

August 9, 2017

Lesley Sprague, Clerk
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON
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Via mail and email - lsprague@city.elliottlake.on.ca

Dear Clerk Sprague:

Re: Complaint received by the Ontario Ombudsman regarding the July 24, 2017 closed meeting in the City of Elliot Lake

I am writing further to the telephone conversation on August 4, 2017, summarizing the results of the Ombudsman's investigation into the July 24, 2017, meeting held by council for the City of Elliot Lake. As we discussed, our Office received two complaints regarding this meeting, each alleging that council's discussion did not fit within the closed meeting exceptions in the *Municipal Act, 2001*.

Review

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an independent Officer of the Ontario Legislature. Our Office has the authority to review complaints regarding the administrative conduct of public sector organizations, including the City of Elliot Lake. As of January 1, 2008, the *Municipal Act, 2001* (the Act) also gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. The Ombudsman is the closed meeting investigator for the City of Elliot Lake.

We reviewed the agenda, as well as the open and closed minutes from the July 24, 2017 council meeting. We also spoke with the Clerk and watched relevant portions of the video recording from the open portions of the council meeting.

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July 24, 2017 meeting

According to the minutes and recording, the Mayor introduced a motion at the July 24 meeting to rescind a previous resolution concerning the recruitment of a permanent Chief Administrative Officer (CAO). Following the introduction of this motion, a different councillor introduced a motion to discuss this matter in closed session under section 239 (2)(b) of the Act for personal matters about an identifiable individual.

In response to this motion, councillors debated whether the discussion about the CAO position needed to involve personal matters about identifiable individuals. Some councillors felt the discussion could occur without this information or could be split between open and closed sessions. Others felt the discussion would necessarily involve personal matters and could not be parsed between open and closed session.

Following this discussion, council voted 4 – 3 in favour of proceeding in camera to discuss the motion concerning the CAO position.

According to the Clerk and closed meeting minutes, once in closed session council discussed information about several identified members of municipal staff. Sensitive personal information about other employees was also discussed, as well as various human resource issues facing the city. We were told these discussions were necessary for council's consideration of whether and how to fill the CAO position. There was also related discussion about the desired qualities of a CAO and possible leadership structures.

Once council returned to open session, it voted on the motion to rescind the previous motion concerning the recruitment of a permanent CAO. The motion to rescind was defeated. The meeting adjourned shortly thereafter.

Analysis

Council relied on the closed meeting exception for personal matters about an identifiable individual under section 239(2)(b) of the *Municipal Act*. This exception does not apply to discussions about employees in their professional capacity. However, discussions about an individual in their official capacity can take on a more personal nature if the individual's conduct is scrutinized.¹

¹ IPC Order MO-2519 (29 April 2010).

The Information and Privacy Commissioner has established a two-part test to distinguish personal information from professional for the purposes of the open meeting rules:

1. In what context do the names of individuals appear? Is it in a personal or business context?
2. Is there something about the particular information that, if disclosed, would reveal something of a personal nature about the individual?

In this case, council discussed several individuals in the context of their employment or professional relationship to the municipality. However, council talked about aspects of the conduct of these employees that went beyond their professional roles, such that if the information were disclosed, it would reveal something of a personal nature about the individuals.

The other discussion during the closed session included the desired qualities of a CAO and possible leadership structures for the municipality. Normally, general discussion of the qualities of a CAO and leadership structures by themselves would not fall within the cited exception of personal matters.

In 2011, with respect to an appeal of a decision of the Information and Privacy Commission, Ontario's Divisional Court commented on the practicality of conducting a meeting where only parts of discussion are allowed in closed session. In *St. Catherines (City) v. IPCO*, Justice Lederer observed that:

[I]t is not realistic to expect the members of a municipal council to parse their meetings...this way. At a minimum, it would detract from free, open and uninterrupted discussion. It could lead to meetings that dissolve into recurring, if not continuous, debate about when to close the meeting and when to invite the interested public to return.²

During the July 24, 2017 closed session, personal matters about identified individuals were discussed throughout the session and were integral to council's consideration of the CAO position. Consequently, I am satisfied that the closed session was permitted within the *Municipal Act's* closed meeting exception for personal matters about identifiable individuals.

² *St. Catherines (City) v. IPCO*, 2011 ONSC 2346 at para 42.

Conclusion

Thank you for your co-operation during our investigation.

You indicated to us that this letter would be included as correspondence and made public at the next available meeting of council.

Yours truly,



Paul Dubé
Ombudsman of Ontario

Cc: Dan Marchisella, Mayor