



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

March 21, 2013

via regular mail and email

Mr. Colin Briggs, Chief Administrative Officer
City of St. Catharines
P.O. Box 3012, 50 Church St.
St. Catharines, ON
L2R 7C2

Mr. Mike Galloway, Chief Administrative Officer
Town of Niagara-on-the Lake
1593 Four Mile Creek Rd.
P.O. Box 100
Virgil, ON
LOS 1T0

Mr. Ken Todd, Chief Administrative Officer
City of Niagara Falls
4310 Queen St.
Niagara Falls, ON
P.O. Box 1023

Dear Messrs. Briggs, Galloway and Todd,

RE: Ombudsman review

I am writing further to our conversation of March 14, 2013 regarding the results of the Ombudsman's review of three complaints made to our Office, in its role as closed meeting investigator.

Two complaints alleged that six of the seven members of the Niagara District Airport Liaison Committee (the Committee) met on September 11, 2012 to discuss and advance Committee business. Two of the complaints also alleged that the Committee failed to provide notice of its meetings, as required by the *Municipal Act, 2001* (the Act).

As you know, the Act requires that all meetings of council, local boards, and their committees, are open to the public with limited exceptions. The Act defines "committee" for the purpose of the open meeting requirements as, "any advisory or other committee,

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subcommittee or similar entity of which at least 50 per cent of the members are also members of one or more councils or local boards.” (s. 238(1)).

The Niagara District Airport Liaison Committee was established through a funding agreement between four municipalities: The City of St. Catharines, The City of Niagara Falls, The Town of Niagara-on-the-Lake, and the City of Thorold. The Committee is to be composed of the Mayors and Chief Administrative Officers of the participating municipalities, as well as the Chair of the Niagara District Airport Commission, a local board responsible for managing the Niagara District Airport. However, at the time of the September 11, 2012 meeting, the City of Thorold had withdrawn from the agreement.

The funding agreement establishes the Committee, as an advisory body, to act as a resource to the Niagara District Airport Commission, and serves as a liaison between the Commission and the three participating councils, keeping the respective councils informed of Commission activities.

Since more than 50 percent of the members of the Committee are members of one or more councils or local boards, the Committee meets the definition of “committee” in the *Municipal Act*.

In reviewing this complaint we spoke with the three of you, and reviewed documents considered at the September 11 gathering. We also considered relevant sections of the Act.

The September 11 Meeting:

You confirmed that on September 11, the Mayors and Chief Administrative Officers of Niagara Falls, St. Catharines, and Niagara-on-the-Lake met for approximately 1 hour. The meeting was not open to the public, and notice was not provided

You advised that the September 11 meeting was not considered to be a meeting of the Committee, but rather a meeting of the three Mayors and Chief Administrative Officers of participating city councils to discuss potential changes to the airport funding agreement, given the departure of the City of Thorold, and concerns about the Commission’s failure to accept advice from the funding municipalities. The Chair of the Commission was not present for this meeting.

At the conclusion of the discussion, one of the Chief Administrative Officers was tasked with drafting a proposal for a new funding agreement to be presented to the three participating councils.

After the September 11 discussion, the Chief Administrative Officers presented staff reports to their respective councils at public meetings, held in November and December

2012. At two of these meetings, representatives of the Niagara District Airport Commission attended to address council and answer questions. Each council considered and debated a report of their respective Chief Administrative Officer recommending that draft changes to the funding agreement be implemented. All three councils approved a new agreement with changes to reflect the departure of the City of Thorold as a funding partner, to provide clarity regarding changes to the Airport's budget, and to alter the role and composition of the Committee, which is now comprised of the Mayors and Chief Administrative Officers only.

Analysis

After considering the principles behind the open meeting law, as well as the relevant case law, the Ombudsman has developed the following definition of a "meeting" to assist in determining whether a gathering is subject to the open meeting provisions. To come within the *Municipal Act, 2001* requirements:

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.

On September 11, 2012, the Mayors and Chief Administrative Officers of three municipalities met to discuss changes to the funding agreement relating to the Niagara District Airport. Although these individuals represented six of the seven members of the Niagara District Airport Liaison Committee, we are satisfied that this discussion did not constitute a meeting of the Committee, which would be subject to the Municipal Act open meeting requirements.

The three Mayors and Chief Administrative Officers who participate on the committee held a discussion in their capacity as municipal representatives in order to review issues relevant to their respective municipalities. They were not meeting in their capacity as Committee members in order to discuss or further Committee business. It is also noted that the Committee has no authority to change the funding agreement including its own mandate and composition, as this falls within the purview of the participating councils.

The municipal representatives who participate on the committee met to discuss potential changes to the funding agreement to be put forward to their respective councils. These proposed changes were ultimately presented to the three participating councils and subject to debate during public meetings.

Notice

The complaint to our Office also alleged that the Committee does not provide notice to the public of its meetings. During our review we were advised that, although Committee



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meetings are open to the public, the Committee has not been following a practice of posting public notice of any of its meetings.

It is a requirement of the Act that councils, committees and local boards provide public notice of all meetings. In a previous letter our Office sent to the Committee as a result of a complaint about an August 2009 meeting, we noted that the Committee is required follow the open meeting requirements, including providing notice of its meetings. Regardless, the Committee has continued to hold meetings without notice. In doing so, the Committee has been violating the Act.

We were advised that the Committee will be implementing new terms of reference and procedures, including a new practice of posting notice of its meetings on the Niagara District Airport's website. We request that you update our Office when these changes are implemented.

When we spoke I requested that you share this letter with the Committee as soon as possible, and in any event no later than the next Committee meeting.

Thank you for the cooperation our Office received during this review.

Sincerely,

Michelle Bird
Legal Counsel
Open Meeting Law Enforcement Team