



Ombudsman Report

**Investigation into the closed meeting
held by council for the Township of Russell
on December 7, 2015**

**Paul Dubé
Ombudsman of Ontario
April 2016**

Complaint

- 1** In December 2015, our Office received a complaint about a special meeting held by council for the Township of Russell on December 7, 2015. The complaint alleged that council inappropriately relied on the personal matters exception of the *Municipal Act, 2001* to discuss changing the salary structure for township employees in camera. In addition, the complaint alleged that council inappropriately discussed changing the salary of the township's Mayor and councillors during the closed session.

Ombudsman jurisdiction

- 2** Under the Act, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3** As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4** The Ombudsman is the closed meeting investigator for the Township of Russell.
- 5** When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.

Investigative process

- 6** On January 11, 2016, we advised council for the Township of Russell of our intent to investigate this complaint.
- 7** Members of the Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the township's procedure by-law and the Act, as well as the meeting agenda, minutes, and materials. They interviewed the Clerk, Mayor, and Chief Administrative Officer (CAO).
- 8** We received full co-operation in this matter.

Council procedure

- 9** At the time of the December 7, 2015 special meeting, the township's procedure by-law¹ stated that meetings were to be open to the public, subject to the exceptions outlined in section 4.11 of the by-law. Prior to recent amendments, the by-law did not accurately reproduce certain portions of the Act's closed meeting exceptions. However, the township's revised procedural by-law, adopted February 16, 2016, accurately reproduces the Act's closed meeting exceptions.²
- 10** Section 4.7.4 of the prior by-law provided that notice of special meetings of council must be posted on the township's website and on the information board in the main lobby of the municipal office at least 48 hours in advance of the meeting. It also stated that notice must be given to the local media by e-mail. These provisions were not changed in the new by-law.

December 7, 2015 special council meeting

- 11** On December 7, 2015, 5:30 p.m., council held a special meeting in council chambers. Notice of the meeting was provided in accordance with the township's procedure by-law.
- 12** At 6:32 p.m., council passed a resolution to proceed in camera to discuss:
- 1 – Hay Group Studies (Market Salary Survey and Job Evaluation Results)** s. (b) personal matter about an identifiable individual, including municipal employees.
- 13** The meeting agenda provided the same description of the matter.

Consultant's presentation

- 14** Once in closed session, a consultant from the Hay Group made a presentation to council summarizing her opinion of the township's current remuneration structure. This information was contained in a report titled "Designing a Salary

¹ Township of Russell, by-law No 2015-45, *Being a by-law to govern the proceedings of the council of the corporation of the Township of Russell* (13 April 2015), online: <<http://www.russell.ca/upload/2015-45%20Procedural%20By-law.pdf>>.

² Township of Russell, by-law No 2015-020, *Being a by-law to govern the proceedings of the council of the corporation of the Township of Russell* (16 February 2016), online: <<http://www.russell.ca/upload//2016-020%20Township%20of%20Russell%20Procedural%20Bylaw.pdf>>.

Structure for the Future: Township of Russell.” Our Office reviewed this document.

- 15** The document indicates that the township retained the Hay Group to review the township’s current salary structure and to create a modified salary structure aligned with the township’s comparator market. Those we interviewed indicated that this report was part of a larger process, commenced in early 2015, to evaluate each position and determine if the township’s non-unionized staff members were appropriately compensated.
- 16** The document analyzed the township’s current salary grid and recommended various structural changes. It recommended a new salary grid for township employees, and the last page of the report compared the current salary for the Mayor and councillors to the salaries of mayors and councillors in comparable markets. Based on this information, the report recommended altering councillor compensation.

Chief Administrative Officer’s presentation

- 17** After the presentation by the consultant, the township’s CAO presented council with two detailed spreadsheets outlining where every township position fell on the current and proposed salary grids. Our Office reviewed these spreadsheets. The spreadsheets were colour-coded to visually represent positions that would receive salary increases and those that would receive decreases under the proposed salary grid.

Discussion – staff salary grid

- 18** In our interview with the Mayor, he told us councillors asked general questions throughout the presentations, such as: “Does this make it fair for everybody?” The Mayor indicated that the councillors were not familiar with the process of evaluating pay equity and therefore had questions about the general process. The CAO told us councillors also asked questions about why some jobs were evaluated in a particular way (resulting in a lower salary grade) and which employees would be affected by certain changes to the salary grid. In addition, council discussed whether staff compensation was set at the appropriate level in relation to other comparator markets.
- 19** The CAO advised us that council extensively discussed how to deal with identified employees whose salaries would be decreased under the proposed salary grid. These employees were “red circled,” and council debated various options for altering their compensation packages. For those named employees, council discussed exactly how much the employee was making under the old

salary grid and exactly how much he or she would make under the proposed salary grid. The people we interviewed indicated that this was a necessary part of the conversation because, in a relatively small municipality, councillors wanted to understand specifically how the various staff members would be affected.

- 20** As a result of the discussions, council directed the CAO to speak with staff about the proposed salary grid and report back to council for final approval. The Mayor and CAO indicated that council wanted to consult with employees before publicly announcing the new salary grid.
- 21** When asked why council’s discussion about the salary grid fell within the personal matters exception, each person we interviewed noted that councillors identified some employees by name and discussed details of their salaries. However, the Mayor and CAO told us that, in retrospect, the discussion more appropriately fell within the “labour relations or employee negotiations” exception. They indicated that the new salary grid would result in changes for all township employees. Because council had not decided whether or how to change the salary grid, they said they felt it was important to have the discussion in private and to protect the township’s bargaining position.

Discussion – council salary

- 22** In addition to discussing the staff salary grid, council also discussed changing the salary of the Mayor and councillors. In his interview, the Mayor said councillors generally discussed “where they would like to find themselves going forward,” and whether it would be appropriate to change councillor remuneration. Councillors asked practical questions about when and how the change could be implemented (i.e., should the change wait until the next election). The Mayor told us councillors knew that further discussion about remuneration would have to occur in open session after the new salary grid was made public. To prepare for this future discussion, councillors directed the CAO to obtain more information about councillor compensation in nearby municipalities and to report back to council.
- 23** When asked why councillor remuneration was discussed in closed session, the CAO and Mayor told us the discussion flowed naturally from the discussion of staff compensation. They indicated that the discussion about the proposed salary grid was really a discussion about the township’s “corporate pay philosophy,” and it made sense to apply the same philosophy to councillor remuneration.

Report back and adjournment

- 24** Council returned to open session at 9:34 p.m. and provided the following report of the closed session:

Council was briefed on the file and the CAO was given directions on how to proceed and will report back to Council no later than January 18, 2016.

- 25** The special council meeting adjourned at 9:37 p.m.

Analysis

Employees' salaries – s.239(2)(b) – personal matters

- 26** The Act does not define “personal matters” for the purposes of section 239 of the *Municipal Act*. However, the related term “personal information” is defined in the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*, as:

[R]ecorded information about an identifiable individual, including...

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

- 27** The Office of the Information and Privacy Commissioner (the IPC) has found that an individual's salary, as opposed to a salary range for a position, qualifies as personal information.³

- 28** In a 2015 report regarding closed meetings in the Municipality of South Huron, our Office determined that council was permitted to discuss the specific salaries and performance reviews of identified employees in camera under the personal matters exception.⁴ Our Office reached the same conclusion in our December 2010 report regarding closed meetings in the Town of Mattawa⁵ and our October

³ For instance: Order M-5 (11 December 1991), online: IPC <https://www.ipc.on.ca/images/Findings/Attached_PDF/M-5.pdf>; Order 61 (26 May 1989), online: IPC <https://www.ipc.on.ca/images/Findings/Attached_PDF/P-61.pdf>; and Order 183 (4 July 1990), online: IPC <https://www.ipc.on.ca/images/Findings/Attached_PDF/P-183.pdf>.

⁴ Ombudsman of Ontario, *Investigation into closed meetings held by Council for the Municipality of South Huron* (February 2015) at para 19, online: <<https://www.ombudsman.on.ca/Resources/Reports/Municipality-of-South-Huron.aspx>>.

⁵ 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/Files/Sitemedia/Documents/Resources/Reports/Municipal/mattawafinal.pdf>>.

2015 report regarding closed meetings in the Township of Russell.⁶

29 At the meeting on December 7, 2015, council for the Township of Russell discussed systematic changes to the township’s salary grid. As part of this discussion, councillors identified specific employees by name and discussed the exact salary the identified employee was earning under the current salary grid, as well as the amount the employee would earn under the proposed salary grid. Our Office was advised that this was a necessary part of the conversation because councillors wanted to understand how various staff members in the township would be affected. Accordingly, this portion of the discussion fell within the closed meeting exception for personal matters about an identifiable individual.

Employees’ salaries – s.239(2)(d) – labour relations or employee negotiations

30 Although not cited in council’s resolution to proceed in camera, both the Mayor and the CAO said they felt council’s discussion fell within the Act’s closed meeting exception for “labour relations or employee negotiations.”

31 In a 2013 investigation into closed meetings in the Township of Leeds and the Thousand Islands, our Office determined that “compensation matters relating to the Township’s [non-unionized] workforce” fell within the exception for “labour relations or employee negotiations”.⁷ Similarly, in a 2014 review of closed meetings in the City of Timmins, our Office determined that council’s in-camera discussion about salary increases for non-unionized staff fell within this exception.⁸ In addition, a 2013 report by Local Authority Services (LAS) regarding a closed meeting in the City of Markham determined that the decision to grant a vacation benefit to a large number of employees fell within the “labour relations or employee negotiations” exception.⁹

32 Although not binding on our Office, the case law of the IPC can be informative. In determining whether the “labour relations or employment related matters” exclusion under *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act* is applicable,

⁶ Ombudsman of Ontario, *Investigation into whether Council for the Township of Russell held an illegal closed meeting* (October 2015) at para 19, online:

<[https://www.ombudsman.on.ca/Resources/Reports/Township-of-Russell-\(2\).aspx](https://www.ombudsman.on.ca/Resources/Reports/Township-of-Russell-(2).aspx)>.

⁷ Ombudsman of Ontario, *Investigation into whether members of council for the Township of Leeds and the Thousand Islands held improper closed meetings* (November 2013) at para 82, online:

<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/TLTI-Nov13-Final-EN_1.pdf>.

⁸ Letter from Ombudsman of Ontario to City of Timmins (9 April 2014) at 6, online:

<<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Timmins-Closing-April9-2014.pdf>>.

⁹ Local Authority Services, *Report to the Council of the City of Markham* (March 2013), online:

<http://www.agavel.com/wp-content/uploads/2013/09/Markham_2013_1.docx>.

the IPC asks whether the record “contains matters that are integral to the employment relationship between the city and its own workforce”.¹⁰ Using this analysis, the IPC determined that a “Management/Exempt [Employee] Compensation review” drafted by a consulting firm for the City of Toronto fell within the exclusion.¹¹

- 33** In Order MO-2332, the IPC determined that “reports and presentations by [a consulting firm], with respect to the compensation structures, salary classifications, remuneration and related matters” for certain city employees fell within *MFIPPA*'s exclusion for labour relations or employment related matters.¹² The IPC also determined that a “Compensation Program Review” document prepared by a consultant for the Toronto Transit Commission fell within the exception.¹³
- 34** During the December 7 special meeting, council for the Township of Russell discussed the township’s compensation strategy and specific recommended changes to the existing salary grid. The recommended changes would affect the compensation structure applicable to every township employee. This discussion fell within the closed meeting exception for labour relations or employee negotiations.

Councillors’ salaries

- 35** It is well established that discussions of council remuneration do not fall within any of the Act’s closed meeting exceptions. In a 2008 investigation into closed meetings in the Town of Orangeville, LAS determined that the setting of council members’ remuneration and expense policy is not eligible for consideration under either the personal matters or the labour relations or employee negotiations closed meeting exceptions.¹⁴ Our Office reached the same conclusion when investigating closed meetings in the City of Timmins¹⁵ and the Township of Leeds and the

¹⁰ Order MO-2660 (24 October 2011) at para 61, online: IPC <<https://www.ipc.on.ca/images/Findings/MO-2660.pdf>>

¹¹ Order MO-2455 (31 August 2009) at 6, online: IPC <<https://www.ipc.on.ca/images/Findings/MO-2455.pdf>>.

¹² Order MO-2332 (25 July 2008) at 1, online: IPC <<https://www.ipc.on.ca/images/Findings/mo-2332.pdf>>.

¹³ Order MO-1735 (24 December 2003) at 8, online: IPC <https://www.ipc.on.ca/images/Findings/Attached_PDF/MO-1735.pdf>.

¹⁴ Local Authority Services, *Report to the Council of the Town of Orangeville* (October 2008), online: <<http://www.agavel.com/wp-content/uploads/2013/09/OrangevilleT.doc>>.

¹⁵ Letter from Ombudsman of Ontario to the City of Timmins (9 April 2014), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Timmins-Closing-April9-2014.pdf>>.

Thousand Islands.¹⁶

- 36** During the December 7 special meeting of council for the Township of Russell, councillors discussed whether to adjust their remuneration. In addition, councillors asked practical questions about when and how the change should be implemented. Following the discussion, council directed staff to obtain more information about councillor remuneration in neighbouring municipalities. This discussion did not fall within any of the Act's closed meeting exceptions.

Opinion

- 37** Council for the Township of Russell did not contravene the *Municipal Act, 2001* on December 7, 2015, when it went in camera to discuss changes to township employee compensation. Portions of the discussion relating to the salaries of identified municipal employees fell within the closed meeting exception for personal information about an identifiable individual. Other portions of the discussion relating to the township's compensation strategy and proposed changes to the salary grid fell within the closed meeting exception for labour relations or employee negotiations.
- 38** However, council did contravene the *Municipal Act, 2001* when it discussed changes to councillor remuneration. This discussion did not fall within the personal matters exception, or any other exception, under the Act.

Recommendations

- 39** I make the following recommendations to assist the township in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

Recommendation 1

All members of council for the Township of Russell should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Recommendation 2

Council for the Township of Russell should ensure that council remuneration is not discussed in closed session.

¹⁶ Letter from Ombudsman of Ontario to the Township of Leeds and the Thousand Islands (18 April 2012), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Leeds---Thousand-Islands---Jan-23.pdf>>.

Recommendation 3

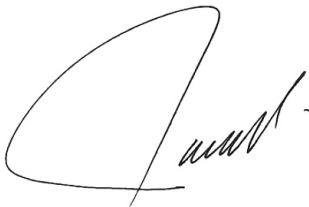
Council for the Township of Russell should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Recommendation 4

Council for the Township of Russell should take care to cite the closed meeting exceptions in the Act that apply to the matters considered during the in camera discussion.

Report

- 40** The township was given the opportunity to review a preliminary version of this report and provide comments to our Office. No comments were received.
- 41** My report should be shared with council for the Township of Russell and made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman of Ontario