

February 14, 2013

Gary Murphy
Commission Secretary
Niagara District Airport Commission
468 Niagara Stone Road
Niagara-on-the Lake, ON L0S 1J0

Dear Mr. Murphy,

Re: Complaint regarding December 9, 2012 Closed Meeting Between Members of the Niagara District Airport Commission and Members of St. Catharines Council

I am writing further to our conversation on January 31, 2013 about the results of our review of a complaint that members of the Niagara District Airport Commission (the Commission) improperly met behind closed doors with members of St. Catharines Council on December 9, 2012.

The complainant alleged that you invited members of the Commission and St. Catharines Council to your home on December 9, 2012 in order to discuss the St. Catharines Council's November 26, 2012 resolution to amend the role of the Niagara District Airport Liaison Committee to one of oversight in respect to the Commission. Under the former governing agreement, the Committee was designated as liaison between the Commission and the three municipalities for which it manages the airport (Niagara Falls, St. Catharines, and Niagara-on-the-Lake).

As you know, the *Municipal Act, 2001* requires all meetings of Council, Local Boards, and their Committees to be open to the public with limited exceptions. The Commission is a nine-member joint municipal service board, which the Act includes in the definition of local board. As such, Commission meetings are subject to the open meeting requirements.

Procedure By-Law

The *Municipal Act* requires municipalities and Local Boards to provide for public notice of meetings within the Procedure By-Law. The Commission's Procedure By-Law states that regular meetings of the Commission are held on the third Thursday of every month at

7:00 p.m. and public notice of all meetings is to be given by posting the schedule of regular meetings and notice of special meetings on the Commission's website at least 48 hours in advance of the meeting.

December 9, 2012 Meeting

You advised our Office, consistent with media reports, that federal MP Rick Dykstra's office arranged a meeting to bring members of the Commission and certain members of St. Catharines Council (the Council) together in order to provide the Commission with an opportunity to express to Council its views on Council's decision to support amendments to the tri-municipal agreement governing the operations and mandate of the Niagara District Airport Liaison Committee, to allow the Committee to provide direction (rather than advice) to the Commission.

You stated that Commission Chair Reudi Suter was able to present his views to Niagara Falls and Niagara-on-the-Lake Council prior to a formal vote being taken on the amendments. However, the Commission was not given an opportunity to present its position to St. Catharines Council.

According to the information received, MP Rick Dykstra's municipal representative, Dave Schulz, invited six members of the thirteen-member Council to attend a meeting at your home, four of whom attended - Councillors Matthew Harris, Matthew Siscoe, Len Stack, and Greg Washuta.

The Commission members who attended in addition to you were Chair Reudi Suter, Vice Chair Henry Zwolak, and Treasurer Bob White.

You advised that Mr. Schulz facilitated a discussion between the parties that included an overview of the Commission's history and relationship with the Niagara District Airport Liaison Committee and the Commission's views on the intended and preferred role the Committee should play.

You said that public notice of the meeting was not provided as it was arranged by the MP's Office and was an informal gathering at which neither quorum of the Commission or of St. Catharines Council was in attendance.

Analysis

For the purposes of the open meeting requirements, a meeting is defined as any "regular, special or other meeting of a council, of a local board or of a committee of either them."

As discussed, based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

The information provided indicates that four of the nine Commission members met informally with four of thirteen St Catharines Council members to share information rather than to exercise the power or authority of Council or the Commission. The meeting was held to inform members of St Catharines council on the Commission's viewpoint on Council's recent decision to support proposed amendments to the Niagara District Airport Liaison Committee's mandate. No council or commission business was advanced at the meeting. Consequently, this informal meeting was not required to follow the open meeting requirements of the Act.

However, as discussed, while the meeting did not technically violate the Act, closed meetings between members of Council and Local Boards have the potential to fuel public speculation and mistrust. As such, the commission may wish to consider a more transparent and open approach to such gatherings in the future where practicable. In this case, in order to avoid public speculation, the Commission might have considered inviting members of St. Catharines Council to a public meeting of the Commission to hear its concerns, particularly since the Commission's view on the mandate changes was already presented at public Council meetings held in Niagara Falls on November 27, 2012 and in Niagara-on-the-Lake on December 3, 2012.

When we spoke on January 31, 2013 you said that this letter would be added to the Commission's next public meeting agenda on February 21, 2013.

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

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team