

April 18, 2012

Vanessa Latimer, Municipal Clerk
Township of Leeds and the Thousand Islands
1233 Prince Street
P.O. Box 280
Landsdowne, ON K0E 1L0

Dear Ms. Latimer,

Re: Closed Meeting Complaint: Council Remuneration

I am writing further to our conversation of April 5, 2012 regarding the results of the Ombudsman's review of complaints received that Council may have discussed a remuneration increase at a closed meeting based on the fact that Council briefly voted to approve a significant increase at a February 13 open meeting without any discussion on the matter.

The Ombudsman is the closed meeting investigator for the Township of Leeds and Thousand Islands (the Township). In reviewing this complaint, our Office spoke with you and reviewed the agendas and minutes for the February 13 and January 23, 2012 meetings, in addition to the Township's Procedure By-Law and sections of the Municipal Act, 2001.

As you know, the Municipal Act (the Act) requires that all meetings of Council, local boards, and their committees shall be open to the public, with limited exceptions.

According to the public minutes of the February 13, 2012 meeting, Council discussed and passed a by-law "to provide for the remuneration of the Mayor, Deputy Mayor, and Councillors" during open session. The minutes do not indicate that any discussion or debate took place on the matter. Media reports advised that the approved increase was approximately sixty per cent.

You confirmed that Council did hold an in-camera discussion pertaining to remuneration on January 23, 2012. The Agenda for the January 23, 2012 meeting indicated that Council would hold a meeting in-camera to discuss "a personal matter about an

identifiable individual, including municipal or local board employees”. The agenda does not provide any additional information about the nature of the matter to be discussed.

Based on the information in the public minutes for the January 23, 2012 meeting, Council resolved in open session to move in-camera under the cited exception.

The Mayor, Deputy Mayor, three of five councilors, the Clerk and Chief Administrative Officer were present at the meeting. The in-camera minutes confirm that Council considered options for remuneration adjustments based on a presentation and report prepared by the Chief Administrative Officer (CAO). According to the minutes, the CAO provided a comparison of remuneration paid in neighbouring municipalities and recommended a cost of living increase to reflect the mid-range remuneration level (option C).

Council then voted in-camera to approve the recommended option, which included a cost of living increase to reflect increases municipal staff received between 2008 and 2011. Following the vote, the minutes state that, “Council directed staff to proceed with Option C for Council remuneration.”

According to the minutes of the open meeting, Council did not report on this matter publicly following the closed session.

You advised our Office, and it is reflected in the report discussed in the closed meeting, that the reason for holding the meeting was to seek confirmation of the Council remuneration figures in order to include them in the draft 2012 budget. You said that the draft budget was then discussed at public meetings later in January, February and March.

Based on the information provided, after some members of the public objected to the increases in remuneration announced following the February 13 meeting, Council revisited the matter at an open meeting on March 12, 2012. You said that the public was able to provide input and comments on a By-Law to amend Council remuneration at that time. The By-Law, which resulted in spreading the approved increases over three years, versus awarding a lump sum increase effective 2012, was ultimately passed at a March 26 2012 open council meeting.

Findings and Recommendations

The Township entered an in-camera session on January 23, 2012, to discuss Council remuneration under the exception of “personal matter about an identifiable individual”.

The Agenda did not provide any additional information to the public about the nature of the matter to be discussed in closed (ie. Council remuneration).

As discussed, Council remuneration is not considered a matter that may be discussed in a closed meeting under the exception of “personal matter about an identifiable individual, including municipal or local board employees”.

In relation to a similar complaint about Orangeville Council discussing remuneration in-camera, Closed Meeting Investigator, Amberley Gavel Ltd, stated in a 2008 report:

The setting of the remuneration and expense policy for members of Council is not a matter that falls within one of the exceptions in section 239 of the Municipal Act...The public must at a minimum have the opportunity to observe the decision making process by Council. Even more appropriate is for the public to have the opportunity to be given adequate notice and the background information so that public comment could be received before any by-law was enacted by Council. The setting of remuneration is a topic of considerable public interest.

It is noted that Council voted on the actual remuneration By-Law at a February 13, 2012 public meeting, however, complaints to our Office were generated because there was no discussion or background provided to the public during that meeting and questions arose about how the increase amount was determined.

In regard to the vote conducted in-camera, under s. 239 (5) of the Act, “ a meeting shall not be closed to the public during the taking of a vote’ , unless under s 239 (6),

subsection (2) or (3) permits or requires the meeting to be closed to the public; and the vote is for a procedural matter of for giving directions or instructions to officers, employees or agents of the municipality....

Article 2.10 and 2.11 of the Township’s Procedural By-Law confirm the prohibition against voting in closed meetings, subject to the exceptions identified above.

As stated above, the closed meeting to discuss Council remuneration was not permitted under the exceptions to the open meeting requirements enumerated in s. 239 (2) of the Act. In addition, although the vote is described in the meeting record as a “direction to staff to proceed with Option C for Council remuneration”, Council is clearly voting to award itself a remuneration increase, which is a substantive decision and not merely a direction to staff to administer the decision.



Therefore, both the subject matter and the vote taken contravened the open meeting requirements of the Act and the Township's Procedural By-Law.

During our discussion, we recommended that the Township carefully consider what topics are discussed in-camera to ensure the subject matter is appropriate for a closed meeting in that it genuinely reflects the exception cited authorizing the closed meeting. Further, Council should scrutinize any votes taken in-camera to be sure that they are actually procedural in nature or direction to staff, and not simply framed as such. If there is a substantive decision underlying the direction to staff, it should likely be conducted in public.

In addition, our Office noted in the course of the review that the Township's agendas generally did not provide any information about the nature of topics to be discussed in-camera. As previously suggested to the Township in a letter from our Office dated October 5, 2009, "Council should generally describe closed meeting items with as much detail as possible, while at the same time balancing the need to protect confidential and sensitive information from disclosure."

When we spoke, you expressed general agreement with our observations and agreed to discuss our review with Council. We ask that the letter be included on the Agenda for an open meeting of Council and made available to the public.

Under the circumstances, we will not be pursuing further review of this complaint. I would like to take this opportunity to thank you for your cooperation during this review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team