



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

September 28, 2012

Clerk Roger Labelle
Municipality of Magnetawan
P.O. Box 70
4304 Highway #520
Magnetawan, ON P0A 1P0

Dear Mr. Labelle,

Re: Closed Meeting Complaint – May 9 and May 23, 2012 Council Meetings

I am writing further to our conversation on September 28, 2012 regarding the results of the Ombudsman's review of a complaint that Council held an improper closed meeting on May 9, 2012 regarding the tender for reconstruction of the public works department garage.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, its committees, and local boards are open to the public, with limited exceptions. Our Office is the closed meeting investigator for the Municipality of Magnetawan.

In reviewing this complaint, our Office spoke with you and reviewed the agenda and minutes of the May 9, 2012 meeting, as well as the meeting records of the May 23, 2012 closed meeting, at which the issue was considered. In addition, our Office reviewed the Procedure By-Law and relevant sections of the Act.

Procedure By-Law

According to the Procedure By-Law regular meetings of Council are held on the second and fourth Wednesdays of each month at 7:00 p.m. Under By-Law 2012-11, amending the Procedure By-Law, the first monthly meeting is now held at 1:00 p.m.

The Municipality's practice regarding public notice is to post the meeting agendas on the Municipal website the Friday prior to the meeting.

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May 9, 2012 Closed Meeting

The Agenda for the May 9, 2012 Council meeting stated that a closed meeting would be held to discuss three different matters, including a “legal opinion regarding tender dispute for reconstruction of [Public Works Department] PWD garage.”

The Agenda cites s. 239 (2) a, d, e, f and s.239 (3.1) as the exceptions for holding the closed meetings but does not clarify which topics are being discussed under which exceptions.

You acknowledged that at least one of the exceptions – s. 239 (2) a, ‘security of the property’ – did not apply to any of the topics being considered in the closed meeting.

The Resolution to proceed in camera stated that the closed meeting pertained to “the Pay Equity Plan for the Municipality of Magnetawan, the Curator Position, and a legal opinion.” However, you advised that the legal opinion was not available at the time of this meeting and the matter was deferred to the May 23, 2012 Council meeting – closed session.

As discussed on, it is important that Council ensure that the Agenda and Resolution to proceed in camera accurately reflect the subject matter being discussed.

In order to maximize information to the public and avoid confusion, 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) (f) “advice that is subject to solicitor-client privilege” – legal opinion regarding contract dispute.

We also noted that Council did not report back in any way following the closed meeting and did not advise the public that consideration of the legal opinion was deferred.

The Ombudsman encourages municipalities to report publicly in open session on what transpired in the closed session, at least in a general way. In some cases, public reporting, due to the confidential nature of the subject matter, might simply consist of a general description in open session of subjects considered in closed session, similar to the information in the resolution authorizing the session together with information about staff directions, decisions and resolutions. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided to the public.

May 23, 2012 Closed Meeting

An Addendum to the original agenda was posted on the website at 2:00 p.m. on May 23, 2012 and included notice that a closed meeting would be held to discuss three matters, including a “legal opinion on tender issue for reconstruction of PWD garage.”

Council passed a resolution to proceed in camera at 8:45 p.m. and disclosed the nature of subjects to be considered in the closed meeting but did not mention the legislated exceptions authorizing closed meeting consideration.

According to the information provided, the legal opinion regarding the tender for reconstruction of PWD garage was discussed under the “solicitor-client privilege exception” (s. 239 (2) (f)).

All of Council attended the closed meeting, along with the Clerk. The Municipality’s Solicitor was not present.

The closed meeting record confirms that, in relation to the Public Works garage, Council reviewed and discussed a written legal opinion from the Solicitor. We were informed that council accepted the legal opinion and that no votes were taken in the open or closed session on this matter.

When Council reconvened in open session at 9:41 p.m., Council again did not report publicly on what transpired in the closed meeting and the Council meeting was adjourned.

Analysis

The *Municipal Act* permits Council to consider advice that is subject to solicitor-client privilege within a closed meeting. Council’s review of the Solicitor’s written legal opinion regarding a contract for PWD garage reconstruction fits within this exception.

Other Matters: Record Keeping/Minutes

During our review we noted that it continues to be Council’s practice to only record the resolutions or decisions and instructions to staff in its open and closed meeting minutes. The minutes do not contain any meaningful information regarding the substance of any discussions that take place at the meetings. As discussed, the lack of detail in the minutes detracts from transparency and gives rise to public speculation and complaints.



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.”

In our previous letter to Council dated October 5, 2009, we explained the Ombudsman’s position regarding record keeping, which is also 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.

The lack of a meaningful closed meeting record made it difficult for our Office to determine whether discussions were permitted under the exceptions cited. As indicated 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 urged municipalities “to adopt practices that serve to instill public confidence in the transparency, openness and accountability of their processes...and to move beyond historical traditions and embrace modern approaches to closed meetings.” He 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.

As such, in the interest of transparency, we again encourage you to maintain a record that more accurately and meaningfully captures the substance of Council and Committee discussions and proceedings.

When we spoke on September 28, 2012 we asked that this letter be included at the next public meeting of Council on October 10, 2012 and a copy be made available to the public on your website.

Sincerely,

Yvonne Heggie
Early Resolution Officer