



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

January 17, 2011

Mayor Paul Tomlinson
Ms. Yvonne Aubichon, Clerk Administrator
Town of Kearney
P.O. Box 38, 8 Main Street
Kearney, ON P0A 1M0

Dear Mayor Tomlinson and Ms. Aubichon,

Re: Our File No. 234652

I am writing further to our telephone conversation of January 14, 2011 regarding the results of the Ombudsman's preliminary review of a complaint received alleging that improper closed meetings had been held on November 5 and November 26, 2010. The complainant advised that the newly elected council, comprised of two incumbents and five new council members that had not yet taken office, met informally to discuss council business.

During the course of our review we spoke to Ms. Aubichon as well as members of the new council, and reviewed relevant provisions of the *Municipal Act, 2001* (the "Act"), and the Township's Procedure By-Law (2009-39).

The information provided to our Office indicates that Mayor Tomlinson, who was then the Mayor Elect, invited the members of the new council to his home on November 5 to socialize and become acquainted with one another. Ms. Aubichon noted that, prior to the meeting taking place, she received advice from the municipality's solicitor that the gathering would not violate the open meeting requirements. During this gathering, the new council members created a list of issues that they would like to see addressed in the upcoming term.

We understand that a second meeting took place on November 26, also at the home of Mayor Tomlinson, to further discuss and prioritize the list of issues compiled at the November 5 meeting. The information provided to our office indicates that this group also discussed various other items at this meeting, including committee appointments; possible amendments to the procedure by-law; and changes to the municipality's voting procedure. The majority of the councillors we spoke with indicated that no decisions had been made at these meetings. We understand that neither Mayor Tomlinson nor the new council members provided the time and location of these meetings to the public.

As you are aware, s. 239 of the Act requires that all meetings of council be open to the public, subject to specific exceptions outlined in s. 239(2), (3) and (3.1). In the Ombudsman's

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report, *Don't Let the Sun Go Down on Me: Opening the Door on the Elton John Ticket Scandal*, the Ombudsman provided the following definition of a “meeting” for the purposes of determining whether a specific gathering is a “meeting” subject to the open meeting provisions of 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.

Informal gatherings for social purposes generally are not considered to be “meetings” for the purpose of the Act. However, where the purpose of the gathering is to discuss council business and/or to make decisions, a gathering is more likely to be considered a “meeting” that is subject to the open meeting requirements.

In this case, only two of the meeting participants were serving council members at the time, and technically there was no quorum for the purpose of decision-making. Under the circumstances, we cannot conclude that the meetings were held in contravention of the open meeting requirements. However, these gatherings were clearly not simply of a social nature, but involved discussion of the future council agenda, committees, and amendments to the procedure by-law and voting procedures, items that normally require open discussion by council under the *Municipal Act*. The group also was involved in setting the groundwork for future decision-making. While technically, these meetings may not have resulted in a violation of the Act, they appear to be inconsistent with the principles of transparency, accountability and openness underlying the open meeting requirements.

We encourage all members of council in future to be vigilant in ensuring that their actions fulfill not only the requirements of the Act, but also its spirit.

During our conversation of January 14 you expressed general agreement with our observations and agreed to discuss our review and suggestions with Council publicly. We requested that you notify our Office when you have had the opportunity to do so.

Under these circumstances we will not be pursuing further review of this complaint. We will notify the complainant of the results of our informal review, including your commitment to share our comments with Council.

I would like to take this opportunity to thank you for the cooperation our Office received during this review.

Sincerely,
Michelle Bird
Ombudsman Ontario