

September 8, 2014

Mayor Rick Hamilton
Clerk Lesley Sprague
The City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON
P5A 1X5

Dear Mayor Hamilton and Ms. Sprague,

RE: Complaint regarding the October 25, 2013 council meeting

I am writing further to our conversation of September 5, regarding the outcome of our Office's review of a complaint that we received on April 2, 2014. The complaint alleged that council went in camera on October 25, 2013, citing the "personal matters about an identifiable individual" exception to the open meeting requirements, and that the closed session discussion did not fit within that or any exception under the *Municipal Act*.

The *Municipal Act, 2001* (the Act) requires that meetings of council, local boards, and committees be open to the public, with limited exceptions and subject to certain procedural requirements. In reviewing this complaint, our Office spoke with you and obtained and reviewed the meeting documents, including the agenda and open and closed session minutes. We also considered relevant sections of the city's Procedure By-law and the Act.

The October 25, 2013 meeting

The agenda stated that the meeting was a special council meeting, beginning at 4:00 p.m. Item 4 on the agenda was a verbal report "concerning personal information about identifiable individuals." Item 5 on the agenda was "closed session business." No further information was provided on the agenda.

The minutes state that all of council was present for the meeting, as well as the clerk and the chief administrative officer.

Council passed this resolution: "That the verbal report concerning personal information about identifiable individuals be discussed in closed session under section 239(2)(b) of the Municipal Act as this matter deals with confidential personal information about identifiable individual(s)."

Council proceeded in camera at 4:04 p.m. and the open session resumed at 4:59 p.m.

The information provided to our Office indicates that the purpose of the closed session was to consider allegations that a member of council had provided confidential information to a member of the public. The closed session minutes indicate that the in camera discussions also involved general concerns about council relations.

Analysis

The Act does not define “personal matters.” In considering the scope of this exception, we reviewed how the Office of the Information and Privacy Commissioner (the IPC) interprets this exception, as well as the term “personal information” in section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Although these decisions are not binding on the Ombudsman, they can offer some guidance.

A 2007 decision of the IPC¹ noted that in order to qualify as personal information, the information “must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official, or business capacity will not be considered to be ‘about’ the individual.” This decision also stated that information relating to an individual in a professional capacity “may still qualify as personal information if the information reveals something of a personal nature about the individual.” Other IPC decisions have noted that information pertaining to an individual in their professional capacity takes on a “more personal quality” if that information relates to the scrutiny of the individual’s conduct².

In the case of the October 25 meeting, council was discussing unproven allegations that a member of council had improperly shared confidential information. Discussions about a council member's conduct in the course of their duties are normally considered to be of a professional nature and do not fall within the personal matters exception. In this case, however, council was considering allegations of breach of confidentiality against a member of council, which had not been investigated or proven at that time and had not been made public. In these circumstances, we are satisfied that, based on the nature of these discussions, they fell within the personal matters exception.

Council also discussed, in a more general way, the relationship between council and city staff – including communications and concerns about how information provided by city staff was disseminated.

Similar discussions were reviewed by the Ombudsman in his investigation into meetings

¹ Order MO-2204; (Town of Aylmer)(2007)

² See Order MO-2519; (Township of Madawaska Valley)(2010)

held in 2012 by the Township of Adelaide Metcalfe. The Ombudsman's report³ noted:

While it is perhaps understandable that council would not want such a sensitive discussion to occur in open session, this subject matter does not fall under any of the exceptions to the open meeting requirements enumerated in the Act. As such, this portion of the meeting was closed contrary to the Act.

Accordingly, the portions of the closed session that did not specifically deal with the allegations against an identified member of council did not fit within the "personal matters" exception, or any exception to the open meeting requirements.

Recording Closed Sessions

On September 5 we also encouraged the city to consider audio recording its closed meetings. As noted in the Ombudsman's 2011-2012 report on open meetings:

Audio or video recording of council meetings should be routine – not just the open sessions, but the closed ones too. This would assist immeasurably in ensuring officials do not stray from the legal requirements once they retreat behind closed doors, and would provide a clear, accessible record for investigators to review.

We are aware of several municipalities that follow this practice, including the Townships of Tiny, Madawaska Valley and McMurrich/Monteith, the Town of Midland, the Municipality of Lambton Shores and the City of Oshawa.

When we spoke, I provided you with our findings and gave you the opportunity to provide feedback, which has been incorporated into this letter.

You agreed to include this letter on the agenda for council's public meeting, on September 22, and to make a copy available to the public.

Thank you for your cooperation with our review.

Sincerely,

Michelle Bird
Open Meeting Law Enforcement Team

³ Investigation of Closed Meetings held by the Township of Adelaide Metcalfe between July and August, 2012 (March 2013)