



J. Paul Dubé, Ombudsman

May 19, 2016

BY MAIL

Mayor Brian Bigger and City Council
City of Greater Sudbury
PO Box 5000, STN 'A'
200 Brady Street
Sudbury ON P3A 5P3

Dear Mayor Bigger and members of City Council:

Re: Closed meeting complaint, April 7, 2016

I am writing to you regarding a complaint made to our Office that council for the City of Greater Sudbury held a private “roundtable” meeting with Prime Minister Justin Trudeau on April 7, 2016, contrary to the open meeting rules in the *Municipal Act, 2001*.

Upon review of the complaint and for the reasons outlined below, I have determined that the roundtable did not constitute a meeting for the purposes of the Act and was therefore not subject to the open meeting rules.

Ombudsman jurisdiction

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. The Act designates the Ombudsman as the default closed meeting investigator for municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for the City of Greater Sudbury.

My Office’s Open Meeting Law Enforcement Team reviews closed meeting complaints to determine whether the municipality has complied with section 239 of the Act, and its own procedure by-law. More information about our jurisdiction and how the Open Meeting Law Enforcement Team investigates complaints is available in our guide to open municipal meetings, *The Sunshine Law Handbook*, available online at: <https://www.ombudsman.on.ca/Resources/Sunshine-Law-Handbook.aspx>

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Prime Minister Trudeau's visit to Greater Sudbury

On April 7, 2016, Prime Minister Trudeau visited Greater Sudbury to announce that the federal government will commit \$26.7 million dollars to the city's Maley Drive extension project. The extension will lengthen the existing Maley Drive to create a new east-west corridor across the north end of the city. Immediately prior to the funding announcement, which occurred at city hall, the Prime Minister met with council, two Members of Parliament, a Member of Provincial Parliament, and others in a roundtable session that was closed to the public and the media.

The funding announcement and roundtable were organized by the Prime Minister's office and the Mayor's office. The Mayor's Chief of Staff was the primary contact for the Prime Minister's office. For security reasons, details about the Prime Minister's visit were not disseminated amongst city staff, including the Clerk's office.

Steps taken by our Office

We spoke with the City Clerk and the Mayor's Chief of Staff, who provided us with an overview of events leading up to the Prime Minister's visit and what occurred during the roundtable. We were also provided with a list of the individuals who attended the roundtable. We were advised that, in addition to the Prime Minister and council, two Members of Parliament, a Member of Provincial Parliament, and a representative from FedNor were present. City staff members, staff members for the Members of Parliament and Member of Provincial Parliament, and an RCMP detail were also present. We also reviewed the media coverage of the Prime Minister's visit to Greater Sudbury.

The Mayor's Chief of Staff advised us that the roundtable lasted approximately 45 minutes. During the roundtable, the Mayor made remarks to the Prime Minister about the Greater Sudbury community. Three councillors provided feedback to the Prime Minister directly on issues, including the importance of healthcare to the community and the Build Canada Fund. The Prime Minister acknowledged these comments and gave a statement citing the federal budget and his leadership of the country with respect to municipalities. We were advised that council members did not speak or engage in discussion with each other during the roundtable.

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What is a “meeting”?

The Act defines a “meeting” as “any regular, special or other meeting of a council, of a local board or of a committee of either of them.”

In a 2008 Ombudsman report¹, through a review of relevant case law and keeping in mind the underlying objectives of open meeting legislation, a working definition of “meeting” was developed to assist with interpreting the definition contained in 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.

The fact that a third party or another level of government requested or arranged a meeting does not relieve council of its open meeting obligations under the Act.² However, not all gatherings of council will constitute a meeting subject to the open meeting provisions.

In an Ombudsman report dated December 12, 2014³, our Office found that a July 25, 2014 closed door meeting between council members for the City of Hamilton and two Members of Provincial Parliament did not violate the open meeting provisions of the Act. The purpose of the meeting was to influence provincial level decision-making, and it was not a council decision-making exercise or an attempt to lay the groundwork for future council decision-making.

¹ Ombudsman Ontario, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal* (April 25, 2008), online: <<https://www.ombudsman.on.ca/Resources/Reports/City-of-Greater-Sudbury-br--Don%E2%80%99t-Let-the-Sun-Go-D.aspx>>

² See Letter from Ombudsman Ontario to City of Elliot Lake (August 10, 2012), online: <<https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Elliot-Lake---closing-letter.pdf>> In a letter dated August 10, 2012, the Ombudsman's Office cautioned the City of Elliot Lake that the fact that a third party arranged a meeting attended by a quorum of council does not relieve council of its obligations under the Act.

³ Ombudsman Ontario, *Investigation into whether Council for the City of Hamilton held an illegal meeting on July 25, 2014* (November 2014), online: <<https://www.ombudsman.on.ca/Resources/Reports/City-of-Hamilton-November-2014.aspx>>

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In a letter dated October 24, 2012⁴, our Office found that meetings between a quorum of council for Elliot Lake and six different ministers and ministry officials during a conference did not violate the open meeting provisions. In that decision, our Office determined the councillors were carrying out council's instruction to raise municipal issues with the ministers and ministry officials. There was no exercise of decision-making power on behalf of council or any groundwork laid for future decision-making during the meetings.

Analysis

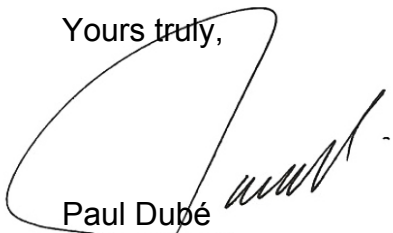
According to the information provided to our Office, the roundtable in Greater Sudbury was limited to high-level remarks regarding the community's needs and opportunities. Council members addressed their comments directly to the Prime Minister. Council did not exercise its decision-making power on behalf of council or lay the groundwork for future decision-making. Therefore, the roundtable did not constitute a meeting for the purposes of the Act and was not subject to the open meeting rules.

Conclusion

The roundtable held between council for the City of Greater Sudbury and the Prime Minister on April 7, 2016 was not a meeting subject to the open meeting provisions in the *Municipal Act* or the city's procedure by-law.

Should you have any questions, please do not hesitate to contact our Office.

Yours truly,



Paul Dubé
Ombudsman of Ontario

cc Clerk, City of Greater Sudbury

⁴ Letter from Ombudsman Ontario to City of Elliot Lake (October 25, 2012), online: <https://www.ombudsman.on.ca/Files/sitemedia/Images/Reports/Elliot-Lake-Oct-25.pdf>