

January 29, 2016

By e-mail (mdupuis@casselman.ca)

Ms. Marielle Dupuis, Clerk
Village of Casselman
751 St-Jean St., P.O. Box 710
Casselman, ON K0A 1M0

Re: Closed Meeting Complaints

Dear Ms. Dupuis:

I am writing further to our discussion of January 15, 2016 regarding the outcome of our review of complaints made about closed meetings held by council for the Village of Casselman in July, August and September 2015. For the reasons outlined below, we have determined that we will not be proceeding further with these complaints; however, we are making suggestions to help improve the Village's closed meetings practices.

Authority of the Ombudsman

As of January 1, 2008, the *Municipal Act, 2001* (the Act) gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.¹ The Ombudsman is the closed meeting investigator for the Village of Casselman.

Closed Meeting Complaints

Our office received complaints about closed meetings of council for the Village of Casselman on July 3, July 14, August 25 and September 22, 2015.

The complaints we received raised the following concerns: that a consultant's report discussed on July 3 and July 14 was not appropriate for in camera discussion; and, that in all cases the agendas, resolutions and reports back relating to the closed sessions did not provide sufficient information to the public to understand the general nature of the matters being discussed in camera.

¹ SO 2001, c 25, s 239.1.

Review

In reviewing the complaints, we considered the agendas, minutes and supporting materials for all the meetings. We also reviewed the Village's procedure by-law and spoke with you.

Discussion of consultant's report on July 3 and July 14, 2015

The July 3 and July 14 meetings were closed to discuss a consultant's report under the personal matters exception to the open meeting requirements of the Act (s 239(2)(b)). You explained to our office that these were closed as the discussions were about restructuring and that individual staff positions would be cut or modified. At both meetings, individuals were identified with reference to an organizational chart. At the July 14th meeting, salary ranges were also discussed.

For the personal matters exception to apply, the information being discussed must be about an individual in his or her personal capacity, rather than his or her professional, official or business capacity. However, this information may still qualify as personal if it reveals something of a personal nature about the individual.

The discussion of the organizational chart was permitted under the personal matters exception. As noted in a letter from our Office to the Town of Amherstburg, "discussion of staff retention and reorganization as it affects individuals and their roles is permitted in closed session" under the personal matters and labour relations exceptions.² Similarly, in a recent report about the Town of South Bruce Peninsula, the Ombudsman found that council's discussion of the possibility of reorganizing the town's administration structure and reassigning duties to better reflect workloads, which identified staff members' workloads and working relationships, fit within the labour relations exception.³

The discussion of salary ranges for management positions on its own does not come under the personal matters exception. In a report about the Town of Mattawa, however, the Ombudsman noted that "an individual's salary, as opposed to a salary range for a

² Letter from the Ombudsman of Ontario to Town of Amherstburg (9 December 2013), online: <[https://www.ombudsman.on.ca/Resources/Reports/Town-of-Amherstburg-\(4\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Town-of-Amherstburg-(4).aspx)>.

³ Ombudsman of Ontario, *Investigation into whether Council for the Town of South Bruce Peninsula held illegal closed meetings in April, May and June 2015* (September 2015), online: <[https://www.ombudsman.on.ca/Resources/Reports/Town-of-South-Bruce-Peninsula-\(4\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Town-of-South-Bruce-Peninsula-(4).aspx)>.

position, may qualify as a personal matter about an identifiable individual.”⁴ The discussion of salary ranges in this case was sufficiently related to the broader discussion of staff reorganization and individual staff positions that it fell within the exceptions contained in the Act in these circumstances.

Procedural Matters

Notice

Notice was provided as set out in the Village’s procedure by-law for all meetings.

As noted in earlier reports, the procedure by-law should be amended to specifically address notice to the public of special meetings.⁵

Resolutions

Section 239(4) of the Act requires that councils pass a resolution, stating the fact of holding a closed meeting and the general nature of the matter to be considered, before holding a closed session. This requirement is echoed in Casselman’s procedure by-law.

The complaints raised concerns that the agendas and the resolutions do not provide sufficient information to the public. As noted by the Ontario Court of Appeal in *Farber v. Kingston City*.⁶

[T]he resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.

⁴ Ombudsman of Ontario, *Investigation into whether the Town of Mattawa Council and its Ad Hoc Heritage Committee held improperly closed meetings* (December 2010) at para 53, online: <<https://www.ombudsman.on.ca/Resources/Reports/Investigation-into-whether-the-Town-of-Mattawa-Cou.aspx>>

⁵ Ombudsman of Ontario, “*Sign Here*” – *Investigation into whether Council for the Village of Casselman held illegal closed meetings in November 2014* (February 2015), online: <[https://www.ombudsman.on.ca/Resources/Reports/Village-of-Casselman-\(1\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Village-of-Casselman-(1).aspx)>; Ombudsman of Ontario, “*Restaurant Roundtable*” – *Investigation into whether Council for the Village of Casselman held an illegal closed meeting on January 8, 2015* (April 2015), online: <[https://www.ombudsman.on.ca/Resources/Reports/Village-of-Casselman\(2\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Village-of-Casselman(2).aspx)>.

⁶ [2007] OJ No 919, at p 151.

In this case, the agendas for the meetings listed vague topics of discussion and the related resolutions cited only the applicable closed meeting exceptions. For example, the August 25 meeting agenda listed seven items to be discussed in closed session while the resolution to go into closed session listed five exceptions. The relationship between the topics discussed and the exceptions cited was unclear.

More descriptive resolutions expressly linking the agenda topics with the exceptions would have provided more information to the public without undermining the reason for meeting in camera. For example, a resolution could state

Be it resolved that the present meeting be adjourned for a closed session for the following purposes:

A proposed or pending acquisition of land for municipal or local board purposes (s 239(2)(c), *Municipal Act, 2001*) – Lease Agreement with Youth Centre

When we spoke, you explained the Village of Casselman has changed its practice and now ensures that resolutions to enter closed session contain a general description of the issue to be discussed, including when referencing confidential reports or materials.

Report Back

All municipalities are encouraged to report back on what occurred in camera. As discussed in the Ombudsman's report with respect to closed meetings in the Village of Westport,⁷ in some cases public reporting might consist of a general discussion in open session of subjects considered in closed session. This might be similar to the information in the resolution authorizing the session, together with information about any decisions, resolutions, and directions given to staff. In other cases, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.

The July 14 resolution confirming the July 3 closed session discussions with respect to staff should likely have taken place immediately following the July 3 closed session. In discussion with our office, you acknowledged that this was an oversight.

⁷ Ombudsman of Ontario, *Investigation into whether Council for the Village of Westport held an illegal closed meeting on October 28, 2014* (January 2015), online: <https://www.ombudsman.on.ca/Resources/Reports/Village-of-Westport.aspx>.

The resolutions passed in open session following the July 14, August 25 and September 22 closed sessions reflect council's discussions and as such may be considered a report back on these matters.

Conclusion

In light of the above findings, we will not be proceeding further with respect to these complaints. We encourage the Village of Casselman to implement the recommended best practices set out above.

You indicated to us that this letter would be included as correspondence at the next available meeting of council.

We thank you for your cooperation during our review.

Sincerely,

Jean-Frédéric Hübsch
Counsel
Office of the Ontario Ombudsman