

January 30, 2012

Mayor Marcel Guibord
The City of Clarence-Rockland
1560 Laurier Street
Rockland, ON
K4K 1P7

Re: Ombudsman Review of Closed Meeting Complaints

I am writing further to our conversation of January 9, 2012, concerning the results of the Ombudsman's preliminary review of one complaint and one inquiry made to our office regarding closed meetings.

The complaint to our office alleged that a series of e-mails that recently became available to the public demonstrated that some council members discussed council business outside of regular meetings, and behind closed doors.

Also, some councillors contacted our office to inquire whether meetings of certain bodies – including the Procedure of Council Review Committee – had to be held in accordance with the open meeting requirements.

During the course of our review of these complaints we spoke with you as well as members of council, and obtained relevant documentation including documents pertaining to the composition of committees of council. We also reviewed provisions of the *Municipal Act, 2001* (the "Act") and the City's Procedure By-law (By-law 2004-40).

During our conversation on January 9 we summarized the results of our preliminary review and provided some suggestions regarding best practices with respect to future closed meetings, which we asked you to share with council.

Complaint regarding a series of e-mails that allegedly demonstrate that informal closed meetings took place

The complaint to our office alleged that a series of emails, which were recently posted in a public forum, suggested that some newly elected council members met informally, in private, with a local lawyer, to discuss council business.

Some of the emails dated from November 2010 prior to the council members being sworn in, others were sent in December 2010, after the new council had been constituted.

These emails indicate that the four members of council in question met with a particular lawyer on December 4 and December 12, 2010, to discuss the wording of a new by-law, a legal matter, and an upcoming closed-session item.

Two of the involved council members confirmed that they did meet with an outside lawyer for advice on a number of matters that they wished guidance on as new members of council.

When we spoke on January 9 we noted that the Ombudsman has provided the following definition of “meeting” for the purpose of the open meeting 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.

While the four members of council involved in these meetings did not represent a majority of council members, these council members were seeking information that would undoubtedly influence their participation in future council decision-making. In holding separate closed-door meetings, they excluded not only the public, but also their fellow councillors. This situation is inconsistent with the principles of openness and transparency, and at a minimum, these gatherings violated the spirit of the open meeting provisions.

Although s. 239(2)(f) of the Act allows council members to proceed *in camera* for the purpose of discussing matters that are subject to solicitor-client privilege, this can only be done once all procedural requirements have been met, including passing a resolution describing the general nature of the matter to be considered. Individual council members should generally limit their discussions of council business to formal meetings held in compliance with the *Municipal Act*.

Inquiry from members of council regarding meetings of certain committees

Three members of council contacted our office to request that our office review “informal” meetings of certain committees or members of council and staff. Specifically, it was noted that some committees of council only consist of one councillor and one member of staff; these two-person committees regularly hold

informal meetings that are not advertised to the public. Similarly, it was also noted that the Procedure of Council Review Committee meets informally, and in the absence of the public.

You provided our office with a list of all the City's committees, and their composition. With respect to the two-person committees (one member of staff and one member of council) that were referenced in the complaint, you advised that these do not operate as committees of council; they are merely groupings of one councillor and a director of a particular municipal department. The purpose is to ensure that at least one member of council knows what is happening in each municipal department. They are referred to as "committees" but are not treated as committees of council; there are no formal meetings, agendas, or terms of reference.

With respect to the Procedure of Council Review Committee, we understand that this committee is made up of three councillors; the Mayor; the CAO and the Clerk. The CAO and Clerk are non-voting members of the Committee. The purpose of the Committee is to allow drafts of the new procedure by-law to be circulated to members of council, who then provide their comments.

You advised our office that there have been two or three meetings of the Procedure of Council Review Committee at Town Hall, and that they are held irregularly depending on when drafts are ready for review. There are no agendas or minutes for the meetings, and no terms of reference for the Committee.

Analysis:

The Act defines a "committee" for the purpose of the open meeting requirements as: any advisory or other committee, 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))

With respect to the committees that involve one member of council meeting with a member of municipal staff to discuss a particular municipal department, we noted that these "committees" do meet the composition requirements of s. 238(1) of the Act (ie. They consist of at least 50% Council members). However, they do not appear to be engaged in the sort of discussions that would require their meetings to be open to the public. In his report regarding the City of Greater Sudbury, the Ombudsman noted:

Here in Ontario, elected municipal officials...establish and oversee administrative policies, practices and programs that are required to implement the decisions of council. But they are not given the power to do the hands-on administration of a municipality; it is the officers and employees of the municipality who implement or administer council's policies and program



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choices and carry out the duties assigned by a municipality. Municipal politicians do interact with administrators, of course, but when doing so they are not exercising power in a way that requires “sunshine laws.” They are managing existing policies or otherwise engaged in administration.

It appears that the function of these two-person “committees” is merely to ensure that council remains apprised of the business of various municipal departments. As such, these meetings do not appear to be subject to the open meeting requirements of the Act.

Regarding the Procedure of Council Review Committee, we noted that this committee also consists of more than 50% Council members, and therefore meets the composition requirements of s. 238(1) of the Act. This committee is also engaged in an important policy-making function; namely, deciding which draft of the new procedure by-law will be presented to council for approval. It is clear that the purpose of this committee is to lay the groundwork for the future decision-making of council. Accordingly, this committee is required to follow the open meeting provisions, including providing notice of meetings, and only closing meetings to the public when the subject matter being discussed falls without one of the exceptions outlined in s. 239.

During our discussion you indicated general agreement with the observations and suggestions made by our Office and a willingness to share our comments with Council. We would appreciate your notifying us once this has occurred and advising us of any steps that Council intends to take to address these matters. We will also be notifying the complainant of the results of our review.

I would also like to take this opportunity to thank you for the cooperation our Office received during this review.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Michelle Bird
Legal Advisor
Open Meeting Law Enforcement Team