



Ombudsman Report

**Investigation into whether
Council for the Municipality of Whitestone
held an illegal closed meeting on
February 4, 2014**

**André Marin
Ombudsman of Ontario
October 2014**

Complaint

- 1 On June 13, 2014, my Office received a complaint about a closed session held by council for the Municipality of Whitestone at the council meeting on February 4, 2014.
- 2 According to the complainant, council proceeded in camera to discuss filling the position of Chief Administrative Officer. The complainant alleged that these closed session discussions violated the provisions of the *Municipal Act* and should have taken place in open session.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*(the Act), all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the Municipality of Whitestone.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Investigative process

- 7 My Office's Open Meeting Law Enforcement Team (OMLET) reviewed relevant portions of the municipality's procedure by-law and the Act, as well as the meeting materials for the February 4 meeting. They also spoke with the Clerk, the Mayor and the Deputy Mayor.
- 8 My Office received full co-operation in this matter.

The February 4 meeting

- 9** The February 4 meeting began at 7:00 p.m. The agenda indicated that council would be holding an in camera session to discuss “Personal matters about an identifiable individual, including municipal or local board employees to discuss implementation strategy of recommendations from Organizational Review.” In fact, council proceeded in camera three different times during the meeting.
- 10** Council first resolved to proceed in camera at 7:04 p.m. for the purpose of “Personal matters about an identifiable individual including municipal and local board employees; and Labour relations and employee negotiations.”
- 11** While in camera, council discussed an organizational review that had been conducted by a consultant. The review contained information about the performance of identified employees. Council also discussed the pending retirements of two identified individuals.
- 12** The open session resumed at 8:45 p.m. and the mayor excused himself to attend to a personal matter. Council resolved to proceed in camera again at 8:55 p.m. for the purpose of continuing the discussions about personal matters and labour relations.
- 13** The open session resumed again at 9:40 p.m. In open session council considered a motion:

In accordance with the intent of the Municipality’s Personnel Policies that the position of CAO be posted internally for one week. Any applications to be directed to the Mayor.
- 14** The motion was deferred, as the Mayor announced a potential conflict of interest and excused himself from the meeting. The same motion was considered again, except with the direction that applications be directed to the Deputy Mayor. The motion passed.
- 15** The Mayor then returned to the meeting and council resolved to proceed in camera again at 9:55, for the purpose of continuing the discussion of personal matters and labour relations.
- 16** During this portion of the closed meeting, direction was given to two members of council to gather information regarding an internal job posting related to the upcoming departure of an identified staff member.
- 17** The open session resumed again at 10:10 p.m. The meeting adjourned at 10:15 p.m.

Analysis

- 18** The information provided to my Office indicates that the in camera discussions on February 4 pertained to an organizational review, which included specific information about the performance of identified staff members. Council also discussed the details of the retirement of two staff members.
- 19** When reviewing the parameters of the open meeting exceptions, my Office has often considered the case law of the Office of the Information and Privacy Commissioner (the IPC). Although not binding on my Office, these cases can be informative.
- 20** IPC Order MO-2204¹ noted that, in order to qualify as “personal information”, the information must be about an individual in their personal capacity, rather than their professional, official or business capacity. However, information in a professional capacity may qualify as personal information if it reveals something of a personal nature about the individual. In IPC Order MO-2519² the adjudicator found that evaluation and performance information about employees and professionals was personal information.
- 21** In this case, council was discussing information related to the performance of identified employees. These discussions fit within the “personal matters” exception. The discussions also fit within the “labour relations” exception. As noted by the IPC, this exception refers to the collective relationship between an employer and its employees³.

Opinion

- 22** My review established that council for the Municipality of Whitestone did not contravene the *Municipal Act, 2001* during the February 4, 2014 closed session. The discussions that took place fell within the cited exceptions to the open meeting requirements.

Report

- 23** OMLET staff spoke with the Treasurer and Mayor on October 30, 2014 to provide an overview of these findings, and to give the municipality an opportunity to comment. Any comments received were taken into account in preparing this report.

¹ Order MO-2204, Town of Aylmer (June 22, 2007)

² Order MO-2519, Township of Madawaska Valley (April 29, 2010)

³ See Order PO-2057 (October 29, 2002), considering the term “labour relations” in s. 65(6) of the *Freedom of Information and Protection of Privacy Act*

- 24** My report should be shared with council for the Municipality of Whitestone and made available to the public as soon as possible, and no later than the next council meeting.



André Marin
Ombudsman of Ontario