

December 18, 2012

Claude Laflamme, CAO/Clerk
Corporation of the Town of Hearst
925 Alexandra Street
P.O. Box 5000
Hearst, ON P0L 1N0

Dear Mr. Laflamme,

Re: Closed Meeting Complaint – October 9, 2012 Council Meeting

I am writing further to our conversation on December 17, 2012 regarding the results of our review of a complaint that Council improperly considered applications for a vacant seat on Council within a closed meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their Committees be open to the public with limited exceptions. The Ombudsman is the closed meeting investigator of the Town of Hearst. In reviewing this complaint, our Office spoke with you and reviewed the meeting agenda and minutes, as well as the relevant sections of the Town's Procedure By-Law and the Act.

Background:

The Town of Hearst declared a vacant seat on Council on August 28, 2012 and posted an advertisement on its website, in the local paper, and on the radio, seeking applicants. Under s. 263 (1) (a) of the *Municipal Act*, Council has the option of filling a vacancy by "appointing a person who has consented to accept the office if appointed."

Council reviewed the applications received at a closed meeting held October 9, 2012.

The Meeting

According to the Town's Procedure By-Law, regular meetings of Council are held every third Tuesday at 6:00 p.m.

The Agenda for the October 9, 2012 Regular Council meeting indicated that Council intended to discuss the designation for the vacant Council seat under "unfinished business". The topic was not identified as a closed meeting item.

However, the public minutes show that Council passed a resolution to hold a closed meeting to discuss the "designation of the vacant Council seat". Although the resolution did not reference the exception of the Act under which the file was being closed, you confirmed that it was closed as a "personal matter about an identifiable individual" (s. 239 (2) (b)).

According to the closed meeting record and the information provided, Council reviewed five applications or letters of interest received in response to the Town's advertisement. You said that Council discussed the individual strengths and experience of the candidates. Councillors expressed their views on each of the candidates in terms of compatibility with the role.

You stated that there was no vote on the selection of a candidate, but Council came to some consensus about who should fill the vacant seat. The Mayor then provided Council with some time to think about the selection prior to the official vote at the October 22, 2012 public Council meeting.

When Council returned to the open session, the minutes indicate that a statement was made that, "the confidential report of proceedings of the closed meeting be hereby acknowledged for Council's information."

The minutes of the October 22, 2012 public meeting confirm that Council passed a resolution in open session to appoint Gerard Proulx as the new member of Council.

Analysis

As indicated, Council reviewed applications for the Council seat vacancy in the October 9 closed meeting under the "personal matters about an identifiable individual" exception. The *Municipal Act* does not define "personal information" for the purpose of the open

meeting requirements. However, an individual's employment and educational history is considered personal under the *Freedom of Information and Protection of Privacy Act*¹.

Our Office found that, since Council's discussion included reference to individual employment history and experience, the discussion technically fits within this exception and was, therefore, permitted in a closed meeting.

Council may wish however to consider following a more transparent process in the future, having regard to the high degree of public interest surrounding such public appointments. As a best practice, public appointments can be considered and made in open session with applicants being clearly advised of this practice when applications are solicited.²

As discussed, in the interest of clarity, Council should also ensure that the agenda identifies subjects that are to be considered in a closed meeting and reference the exception relied on for closing the meeting in both the agenda and the resolution to proceed in camera.

You confirmed that this letter would be shared with Council at a public meeting on January 15, 2013, after review by your Policy Working Group on January 9, 2012, and that a copy would be made available to the public on your website.

Thank you for your cooperation during our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team

¹ Freedom of Information and Protection of Privacy Act, R.S.O. 1990, s. 21(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, ... (d) relates to employment or educational history.

² See also June 2012 report by Amberley Gavel re: investigation into closed meeting held by Council in Whitchurch-Stouffville on October 18, 2011 to review applications for appointments to the Preston Lake North Shore Road Committee.