

August 29, 2014

Cllr. Norman Mann, Chair
Ms. J. Lebreche, Recording Secretary
Mr. Rob deBortoli, Chief Administrative Officer
Elliot Lake Parks and Recreation Committee
45 Hillside Drive North
Elliot Lake, ON
P5A 1X5

Dear Cllr. Mann, Ms. Lebreche and Mr. deBortoli,

RE: Complaint regarding the March 25, 2014 meeting of the Parks and Recreation Standing Committee

I am writing further to our conversation of August 28, regarding the outcome of our Office's review of a complaint about the meeting of the Parks and Recreation Standing Committee (the Committee) on March 25, 2014, which was closed to the public under the "personal matters about an identifiable individual" exception. The complaint alleged that the closed session discussion did not fit within that exception or any exception to the open meeting requirements.

The *Municipal Act, 2001* (the Act) requires that meetings of council, local boards, and committees be open to the public, with limited exceptions and subject to certain procedural requirements. In reviewing this complaint, our Office spoke with you and other members of the committee and members of council who attended the meeting. We also obtained and reviewed the meeting documents, including the agenda and minutes of the open and closed sessions, and considered relevant sections of the City's Procedure By-law and the Act.

The March 25, 2014 meeting

The agenda for the March 25 meeting stated that the committee would meet at 4:30 p.m. to discuss a staff report pertaining to junior hockey. It noted that, as this matter involved personal information about identifiable individuals, it may be dealt with in closed session. The minutes of the open session state that the meeting was called to order at 4:30 p.m. The resolution to proceed in camera mirrored the information in the agenda. The closed session lasted approximately an hour and a half.

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The minutes of the closed session indicate that the Chief Administrative Officer presented his report, which discussed the benefits of having a junior hockey team in the city, and suggested that the committee consider a resolution to establish a non-profit corporation to oversee the ongoing management of the junior hockey program. Attached to the report were a business plan, joint venture considerations, and a risk analysis. The Chief Administrative Officer also provided information pertaining to various junior hockey teams in the area.

The minutes of the closed session also detail discussions relating to the establishment of the non-profit corporation, as well as possible revenue sources and benefits of having a team in Elliot Lake.

When the open session resumed, the committee voted:

“That Report SR CAO2014-04 of the Chief Administrative Officer be received and that a Not for Profit Corporation be established to oversee the ongoing management of the junior hockey program; and that a joint venture agreement be developed to support the partners of the Not For Profit Corporation.”

In our discussions with council members and staff, we received some contradictory information about who attended this meeting and what was reviewed in camera. We were advised that there were several meetings pertaining to junior hockey, and it was therefore difficult for some interviewees to recall what was discussed at this particular meeting.

Some members of council and staff with whom we spoke said the in camera discussions included personal information about owners of other hockey teams, and the owner of one team in particular. We were advised that the committee required this information in order to assess the feasibility of having a team in Elliot Lake.

Others told us that confidential or sensitive information about other teams was presented, although the information was not personal in nature. Two individuals we interviewed believed that the “personal information” being discussed at the closed session related to two organizations that might be partnering with the city in forming the non-profit corporation to manage the junior hockey team.

Analysis

The *Municipal Act* does not define “personal matters.” In considering whether a matter falls within the “personal matters” exception, our Office often refers to the definition of “personal information” found in s. 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). Although this definition is not binding, it can offer guidance. According to MFIPPA, “personal information” includes “the views or opinions of another individual about the individual” (s. 2(1)(g)).

Some members of council and staff told us personal information about one or more individuals was discussed at the in camera meeting on March 25. Information provided during interviews indicates that the discussions about one team owner in particular included councillors' personal opinions about the owner's character. This would qualify as personal information about the owner, and this portion of the discussion would fall within the parameters of the "personal matters" exception to the open meeting requirements.

Other members of council and staff said the meeting was held in camera to discuss "confidential" information about other teams in the area, as well as "personal information" about two organizations that were considering partnering with the city in the junior hockey venture. Although certain information may be considered to be "confidential" or "sensitive," this does not necessarily bring the information within the scope of the "personal matters" exception. The purpose of s. 239(2)(b) is to protect the privacy of an identifiable individual; information pertaining to particular hockey teams, or to organizations that might become involved in junior hockey in Elliot Lake, does not fall within this exception.

Conclusion

The information contained in the closed meeting documents (including the meeting notes and the staff report), as well as the resolution that was passed in open session, indicates that the bulk of the discussion on March 25 was about the logistics of bringing a hockey team to Elliot Lake and setting up a corporation to manage it.

Many of those we interviewed said the discussions included personal information about one team owner. The information provided to our Office, however, indicates that only a small portion of the discussion related to the personal matter, and this matter could have been discussed separately from the remainder of the information. Most of the issues discussed at this closed meeting did not fit within the "personal matters" exception, or any exception, and were therefore discussed in camera in violation of the open meeting requirements.

Procedural Matters

In our conversation on August 28, we also discussed some procedural issues that came to our attention during this review.

Reporting Back

We encourage the committee to follow a practice of reporting back to the public after closed sessions. The Ombudsman has stated that councils and committees should report back on what occurred in camera, at least in a general way. In some cases, public



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reporting might simply consist of a general discussion in open session of subjects considered in closed session, similar to the information in the resolution authorizing the session together with information about staff directions, decisions and resolutions. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.

Recording Closed Sessions

Finally, we encouraged the committee to consider audio recording its closed meetings. As noted in the Ombudsman's 2011-2012 annual report on open meetings:

Audio or video recording of council meetings should be routine – not just the open sessions, but the closed ones too. This would assist immeasurably in ensuring officials do not stray from the legal requirements once they retreat behind closed doors, and would provide a clear, accessible record for investigators to review.

In this case, an audio recording would have provided some much-needed clarity as to what actually transpired in the closed session, given the councillors' opposing recollections, and the conflict between those recollections and the information in the closed meeting minutes. Several municipalities, including the Townships of Tiny, Madawaska Valley and McMurrich/Monteith, the Town of Midland, the Municipality of Lambton Shores and the City of Oshawa, follow this practice.

When we spoke on August 28, I outlined our findings and gave you the opportunity to provide feedback. Mr. deBortoli and Cllr. Mann advised that they felt the in camera discussions on March 25 were mostly confidential in nature and not suitable for open session. We discussed that our Office, as a closed meeting investigator, must make decisions based on the evidence before us. Our Office can only conclude that a meeting was properly closed to the public if the discussions fit squarely within the parameters of the exceptions to the open meeting requirements found in the *Municipal Act*.

You agreed to include this letter on the agenda for the committee's next public meeting on September 8, and to make a copy available to the public.

Thank you for your cooperation with our review.

Sincerely,

Michelle Bird
Open Meeting Law Enforcement Team