



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

December 11, 2012

Mrs. Kathryn Scott
Clerk Administrator
Town of Blind River
11 Hudson Street
Blind River, ON P0R 1B0

Dear Ms. Scott,

Re: Closed Meeting Complaint – September 17, 2012 Meeting of Council

I am writing further to our discussion on December 10, 2012 regarding the outcome of our review of a complaint that Council held an improper closed meeting on September 17, 2012 to discuss possible amendments to municipal by-laws concerning property matters. The complainant noted that Council passed amendments to the Zoning By-Law following the closed meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their committees are open to the public, with limited exceptions, as defined under s. 239 (2) of the Act.

Council for Blind River appointed the Ombudsman as the Town's closed meeting investigator in February 2012. In consideration of this complaint, our Office spoke with you, obtained and reviewed the meeting agenda and minutes, and reviewed the relevant sections of the Act and the Town's Procedure By-Law (No. 2213).

In reviewing the meeting materials, our Office determined that Council did not hold any discussions regarding by-laws or proposed amendments to by-laws in the closed meeting. However, we are offering a number of best practice recommendations for council to improve transparency on a number of procedural matters.

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Procedure By-Law

Regular meetings of Council are held on the first and third Monday of each month at 7:00 p.m.

The Procedure By-Law provides for public notice of meetings, as required under the Act. Meeting notices are to be posted on the Town's website no later than 48 hours prior to the meeting.

The By-Law references the open meeting requirements of the *Municipal Act*.

September 17, 2012 Closed Meeting

The Agenda

The Agenda for the September 17 meeting that was posted on the website stated that there would be a "Resolution to go into Closed Meeting." No additional information about the general nature of the topics to be discussed or the exception relied on to authorize the closed meeting was provided.

You stated that, in practice, Council does not include details about the closed meeting topics in the publicly available agenda. Instead, a closed meeting agenda is circulated to Council members and it includes some information about the nature of topics to be considered in the closed meeting. According to this agenda, six matters were scheduled for closed meeting discussion, including personnel matters and a proposed acquisition of land.

As discussed, the Act requires that the Procedure By-Law provide for public notice of meetings, but does not specify the content or format of this notice. However, in the interest of transparency, the Ombudsman recommends that municipalities list all items on the agenda, including a general description of each of the matters to be considered in the closed session along with reference to the specific applicable closed meeting exception in the *Municipal Act*.

This will serve to provide an additional degree of assurance to members of the public that council is discussing in closed session only those items that it is permitted to discuss under the exceptions contained in the Act.

Resolution

The *Municipal Act* requires that before holding a closed meeting, Council state by resolution,

“the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting”

The public minutes of the September 17 meeting show that Council passed a resolution to proceed *in camera*

To discuss personal matters about an identifiable individual, including municipal or local board employees; a proposed or pending acquisition or disposition of land by the municipality or local board; advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Although Council lists the legislated exceptions for holding the closed meeting, the information provided does not provide any meaningful information to the public about the nature of the matters to be considered or the number of topics on the closed meeting agenda.

The Ontario Court of Appeal noted in *Farber v. Kingston (City)*, 2007 that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”

During our discussion on December 10, 2012 we suggested that both the Agenda and the Resolution identify the exception authorizing the closed meeting along with the general nature of the subject (s) to be discussed. For example, the resolution may state:

Council resolved to proceed *in camera* under s. 239 (2) (b) “personal matters about an identifiable individual, including municipal or local board employees” – employee performance.

Closed Meeting Record

The *Municipal Act* requires municipalities and local boards and their committees to “record without note or comment all resolutions, decisions and other proceedings at a meeting of the body, whether it is closed to the public or not.”

The record of the September 17, 2012 closed meeting of Council is limited in that it only lists vague headings about topics that were discussed in the closed meeting and whether or not a resolution was to be tabled in the open session.

I spoke with you to obtain further details of the matters considered and, based on the information provided, Council discussed an employee performance issue, ongoing litigation, legal advice regarding proposed terms of a contract, the proposed purchase of property by the municipality, and an employee salary issue. There is no evidence that Council discussed or amended any by-laws in the closed session.

While the subject matters fall within the permitted exceptions for holding a closed meeting, the meeting record did not provide a complete record of the discussions that took place in the September 17 closed meeting.

The Ombudsman’s position regarding record keeping, is expressed in our 2008 report (*The ABC’s of Education and Training*) to the city of Oshawa:

The requirement to keep a meeting record should be interpreted in a manner that is consistent with the intent of the open meeting provisions, which are directed at enhancing the openness, transparency and accountability of municipal government. While extraneous notes and comments not germane to the actual proceedings...should be excluded, the minutes should reflect what actually transpired, including the general nature of the subjects discussed.

More recently, in the Ombudsman’s report on his investigation into whether Council in the City of London held an improper meeting on February 1, 2012, the Ombudsman recommended that “having audio and/or video recordings of closed meetings would significantly reduce the time and resources necessary to respond to a closed meeting investigation” as well as providing a complete record of what transpires behind closed doors.



When we spoke, you said that this letter would be included at the next public meeting of Council on January 7, 2013 and a copy made available to the public on your website.

We would like to thank you for your cooperation during our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team