



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

August 1, 2013

Mayor Jim Diodati,
CAO Ken Todd, and
City Clerk Dean Iorfida
City of Niagara Falls
4310 Queen Street
Niagara Falls, ON L2E 6X5

Dear Mayor Diodati, Mr. Todd, and Mr. Iorfida,

Re: Complaint about February 19, 2013 Council Gathering

I am writing further to our conversation on August 1, 2013 regarding the outcome of our review of a complaint that Council held an informal closed meeting on February 19, 2013 following the Niagara Falls Hydro Holdings Corporation Board (the Board) meeting.

The complainant alleged that, following the Board meeting, a quorum of Council met without notice to discuss Council business concerning the resignation of a staff member.

As you know, under the *Municipal Act* all meetings of Council, Local Boards, and their Committees must be open to the public with limited exceptions and subject to certain procedural requirements.

The Ombudsman is the closed meeting investigator for the City of Niagara Falls. In reviewing this matter, we spoke with the complainant, the Mayor, the Chief Administrative Officer (CAO), and the Clerk, and reviewed the City's Procedure By-Law.

All nine members of the Niagara Falls Council are members of the Niagara Falls Hydro Holdings Corporation Board. According to the information received, shortly following the February 19, 2013 Board meeting, the CAO announced to a quorum of Council that a senior staff member unexpectedly resigned earlier that day.

The CAO, Mr. Todd, advised that he wanted to inform Council of the resignation without delay so that they did not learn of the matter from outside sources. The Mayor and CAO recalled that Councillors may have asked questions of the CAO or made individual comments but no specific details were available at the time and the CAO advised that he would provide an updated report at the next Council meeting. Those interviewed estimated that the conversation lasted approximately five to ten minutes as Council

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members were exiting the Board meeting. Council did not deliberate on the matter or reach any decisions.

Analysis

For the purposes of the open meeting requirements, a meeting is defined as any “regular, special or other meeting of a council, of a local board or of a committee of either them.”

As discussed, based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements 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.

The information provided indicates that an administrative staff member informed Council of a sudden resignation of a senior staff member. Although a quorum of Council was present and may have individually commented on the news, there is no indication that Council held any deliberations or substantive discussions about the employee resignation in a way that materially advanced Council business. Rather, a staff member relayed factual information that he deemed essential for Council to know in a timely manner.

As Council did not come together to exercise its authority or lay the groundwork for future decision-making, this gathering did not constitute a “meeting” for the purpose of the open meeting requirements.

February 26, 2013 In Camera Session

In the course of reviewing the complaint about the February 19, 2013 gathering, we were advised that the CAO provided an update to Council about the employee resignation at the February 26, 2013 in camera session under s. 239 (2) (b) of the Act - “personal matters about identifiable individuals, including municipal or local board employees.” However, this item was not included on the publicly available agenda.

The resolution to move in camera indicated that Council intended to discuss a proposed or pending acquisition of property and to receive advice that is subject to solicitor-client privilege regarding an Ontario Municipal Board hearing.

Council also discussed the employee resignation for approximately twenty minutes, however it did not hold a vote to amend the agenda to include discussion on this topic and did not record the discussion in the closed meeting minutes.

Analysis

Discussion of an individual employee's resignation is permitted in closed session under the exception for personal matters under s.239(2)(b) of the Municipal Act

The *Municipal Act* requires however that the resolution to proceed in camera state "the general nature of the matter to be considered at the closed meeting." As such, not informing the public that an employee matter would be discussed in the closed session, is a procedural violation under the *Municipal Act*.

Further, as a best practice and in the interest of transparency, the publicly available Council meeting agenda should itemize all matters to be considered by Council, including all closed meeting agenda items, and the closed meeting record should capture all substantive matters that are discussed. The Ombudsman also recommends that Council consider audio or video-taping closed meetings so that a complete and accurate record is available to council and the closed meeting investigator.

On August 1, 2013 we reviewed the above-information with you and provided you with an opportunity to provide feedback and provide any additional relevant information. You accepted our findings and shared that you are now careful to ensure that resolutions to proceed in camera capture all subjects to be considered in the closed session.

You agreed to include this letter on either the September 10 or September 24, 2013 public Council meeting agenda and to make a copy available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team