

June 23, 2014

Mayor Gord McKay
Acting Clerk Laura Lee
Town of Midland
575 Dominion Avenue
Midland, ON L4R 1R2

Dear Mayor McKay and Ms. Lee,

Re: Closed Meeting Complaint – February 10 and March 3, 2014 Closed Council Meetings

I am writing further to our discussion on June 23, 2014 regarding the outcome of our review of a complaint that Council's February 10, 2014 closed meeting discussion, involving the civilian appointment to the Midland Police Services Board, did not fall within the "personal matters" exception to the open meeting requirements.

The complainant maintained that the information discussed at the February 10, 2014 closed Council session was already in the public domain. In support of this position, the complainant noted that the public minutes of a November 25, 2013 closed session referenced a direction to staff to "*prepare the appropriate motion for consideration at the December Council meeting to consider Police Service Board appointments for the civilian council appointee for succession planning purposes.*"

Ombudsman Review

As you know, the Ontario Ombudsman is the closed meeting investigator for the Town of Midland. In reviewing this complaint, our Office spoke with the Acting Clerk and obtained and reviewed the February 10, 2014 meeting records, as well as the records for the Council meetings on November 25, 2013, February 24, 2014 and March 3, 2014, including the meeting agendas and minutes.

The Acting Clerk told us that, while it is normally Council's practice to audio record its closed meetings, the audio recording of the February 10, 2014 closed session was unavailable due to technical difficulties. However, she clarified that the substantive discussion on the Police Service Board appointment actually took place at the meeting on March 3, 2014. Accordingly, we obtained and reviewed the audio recording of that closed session.

Procedure By-Law

Regular meetings of Midland Council take place on the 4th Monday of each month at 7:00 p.m.

The Procedure By-Law provides for public notice of both open and closed meetings. The Town posts meeting agendas on its website the Friday prior to the meeting.

February 10, 2014 Meeting Agenda

The Agenda for the February 10, 2014 closed meeting stated that Council would be discussing, among other things:

Subsection 2 (b) Personal matters about an identifiable individual

2 (f) Advice that is subject to solicitor-client privilege

Confidential e-mail, dated January 17, 2014, from Mayor McKay

Confidential letter, dated January 21, 2014 from Douglas S. Christie, Solicitor

Re: Appointments to Police Services Board

Closed Meetings re: Civilian Appointment to Police Services Board

The Acting Clerk told us that Council was scheduled to review a confidential email dated January 17, 2014, from Mayor McKay, and a confidential letter dated January 21, 2014, from Douglas S. Christie, Solicitor, at the February 10, 2014 meeting. She said at that meeting, the issue of the civilian appointment to the Police Services Board was deferred to February 24, 2014, after Council directed her to obtain and provide a transcript of the November 25, 2013 closed meeting. She explained that Council wished to clarify what had been discussed earlier concerning the civilian appointment.

Our Office obtained copies of Mayor McKay's January 17, 2014 e-mail and the Solicitor's January 21, 2014 letter to Council. We confirmed that the e-mail included personal information about an identifiable individual and that the Solicitor's letter included privileged legal advice to Council on the topic of the civilian appointment to the Police Services Board.

The public minutes for the February 10, 2014 closed meeting confirm that "the Clerk was directed to arrange for a special closed meeting to deal with this item."

The Acting Clerk told us that Council voted not to proceed in camera at the February 24, 2014 meeting, and finally discussed the civilian appointment at the March 3, 2014 closed meeting.

March 3, 2014 Meeting

The March 3, 2014 agenda stated that Council would go into closed session to discuss “appointments to the Police Services Board” and would review:

- a confidential email dated January 17, 2014 from Mayor McKay
- a confidential letter dated January 21, 2014 from Douglas S. Christie, Solicitor
- transcription of portion of minutes from November 25, 2013 closed meeting

The meeting was closed under the exceptions for “personal matters about identifiable individual” and “advice that is subject to solicitor-client privilege,” under s. 239 2 (b) and s. 239 2 (f) of the *Municipal Act*.

According to the March 3, 2014 audio recording of the closed session, Council discussed a personal matter about an identifiable individual referred to in the Mayor’s January 17, 2014 e-mail. Council also considered advice received from its Solicitor about this matter.

The public minutes of the closed session state that “Council considered whether staff should be directed to proceed with the procedural steps set out in a confidential letter dated January 21, 2014, from Douglas R. Christie, Barrister and Solicitor.” The motion was defeated.

Analysis

The public minutes following the November 25, 2013 closed session disclosed that succession planning for the Police Services Board civilian appointment was to be considered. However, this did not prevent Council from later discussing personal matters about identifiable individuals or advice subject to solicitor-client privilege, relating to this issue, in closed session. Based on the information we obtained and reviewed, the February 10, 2014 and March 3, 2014 closed sessions were permitted under the *Municipal Act* open meeting provisions.

On June 23, 2014, we spoke with you to confirm our review and findings and provided you with an opportunity to provide feedback. You stated that you did not have any questions or concerns about our findings. You agreed to include a copy of this letter on the agenda for Council’s July 28, 2014 public meeting.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team