

June 28, 2013

Mayor John Henry and
City Clerk Sandra Kranc
The Corporation of the City of Oshawa
50 Centre Street South
Oshawa, ON L1H 3Z7

Dear Mayor Henry and Ms. Kranc,

Re: Complaint about May 21, 2013 Closed Meeting of Council

I am writing further to our conversation on June 27, 2013 regarding the outcome of our investigation of a complaint that Council may have held an improper closed meeting on May 21, 2013.

The complaints alleged that Council did not identify in its resolution to proceed in camera, the nature of the subject matter to be discussed, as required by the *Municipal Act, 2001*. Concern was also expressed that the topic for discussion may not have been permitted in a closed session and that Council may have gone in camera to discuss the findings of a recent Auditor General's report that was critical of the City's handling of a proposed purchase of property at 199 Wentworth Street for a new "Consolidated Operations Centre."

As you know, the *Municipal Act, 2001* (the Act) requires that meetings of Council, Local Boards, and their Committees be open to the public with limited exceptions.

Our Office spoke with the Clerk and obtained and reviewed the meeting documents, including the agenda, minutes, and the report reviewed in the closed session, as well as the audio recording of the meeting.

May 21, 2013 Closed Meeting

The agenda for the May 21, 2013 closed City Council meeting that is posted on the City's website stated that Council intended to discuss a potential disposition of City-owned land.

The agenda stated that Council would review a Developmental Services Committee report (DS-13-153) which included recommendations for Council to consider about the disposition of the land.

The specific recommendations respecting the particular property are outlined in the publicly available Agenda and suggest that the lands described in the report be declared surplus and be transferred to the Durham District School Board for a nominal fee and that the Mayor and Clerk be authorized to execute any agreements and legal documents for this purpose.

According to the meeting minutes and the audio recording, Council passed the following resolution prior to proceeding in camera:

That pursuant to Section 239, subsection (c) of the Municipal Act, 2001, as amended, this meeting be closed to the public in order to discuss Item 1 of the Forty-Seventh report of the Development Services Committee concerning a potential disposition of land by the City.

As stated, the Development Services Committee report and recommendations are described in the Agenda.

Eight of the eleven Council members were in attendance at the closed meeting, in addition to the City Clerk, the City Manager, the City Solicitor, the Commissioner of Development Services, the Auditor General, and other senior staff.

The closed meeting commenced at 3:30 p.m. and lasted approximately twenty minutes. The audio recording and publicly available minutes confirm that Council members posed questions to the Commissioner of Development Services about the proposed disposition of lands described in confidential report #DS-13-153.

The report outlines the history of the land, a map of the property and the site plan, as well as correspondence from the lawyer for the party interested in the property. As indicated above, the report also provided recommendations to Council on how to proceed with the proposed land. We noted that the property discussed at this closed meeting was not the one that was the subject of the Auditor General's report referred to by complainants.

The meeting record showed that Council discussed views on how to proceed with respect to the disposition of land and sought legal advice toward the end of the closed session.

Council then resolved to return to open session and, after doing so, voted to accept the recommendations outlined in the report.

Analysis

Council is permitted under s. 239 (2) (c) of the Act to discuss in closed session a potential disposition or acquisition of land. The meeting documentation and the audio recording confirm that Council's discussion in the closed meeting focused on negotiating an agreement regarding the disposition of City owned lands.

In addition, we determined that Council's resolution to proceed in camera identified the general nature of the matter to be considered in closed session, as required under s. 239 (4) of the Act. The resolution confirmed that Council was going in camera to discuss a potential disposition of land and referenced the Development Services Report and recommendations described in the meeting Agenda. The Agenda outlined the specific recommendations from the report with respect to the subject land that Council was to consider.

We would also like to commend the City's practice of audio recording its closed meetings. Having a recording available of the closed session greatly facilitated our investigation of this complaint.

When we spoke on June 27, 2013 we asked that this letter be included on the next public Council meeting agenda on September 3, 2013 and a copy made available to the public on your website.

We would like to take this opportunity to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team