

January 9, 2020

BY EMAIL

Mayor and Council
c/o Tara Stephens, Clerk
60 East Main Street
Welland, Ontario L3B 3X4

Dear Mayor and Members of Council for the City of Welland:

Re: Closed meeting complaint

I am writing regarding a complaint received by my Office about a closed meeting held by council for the City of Welland on September 17, 2019. The complaint alleged that council's discussion did not fit within the "personal matters about an identifiable individual" closed meeting exception in the *Municipal Act, 2001*.

Based on the information available as referred to below, council was entitled to go into closed session on September 17 to discuss the matter raised in this complaint. Accordingly, I have determined that I will not be reviewing the complaint further. However, I would like to provide you with best practice suggestions to assist the municipality with future meetings.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public. Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities and local boards that have not appointed their own. I am the closed meeting investigator for the City of Welland.

Review

In investigating this complaint, my Office spoke to the complainant and with city staff. My Office also reviewed the agenda, meeting minutes, and the closed session minutes and the materials that was distributed to the council members, in addition to the city's procedure by-law.

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Application of the “personal matters” exception

The complainant told my Office that council for the City of Welland had an *in camera* discussion on September 17, 2019 that did not fit within the “personal matters” exception, which was cited to close the meeting to the public.

The agenda and minutes for the September 17 meeting indicate that council closed the session under section 239(2)(b) of the Act, which allows *in camera* discussions about “personal matters about an identifiable individual, including municipal or local board employees.” The agenda stated that council would be moving into closed session to discuss “Citizens appointment to the following: Arts and Culture Advisory Committee, Senior Citizens Advisory Committee.”

The closed session minutes indicate that council discussed appointments to two committees: the Arts and Culture Advisory Committee and Senior Citizens Advisory Committee.

For the “personal matters” exception to apply to an *in camera* discussion of council, it must reveal personal information about an identifiable individual. It must also be reasonable to expect that disclosing the information publicly could lead to the individual to be identified.¹ Furthermore, the qualifications of potential candidates for appointment to municipal committees, including information about work history and volunteer experience, can be considered personal matters.²

The municipality advised my Office that the council members discussed the applicants’ application and résumé, which included a description of their work history, volunteer experience and education. My Office was also informed that the discussion about the applications to the city committees lasted approximately five minutes. This discussion involved personal information about the applicants and was appropriate for consideration in closed session under the “personal matters” exception.

Resolution to proceed into closed session

The minutes for the September 17, 2019 meeting indicate that the resolution to go into closed session did not provide a description of the general nature of the matters to be considered *in camera*.

Subsection 239(4) of the *Municipal Act, 2001* requires municipalities to pass a resolution to state the fact of a closed meeting and the general nature of the topic to be discussed, before proceeding *in camera*. The Ontario Court of Appeal has recognized that, “the resolution to go into closed session should provide a general description of the issue to be discussed in a way

¹ *Ontario (Ministry of Correctional Services) v Goodis* [2008], OJ No 289 at para 69.

² *Woolwich (Township of) (Re)*, 2015 ONOMBUD 24 at para 60, online: <<https://bit.ly/36su26l>>. See also *Bracebridge (Town of) (Re)*, 2015 ONOMBUD 10, at paras 37-41, online: <<https://bit.ly/35T7cVn>>.

J. Paul Dubé, Ombudsman

that maximizes the information available to the public while not undermining the reason for excluding the public.”³

The meeting resolution to proceed into closed session referred to the “personal matters” exception, but did not describe the general nature of the subject matter to be considered. A more descriptive resolution could have provided greater information to the public without undermining the reason for meeting *in camera*. We note that a description of the general nature of the matters to be discussed was included in the agenda for the meeting.

We spoke with city staff on November 12, 2019, who agreed that, going forward, all resolutions to proceed into closed session would contain a general description of the topics to be discussed, to the extent possible without undermining the reason for closing the meeting, in addition to the cited exception.

Conclusion

Council was entitled to go into closed session on September 17, 2019, to discuss the matter raised in this complaint under the stated exception to the open meeting rules.

To assist municipal councils, staff, and citizens, we have developed an online Digest that contains summaries of the Ombudsman’s open meeting cases. This searchable repository was created to provide easy access to the Ombudsman’s past decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the Digest to inform their discussions and decisions on whether a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of previous Ombudsman decisions may be reviewed in the Digest at www.ombudsman.on.ca/digest.

We would like to thank you and your staff for your co-operation during our review.

We ask that this letter be made public at your earliest convenience, and no later than the next council meeting.

Sincerely,


Paul Dubé
Ombudsman of Ontario

cc: Tara Stephens, Clerk (clerk@welland.ca)

³ *Farber v. Kingston City*, [2007] O.J. No. 919, at page 151.