

May 23, 2012

Ms. Fran Urbshott
Administrator/Clerk/Treasurer
Township of Adelaide Metcalfe
2340 Egremont Drive, R.R. #5
Strathroy, ON N7G 3H6

Dear Ms. Urbshott:

Re: Complaint about March 5, 2012 closed meeting

I am writing further to our telephone conversation of May 16, 2012 regarding the results of the Ombudsman's review of a complaint about the closed portion of a Council meeting on March 5, 2012. The complaint alleged that insufficient information was provided to the public about the nature of the closed session.

The Ombudsman is the closed meeting investigator for the Township of Adelaide-Metcalfe. In reviewing the complaint, our Office spoke with you, and reviewed the agenda and minutes for the March 5, 2012 meeting, the relevant sections of the *Municipal Act* as well as the Township's Procedure By-Law.

As you know, the *Municipal Act* requires that all meetings of Council, local boards, and their committees be open to the public, with limited exceptions. The Act also sets out procedural requirements that must be observed before a closed session may be held.

March 5, 2012 Closed Session

The agenda for the March 5, 2012 regular meeting of Council was posted on the Township's website, and provided notice that an in camera session would be held "to discuss legal matters."

However, according to the minutes for the meeting, Council resolved to move in camera to discuss both legal and personnel matters.

You indicated that normally Council would resolve in open session to add an item to the closed session or to defer it, if it does not appear on the public agenda. However, you

confirmed that three “personnel matters” items were added to the March 5, 2012 closed session agenda without a formal resolution.

No details were provided publicly about the topics to be discussed in the closed session. But you advised an in camera agenda was circulated to Council members on the day of the meeting, which included specific reference to comments from the Township’s lawyer about wind turbines, an employment agreement for a specific individual, salaries and wages for 2012 and *Public Sector Salary Disclosure* for 2011.

According to the March 5, 2012 in camera session record, Council reviewed correspondence from its lawyer commenting on wind turbine permit fees, an identified employee’s employment agreement, *Public Salary Disclosure Act* documents for 2011 and a summary of wages for 2012.

Under the *Public Sector Salary Disclosure Act*, organizations that receive public funding, including municipalities, must disclose the name, position, salary, and taxable benefits of any staff members paid \$100,000.00 or more annually, to the funding Ministry by the fifth business day of March. You said that you brought the Public Salary Disclosure documents, which reported all individual municipal employee’s salaries for 2011, to the in camera session on March 5, 2012, for Council approval and the Mayor’s signature. You also brought the 2012 salary wage documents, which identify specific employee names and salaries, for approval at the same time.

Following the closed session, Council returned to the public meeting and passed the following resolutions:

Mayor Bolton be authorized to sign the Public Sector Salary Disclosure documents for year ending 2011

Mayor and Administrator/Clerk/Treasurer be authorized to sign the 2012 wages and salaries documents, as presented to Council.

Administrator/Clerk/Treasurer be directed to prepare a report for the March 19, 2012 Council meeting, with respect to the wind turbine matters.

Analysis

Notice of Closed Session Agenda

In this case, three “personnel matters” were added to the closed session agenda without prior notice or formal resolution. This was inconsistent with the Township’s general practice, as you have described it.

As we have discussed previously, the Ombudsman recommends as a best practice that advance public notice be provided of all items to be considered at a closed session, and that new items only be considered if they are urgent, and provided procedural requirements have been observed.

In this case, as the legislated deadline for submission of salary disclosure information was approaching, this item might be considered urgent. You also stated that there was some urgency in the other items, as the 2012 salary documents required sign off to initiate retroactive pay adjustments and the employee contract was reviewed in regard to a vacancy.

In a March 22, 2012 letter to the Township relating to a previous complaint, we suggested that Council consider amending its Procedure By-Law to set out a process for last minute additions to meeting agendas. We continue to encourage the Township to formalize a practice for adding items, which promotes increased transparency. You confirmed that the Township is working on this.

Closed Meeting Exceptions

Under s. 239(1)(f) of the *Municipal Act* Council may consider advice subject to solicitor-client privilege in camera. It appears that Council's consideration of the Township's lawyer's communication about wind turbine permit fees came within this exception.

Council may also consider personal matters about an identifiable employee, including municipal employees, in closed session under s.239(1)(b) of the Act.

The discussion of salary documents identifying specific employee names and salaries and the terms of a specific employment contract appear to be topics that fit within this exception. Only one employee fell under the public salary disclosure requirements.

Resolution

Resolutions authorizing closed sessions must state the general nature of the matter to be considered. In the case of the March 5, 2012 closed session very little information is

provided about the issues that were to be considered. The Ombudsman recommends that Council generally describe closed meeting items with as much detail as possible in the agenda and resolutions authorizing closed sessions, while at the same time balancing the need to protect confidential and sensitive information from disclosure.

In addition, it is also helpful to indicate the specific exception under which the matter is to be considered in camera.

When we spoke, you expressed general agreement with our observations and agreed to discuss our review with Council. We ask that the letter be discussed publicly at an open Council meeting and made available on the Township's website.

Under the circumstances, we will not be taking any further action on this complaint. I would like to take this opportunity to thank you for your cooperation during this review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team