



**Investigation into a complaint
about a meeting held by
Council for the City of Sault Ste. Marie on
October 13, 2015**

**Paul Dubé
Ombudsman of Ontario
August 2016**

Complaint

- 1 In May 2016, my Office received a complaint alleging that council for the City of Ste. Sault Marie held a closed meeting on October 13, 2015 that did not comply with the open meeting rules.
- 2 The complainant alleged that council met with the city's Fire Chief to discuss the potential realignment of the city's fire services and emergency medical services, contrary to the open meeting provisions of the *Municipal Act, 2001* (the Act).

Ombudsman jurisdiction

- 3 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.
- 4 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.
- 5 The Ombudsman is the closed meeting investigator for the City of Sault Ste. Marie.
- 6 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

- 7 On June 14, 2016, we advised council of our intent to investigate this complaint.

- 8 Members of the Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the city's procedure by-law and the Act, as well as the meeting agenda, minutes, and materials for the October 13, 2015 closed meeting of council. We also reviewed the city's audio-video recording of the meeting, which provided an accurate record of what transpired and greatly assisted us in completing our investigation.
- 9 My Office received full co-operation in this matter.

Background

- 10 The City of Sault Ste. Marie provides fire services to its residents through its Fire Services Department. According to the city's website, the department is composed of five divisions including fire suppression, emergency medical services (EMS), and fire prevention.¹
- 11 The Fire Services Department is led by a Fire Chief who is appointed by council and is responsible to council for the delivery of fire protection services in the city.
- 12 At the time of the meeting, the city also provided EMS through its Fire Services Department under contract to the District of Sault Ste. Marie Social Services Administration Board.
- 13 On October 13, 2015, council met in closed session to discuss a proposed realignment plan with the Fire Chief. The plan would reduce firefighter staffing levels by attrition and increase EMS staffing levels to respond to what the Fire Chief indicated was an increasing need for emergency medical services in the city.
- 14 At a council meeting on October 26, 2015, the Fire Chief presented the realignment plan to council in open session. At the same meeting, council approved the realignment plan.

¹ <http://www.saultstemarie.ca/City-Hall/City-Departments/Fire-Services.aspx?ext=>

Township procedures and quorum emails

- 15 Section 4.10 of the city's procedure by-law (By-law No. 2013-100) states that all meetings shall be open to the public subject to the listed exceptions in section 5.1. The by-law generally mirrors the closed meeting exceptions found in the Act. However, the by-law has not been updated to reflect recent amendments to the Act, which mandate that discussions related to ongoing ombudsman or closed meeting investigations shall occur in closed session.
- 16 Section 5.3 of the by-law provides for digital audio-video recording of closed sessions of council. Under this provision, the clerk is responsible for the care and retention of the recordings.

October 13, 2015 council meeting

- 17 On October 13, 2015 at 4:30 p.m., council for Sault Ste. Marie met in council chambers for a regular meeting. Council resolved to proceed in camera with the Fire Chief to discuss human resources issues pursuant to the labour relations or employee negotiations exception (subsection 239(2)(d) of the Act). The city's Chief Administrative Officer (CAO), solicitor, and human resources manager were also present in the closed session.
- 18 Once in camera, the Fire Chief gave a PowerPoint presentation to council. Our Office reviewed a copy of this presentation and the recording of the closed session.
- 19 The Fire Chief's presentation, entitled "Fire Services Business Transformation", outlined a plan to realign the city's fire services and emergency medical service staffing levels. In addition to the mechanics of the proposed realignment, the presentation covered the realignment plan from a risk management perspective, the potential impact on fire service levels in the city, the prospective financial savings should the plan be implemented, and the fire chief's discussions with the Sault Ste. Marie Firefighters Association.

Analysis

- 20** Subsection 239(2)(d) of the Act provides that council may go into closed session if the subject matter being considered is “labour relations or employee negotiations”.
- 21** While there are no reported cases interpreting s. 239(2)(d) of the Act, the Ontario Court of Appeal has found that the ordinary meaning of the phrase “labour relations” in subsection 65(6) of the *Freedom of Information and Protection of Privacy Act* can extend to relations and conditions of work beyond those related to collective bargaining.²
- 22** Generally, the labour relations exception does not apply to discussions relating to an organizational review or restructuring offered by the municipality. However, my Office has found that the exception may apply to a discussion relating to reorganization as it affects individuals and their roles.³ The exception may also include discussions involving staff compensation or vacation; the hiring or firing of staff or disciplinary proceedings; grievances under a collective agreement; a voluntary exit program; or a review of staff workload and working relationships.⁴
- 23** On October 13, 2015, Sault Ste. Marie’s in camera discussions covered a number of topics related to the Fire Chief’s realignment plan. The Fire Chief advised council about his discussions with the Fire Association. Council briefly discussed an upcoming arbitration award. These discussions fell within the labour relations exception.
- 24** The other topics covered in the presentation and in council’s discussions included risk management, impact on service levels, and potential financial

² *Ontario (MOHLTC) v. Ontario (IPC)*, [2003] O.J. No. 4123 (C.A.)

³ Ontario Ombudsman, Letter to the Town of Amherstburg (December 9, 2013) online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Amherstburg-Closing-Letter-Dec-9.pdf>>.

⁴ Ontario Ombudsman, *Investigation into whether members of council for the Township of Leeds and the Thousand Islands held improper closed meetings* (November 2013), online: <https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/TLTI-Nov13-Final-EN_1.pdf>; Ontario Ombudsman, Letter to the City of St. Catharines (April 19, 2013) online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/St--Catharines-Fire-Services---Dec-17-closed-meeting-asscbl.pdf>>; Ontario Ombudsman, Letter to the Township of Bonfield (October 30, 2013), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Bonfield-Closing-Letter-Personnel-Committee-final-1.pdf>>.

savings. Had council's discussion been limited to these topics, it would not have been permitted within the exception for labour relations in the Act.

- 25 In 2011, with respect to an appeal of a decision of the Information and Privacy Commission, Ontario's Divisional Court commented on the practicality of conducting a meeting where only parts of discussion are allowed in closed session. In *St. Catherines (City) v. IPCO*, Justice Lederer observed that:

[I]t is not realistic to expect the members of a municipal council to parse their meetings...this way. At a minimum, it would detract from free, open and uninterrupted discussion. It could lead to meetings that dissolve into recurring, if not continuous, debate about when to close the meeting and when to invite the interested public to return.⁵

- 26 Our review of the October 13 meeting indicates that the matters that did not fall within the exception were not discrete topics of discussion. Instead, these matters were discussed as part of council's broader discussion about labour relations. These matters were entwined with the matters that fit within the exception, such that separating them out would not have allowed for free, open and uninterrupted discussion. In these circumstances, it is not realistic to expect council to parse their discussions by extracting these topics for discussion in open session.
- 27 The Fire Chief's realignment plan was presented to council in open session at the next council meeting on October 26, 2015 and was the subject of public debate at that time.

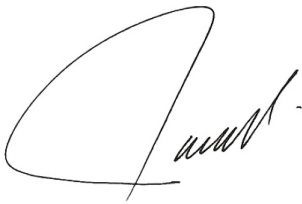
Opinion

- 28 Council for Sault Ste. Marie did not contravene the *Municipal Act, 2001* on October 13, 2015, when it went in camera to discuss the potential realignment of the city's fire services. The discussion fell within the closed meeting exception for labour relations or employee negotiations in s. 239(2)(d) of the Act.

⁵ *St. Catherines (City) v. IPCO*, 2011 ONSC 2346 at para 42.

Report

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



Paul Dubé
Ontario Ombudsman