrity commissioner is prohibited. It is a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of his or her responsibilities, for example by the destruction of documents or the erasing of electronic communications.