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Integrity Commissioner J. David Wake
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September 30, 2019

RE: Request for explanation why you won't issue a public ruling on Premier Ford's staff, and deputy minister, giving preferential treatment to Ron Taverner, Mario Di Tomasso, and Chris Frogatt

Dear Commissioner Wake:

I write in response to your April 11, 2019 letter, and former Conflict of Interest Commissioner Sydney Linden's March 28, 2019 letter, denying my request for the issuance of a public ruling in respect of the actions of Premier Ford's Staff, and of the former deputy minister (Secretary of the Cabinet), giving preferential treatment to Ron Taverner, Mario Di Tomasso, and Chris Frogatt. I seek clarification of the basis on which you have denied my request.

I wrote to you on March 25, 2019, requesting an investigation and public ruling on whether Dean French and/or Steve Orsini violated applicable regulations. In your April 11, 2019 response, you stated:

You are correct that there is no provision in the PSOA prohibiting me from making a determination public, but neither is there any authority for me to do so.

...

The determinations I make as Ethics Executive to ministers staff are handled in confidence, although samples of the inquiries and determinations are provided in an abbreviated and anonymized format in the Office's annual report. Given the employment relationship between public servants and the government I do not think that it would be appropriate for any determination I make to public servants as their Ethics Executive to be made public as you suggest.

I also sent the March 25, 2019 letter to then-Conflict of Interest Commissioner Sydney Linden. Since May 1, 2019, you have assumed the duties of the former Conflict of Interest Commissioner position as that position has been incorporated into your office. I had addressed my letter to Commissioner Linden in addition to you because, under clause 62(1)4 of the *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Sched. A, he was then the "ethics executive" for the former Secretary of the Cabinet, whose actions Democracy Watch had requested be investigated and ruled on publicly, in addition to various members of Premier Ford's staff.

In his March 28, 2019 letter, Commissioner Linden responded by stating:

The role of the Conflict of Interest Commissioner is set out in the Public Service of Ontario Act, 2006 (PSOA) and its regulations. Under the PSOA, the Conflict of Interest Commissioner is the ethics executive for current and former Secretaries of Cabinet. However, the PSOA and the *Freedom of Information and Protection of Privacy Act* limit the type of information that this office may disclose. For example, section 3 of Ontario Regulation 384/07 to the PSOA prohibits the disclosure of personal information by the commissioner and sets out the limited exceptions to when such disclosure is permitted. In light of the disclosure restrictions that this office is subject to, we are not able to accommodate your request.

Should you not have a copy of Commissioner Linden's letter, I would be happy to provide it to you.

With respect, I see nothing in the *Public Service of Ontario Act (PSOA)*, Ontario Regulation 384/07 (section 3 or any other section), or in the *Freedom of Information and Protection of Privacy Act (FOI/POPA)* – in the definition of "personal information" in subsection 2(1) or in any other provision) that would make confidential a ruling that a public servant has violated the law.

A ruling on whether a public servant has violated the law is not "personal information" of the public servant. It is information that must be disclosed so "that politicians and bureaucrats remain accountable to the citizenry" (*Dagg v. Canada (Minister of Finance)*, [1997] 2 SCR 403, at para. 61), especially if the public servant violated the law.

The public already knows that Dean French and Steve Orsini worked for the Ontario Premier and Cabinet (i.e. for the public). The public therefore has a clear right to know, as their employer, whether these individuals complied with the law while in their public positions.

The public also has a right to disclosure of your ruling in order to ensure that you are upholding the law properly. A secret ruling defeats this right to know.

The actions of Dean French and Steve Orsini have been made public already. For the public to hold them, and yourself, accountable, your ruling on their actions must be disclosed publicly.

Additionally, as the public interest complainant concerning the actions of Premier Ford's staff, and the former Secretary of the Cabinet (Premier Ford's former Deputy Minister), Democracy Watch has a right under the rules of natural justice to receive your rulings on its complaint filed with you on March 25, 2019.

As a result, I hereby request that you provide details as to the basis for your and Commissioner Linden's positions that the rulings concerning Mr. French and Mr. Orsini can legally be kept confidential.

Democracy Watch is happy to provide further details should you require any additional information to act on this request.

We look forward to hearing back from you about this request, and hopefully to seeing public rulings concerning Mr. French and Mr. Orsini issued very soon.

Sincerely,



Duff Conacher, Co-founder of Democracy Watch
on behalf of the Board of Directors of Democracy Watch