



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

October 11, 2013

Clerk Malcolm White and
Deputy Clerk Rachel Tyczinski
City of Sault Ste. Marie
99 Foster Drive, P.O. Box 580
Sault Ste. Marie, ON P6A 5N1

Dear Mr. White and Ms Tyczinski,

Re: Closed Meeting Complaints – Procedure By-Law Review Committee and Agenda Review Committee

I am writing further to our discussion on October 8, 2013 regarding the outcome of our review of complaints that (1) the Procedure By-Law Review Committee met behind closed doors to discuss proposed amendments to the City's Procedure By-Law and that, (2) the Agenda Review Committee regularly holds closed meetings that contravene the open meeting requirements.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of councils, local boards and their committees be open to the public with limited exceptions. For the purposes of the open meeting requirements a "committee" is defined as "any advisory or other committee, subcommittee or similar entity of which at least 50% of the members are also members of one or more councils or local boards."

In reviewing this complaint, our Office spoke with the Clerk and the Deputy Clerk and reviewed the City's Procedure By-Law and relevant sections of the Act.

Procedure By-Law Review Committee

Background: The role of the Procedure By-Law Review Committee is to review the City's Procedure By-Law in the course of each Council's term and recommend any revisions for Council's consideration. On January 23, 2012 Council passed a resolution appointing the following members to the Committee: The Mayor, two members of Council (Councillors Christian and Walkins), the City Solicitor, the Chief Administrative Officer, and the Clerk. We were subsequently informed that the Deputy Clerk also

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participates in the meetings but she was not included in the list of original appointees due to an oversight. The Procedure By-Law Committee met on November 1, 2012 and January 28, 2013, and presented its recommended revisions to Council at a public council meeting on February 19, 2013.

Council postponed approving the proposed by-law revisions at that time as it contemplated the creation of a Deputy Mayor position and members wanted to gather additional information and seek public input on this issue.

After receiving and reviewing a complaint that the Procedure By-Law Review Committee was not adhering to the open meeting requirements, our Office issued a letter on May 14, 2013, stating our finding that the Procedure By-Law Review Committee, as comprised, was required under both the Act and the City's Procedure By-Law (99-100) to hold its meetings in public.

Current Complaint: The complainant alleged that members of the Procedure By-Law Review Committee gathered sometime between receiving our May 14, 2013 letter and prior to the June 24, 2013 regular Council meeting to discuss bringing forward additional amendments to the Procedure By-Law.

In addition to the Committee's original recommendations in the report submitted to Council on February 19, 2013, the June 24, 2013 report submitted by the Clerk included the following recommendations:

- That the Procedure By-Law define "committees of council," noting that task forces composed of a majority of staff members are not intended to be subject to the provisions of the Act.
- That Council consider the creation of an Acting Mayor position to be implemented on a rotational basis [this revoked the previous recommendation to appoint a Deputy Mayor].

The report states that the recommendation to define "committees of council" arose based on our Office's findings in May that the Procedure By-Law did not include a definition of the term. In regard to the creation of an Acting Mayor position, the Clerk notes in the June 24, 2013 report that the amendment was included for Council's consideration based on the debate that occurred on the matter at a public council meeting on June 10, 2013, and the fact that Council defeated a motion to create a Deputy Mayor position.

The Clerk and Deputy Clerk both advised our Office that there were no further meetings of the Procedure By-Law Review Committee after January 28, 2013. They said the changes with respect to defining committees arose as a result of the Ombudsman's May 2013 findings that the Procedure By-Law did not define "Committees" except for "special committees," and they wanted to clarify that Committees of Council are intended to be defined as per the Act. The Clerk said that he recalled discussing this issue with the Mayor and he and the Deputy Clerk then drafted the proposed amendment to the Procedure By-Law for review by Council at the June 24, 2013 public Council meeting.

The Clerk said he notified the two Council members on the Committee that he intended to submit a revised report to Council on June 24, 2013.

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.

Based on the information received, the Clerk and Deputy Clerk drafted the additional proposed changes to the Procedure By-Law based on new information that came to their attention after the Committee's recommendations were initially presented to Council on February 19, 2013. The additional recommendations arose after our Office issued a letter which provided feedback about how the existing Procedure By-Law applied to "special committees," and after Council publicly debated the addition of a Deputy Mayor role and determined that an Acting Mayor position was preferable. The Clerk and Deputy Clerk made the amendments to the recommendations to reflect this new information. Although the Clerk notified the Mayor and the two councillors on the Procedure By-Law Review Committee that the additional recommendations were being brought forward, these recommendations were submitted by staff to Council for approval.

Given the above, we do not find that the Procedure By-Law Review Committee held an illegal closed meeting between May 14 and June 24, 2013.

Agenda Review Committee

As stated, our Office also received a complaint that members of the public were not permitted to attend meetings of the Agenda Review Committee, and that this was a contravention of the open meeting requirements.

We received a similar complaint in 2010. What was then known as the “Agenda Setting Review Committee” was comprised of three members of Council and two staff members, whose role was to determine what matters appeared on Council meeting agendas. Our review determined that the Agenda Setting Review Committee, as comprised, was required to comply with the open meeting requirements.

However, since that review took place, Council amended its Procedure By-Law (By-Law 2011-41 and 2013-100) and changed the composition of the committee. The present Agenda Review Committee includes the Mayor and two staff members – the Chief Administrative Officer and the Clerk. The role of the Committee remains the same: “Deciding the subject matters and items to appear on the Council agenda.” If the Agenda Review Committee denies a person’s request for a delegation to Council, that individual can ask members of Council to consider passing a motion to consider the matter.

Analysis

As indicated, for the purpose of the open meeting requirements, the *Municipal Act* defines a Committee of Council as “any advisory or other committee, subcommittee, or similar entity of which at least 50% of members are also members of one or more councils or local boards.” The City’s Procedure By-Law defines committees according to the Act’s definition.

As currently composed, the Agenda Review Committee is not a Committee of Council, as fewer than 50% of the members are members of Council. As such, the Committee is not obligated to comply with the open meeting requirements.

During our call on October 8, 2013, we shared the outcome of our review with you and provided you with an opportunity to provide feedback. You stated that you had no concerns with our findings.



You also agreed that this letter would be shared with Council at the October 21, 2013 public Council meeting and a copy would be made available to the public on your website as part of the meeting agenda package.

Thank you for your co-operation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team