

April 17, 2013

Natalie Bray
Administrative Assistant to CAO
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON P5A 1X5

Dear Ms. Bray,

Re: Closed Meeting Complaint – January 29, 2013 Closed Meeting of the Economic Development Committee

I am writing further to my conversation with you and Councillor Tom Farquhar on April 17, 2013 about the outcome of our review of a complaint that the Economic Development Committee held a closed session on January 29, 2013 to discuss the structure of a proposed Nuclear Waste Management Organization public liaison committee (liaison committee). The complaint alleged that the subject matter discussed in closed session did not fall within the “personal matters” exception that was cited as the reason for closing the meeting to the public.

The *Municipal Act, 2001* requires that all meeting of Council, Local Boards, and their Committees are open to the public, with limited exceptions. The Economic Development Committee is a Committee of Council comprised of the Mayor and three Councillors. Eight “resources” or non-voting members also sit on this committee and provide expert knowledge in certain areas.

As you know, the Ombudsman is the closed meeting investigator for the City of Elliot Lake. In reviewing this complaint our Office spoke with you, the Chief Administrative Officer (CAO), and the Committee members who attended the January 29, 2013 Closed Meeting – Councillors Tom Farquhar, Sandy Finamore, and Chris Patrie. The Mayor was not in attendance. In addition, our Office obtained and reviewed the January 29 meeting agenda and minutes, as well as considered the relevant sections of the City’s Procedure By-Law and the Act.

The Procedure By-Law states that the rules and regulations contained in it apply to all committees, “with necessary modifications”. The By-Law provides for public notice of meetings, as required by the Act, “by posting the Agenda cover page on the City Hall

Bulletin Boards.” However, it is also the City’s practice to post the meeting agenda on the City’s website.

January 29, 2013 Economic Development Committee Meeting

The Agenda for the January 29, 2013 “Special Meeting” of the Economic Development Committee was posted on the City Hall Bulletin Board and the city’s website on January 23, 2013.

The Agenda stated that the Economic Development Committee would be holding a closed meeting to discuss information about identifiable individuals with respect to the Nuclear Waste Management Organization Community Liaison Committee.

Three of the four members of Council who are on the Economic Development Committee (Tom Farquhar, Sandy Finamore, and Chris Patrie) were in attendance as well as Councillor Ken Rastin. The Mayor was absent. The CAO, Rob deBortoli, you, and two other non-voting members (resources) were also present at both the open and closed sessions.

The public meeting minutes indicate that the Economic Development Committee discussed in the open session the proposed structure of the liaison committee. It was determined at the meeting that the liaison committee should be comprised of the Mayor, one Councillor, and five members of the public and that four community sectors should be represented as resources – Education, Medical, Business, and Seniors.

The Economic Development Committee passed a motion in the open session recommending that Councillor Rastin be appointed as the Council representative on the liaison committee. We note that all liaison committee appointments need to be approved by Council and this was done at the March 11, 2013 public Council meeting.

Prior to moving into closed session on January 29, 2013, the Economic Development Committee passed a resolution to proceed in camera,

“to discuss potential members to the committee. As this matter deals with information about identifiable individuals it may be discussed in closed session as per section 239 (2) (b) of the Municipal Act.”

January 29, 2013 Closed Session

The closed meeting record stated that the Economic Development Committee continued to discuss sector representation for the liaison committee in the closed meeting, and listed potential sector “resource” candidates. The minutes also state that the Economic Development Committee members discussed how to distinguish between resources and members.

As noted, our Office spoke with the CAO, the Recording Secretary, and the three Economic Development Committee members present to discuss what ‘personal’ information was considered in the closed session.

We received consistent information from all individuals interviewed that the Economic Development Committee discussed the qualifications, experience, and character traits (including the ability to remain neutral or impartial in relation to the subject matter) for each of the individuals identified as potential resources for the liaison committee. The Economic Development Committee members also contrasted and compared the qualifications of possible sector resources to determine which candidates may be best suited to act as a resource.

The Economic Development Committee members interviewed advised our office that the discussion about differentiating between ‘resources’ and ‘members’ was not a general discussion but pertained to specific, identified individuals who would be better able to act as a ‘resource’ versus a voting member of the liaison committee. Those we interviewed provided examples of individuals discussed at the closed session who were thought to be able to provide valuable expert knowledge but who would not be suitable to act as voting members because they would not be seen as neutral parties.

Analysis

The *Municipal Act* does not define “personal information” for the purpose of the open meeting requirements. However, under the *Freedom of Information and Protection of Privacy Act*¹ both an individual’s employment history and “personal recommendations or evaluations” and character references are considered personal and it is a presumed invasion of personal privacy to disclose such information.

¹ Freedom of Information and Protection of Privacy Act, R.S.O. 1990, s. 21(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, ... (d) relates to employment or educational history; or ... (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

According to the information obtained in our review, the Economic Development Committee's January 29, 2013 closed meeting discussion focused on identifying potential resources to the liaison committee and considering and evaluating these individuals' employment history, experience, qualifications, and character. As such, the closed meeting discussion falls within the "personal matters" exception to the open meeting requirements.

Closed Meeting Record

As discussed, we noted during our review that the closed meeting record was limited and did not fully capture the substance of discussions held by the Economic Development Committee in the closed session. While the closed meeting record listed prospective resources for the Committee, it did not provide any detail about what was discussed about the individuals that was "personal" that would bring the subject matter within the "personal matters" exception. It appeared from the meeting record that the Committee listed potential resources, commented on the structure of the liaison committee, and discussed how to distinguish between a "resource" and a "voting member", all of which does not qualify for closed meeting consideration. Through interviews with Economic Development Committee members, it became clear that the closed session included discussion and consideration of the qualifications and characteristics of the potential resources.

The Ombudsman's position regarding record keeping is expressed in our 2008 report (*The ABC's of Education and Training*) to the city of Oshawa:

The requirement to keep a meeting record should be interpreted in a manner that is consistent with the intent of the open meeting provisions, which are directed at enhancing the openness, transparency and accountability of municipal government. While extraneous notes and comments not germane to the actual proceedings...should be excluded, the minutes should reflect what actually transpired, including the general nature of the subjects discussed.

Council should maintain a closed meeting record that completely and accurately captures the substance of closed meeting discussions. As a best practice, the Ombudsman recommends that Councils audio or video record meetings in order to ensure a complete and accurate record.

As indicated, we reviewed our findings with you and Councillor Farquhar on April 17, 2013 and provided an opportunity to provide relevant feedback and any additional pertinent information.

We asked that this letter be included on the next public Council meeting agenda scheduled for April 22, 2013, and that a copy be made available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team