

June 17, 2013

Mayor Bob Bratina and
City Clerk Rose Caterini
City Hall
71 Main Street W., 1st Floor
Hamilton, ON L8P 4Y5

Dear Mayor Bratina and Ms. Caterini,

Re: Complaint about January 23, 2013 Closed Council Meeting

I am writing further to our conversation on June 14, 2013 regarding our review of a complaint that Council held an improper closed meeting on January 23, 2013 to discuss a contract with consultant Dialogue Partners that was hired by the City of Hamilton to conduct a public outreach project entitled, "Our Voice, Our Hamilton".

In mid-January 2013, members of the public raised complaints on Twitter about certain aspects of the public outreach project and Dialogue Partners' performance. The issue was brought before Council in both public and private sessions in January 2013, including the January 23, 2013 closed session.

The complainant alleged that, since the terms of the contract were already public knowledge, there was no need to discuss the issue behind closed doors. We also received a complaint that the subject matter discussed by Council extended beyond receiving advice from the Solicitor, which was the reason cited for closing the meeting, and that Council's discussions included deliberations about how to proceed with respect to the contract.

As you know, the *Municipal Act, 2001* (the Act) requires all meetings of Council, Local Boards, and their Committees to be open to the public, with limited exceptions. In reviewing this complaint, our Office communicated with the Mayor and his Chief of Staff, Councillors Brad Clark, Judi Partridge, and Brenda Johnson, as well as the Deputy Clerk, and the Legislative Coordinator, who were in attendance at the January 23, 2013 meeting.

We also obtained and reviewed the meeting documentation, the video of the public Council meeting, and the relevant sections of the Procedure By-Law and the Act.

January 23, 2013 Closed Session

The Agenda for the January 23, 2013 regular Council meeting indicated that two items would be discussed in camera under the “personal matters” exception to the open meeting requirements under s. 239 (2) (b) of the Act.

The video of the public meeting and the meeting minutes (page 5) show that a majority of Council voted to refer a General Issues Committee report concerning “Our Voice, Our Hamilton” for closed meeting consideration in order to obtain advice from the Solicitor. Councillor Clark, Partridge, and Johnson, objected to referring the matter to a closed session on the basis that the terms of the City’s contract with Dialogue Partners were already public knowledge. According to the information provided, Council discussed the public complaints at a January 14, 2013 General Issues Committee meeting and voted to make the terms of the contract with Dialogue Partners public.

The video of the January 23, 2013 public session shows that the Solicitor stated that, in his view, the closed session was to be held because the City needed to make a decision with respect to continuing the contract with Dialogue Partners and that such decision may involve the receipt of legal advice about any implications of that decision. Councillors McHattie and Whitehead stated that they wished to proceed in camera to receive legal advice about any modifications to the contract.

Later in the meeting (7:30 p.m.) Council voted to proceed in camera to consider the two personal matters on the agenda “and also to receive advice that is subject to solicitor-client privilege, including communications necessary for that purpose.”

The closed meeting record states that the Solicitor provided advice to Council with respect to any implications of amending the contract.

We were advised by the Mayor and staff interviewed that Council met in camera under the solicitor-client privilege exception to receive advice from the Solicitor to ensure that any decisions regarding altering the contract with Dialogue Partners did not present any potential risks for the City.

We were also informed that, at the beginning of the closed session, the Solicitor identified options for Council to consider with respect to the and any risks associated

with those options. Estimates about how long the meeting lasted ranged from thirty to forty-five minutes and we received fairly consistent information that the Solicitor presented for about fifteen minutes, following which Council members reportedly discussed the solicitor's legal advice and how best to proceed in light of that advice. We were advised that the Solicitor remained for the duration of the closed session and responded to any questions that arose.

We also received information, and the closed meeting record confirmed, that Council directed the City Manager to work with the City Solicitor to negotiate a change to the agreement with Dialogue Partners.

Analysis

Council is permitted under s. 239 (2) (f) of the Act – “advice that is subject to solicitor-client privilege” -- to review or receive legal advice in a closed meeting. The members of Council and staff members interviewed all agreed that the Solicitor was at the January 23, 2013 closed session and provided advice concerning the ramifications of any decision to alter or terminate the City's contract with Dialogue Partners. Council then provided direction to the Solicitor and City Manager.

The provision of advice and direction to the Solicitor as well as any discussions about the advice received fall within the solicitor-client privilege exception. Although Council has the option to waive solicitor-client privilege if it deems it warranted, Council did not exercise that option in this case.

You confirmed that this letter would be included on the June 26, 2013 public Council meeting agenda and a copy made available to the public on your website.

We would like to take this opportunity to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team