

April 16, 2013

Ms. Nancy J. Bozzato, Town Clerk
The Corporation of the Town of Pelham
P.O. Box 400, 20 Pelham Town Square
Fonthill, ON
L0S 1E0

Dear Ms. Bozzato:

RE: Our File Number 233089-003

I am writing further to my conversation with you, Mayor Dave Augustyn, and Chief Administrative Officer Darren Ottaway of April 11, 2013 regarding the results of our review of a complaint about closed meetings held to discuss an Environmental Protection by-law. The complainant alleged that council improperly met some time prior to the February 19, 2013 council meeting, in violation of the open meeting requirements, to vote on the by-law. The complainant also alleged that council improperly proceeded *in camera* at the March 4 council meeting to discuss the by-law behind closed doors.

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. The Ombudsman is the closed meeting investigator for the Town of Pelham.

In reviewing this complaint we spoke with you and obtained and reviewed the meeting materials for the February 19 and March 4 council meetings. We also considered relevant sections of the Act and the Town's procedure by-law (by-law 3293-2012).

Allegation regarding improper voting on the by-law

You advised our Office that the first presentation of the Environmental Protection by-law was at the February 19 Policy and Priorities Committee meeting. There was no closed session at this meeting, and you advised that the by-law had never previously been discussed *in camera*. At this meeting, the Committee voted that staff be directed to review the by-law, and recommended that council approve the by-law, subject to any amendments that may be required as a result of the staff's review.

The complaint to our Office alleged that council must have voted on the by-law at some point prior to the February 19 meeting, because the copy of the by-law circulated on February 19 stated that it had already passed three readings.

We obtained a copy of the by-law that was handed out on February 19. The by-law is marked “draft” and at the bottom states:

Read a first, second, and third time and finally passed by council this
(blank) day of February, 2013

There is no date filled in. You advised that this wording at the bottom of the by-law is a placeholder for when the by-law actually does pass three readings.

Analysis:

Our review did not substantiate that the by-law was improperly discussed or voted upon behind closed doors prior to the February 19 meeting. Accordingly, we will not be further reviewing this aspect of the complaint.

In camera discussion at the March 4 council meeting:

The March 4 meeting was scheduled to begin at 6:30 p.m. According to the agenda, council was scheduled to hear delegations on the Environmental Protection by-law, in open session. Council was then scheduled to consider the by-law later in the meeting. Item 21 on the agenda was “Resolution to Move In Camera”, although no further information was provided about an *in camera* item. You advised that your procedure by-law provides a template for the order of meetings, and that closed session items generally take place at that point on the agenda. For the March 4 meeting there were no planned closed session items, and accordingly no details were provided.

During our conversation of April 11, Mayor Augustyn advised that, upon hearing the delegations on the Environmental Protection by-law, council wanted to consult with its legal counsel, who was already present at the meeting.

At 7:13 p.m. council passed a resolution that council move *in camera* to consider “Item under s. 239(f): advice that is subject to solicitor-client privilege, including communications necessary for that purpose.”

You provided copies of the *in camera* minutes, which we reviewed. According to the closed session minutes, in addition to you and the CAO, all of council as well the municipality’s legal counsel were present during the *in camera* session. While *in camera*, council discussed the by-law with legal counsel and received advice.

When the open session resumed, council voted to pass the by-law. No information was provided to the public about the *in camera* discussions.

Analysis:

Council met *in camera* to discuss advice subject to solicitor-client privilege, which is permissible under s. 239(f) of the Act. Legal counsel was providing information and answering questions about the by-law, and was present for the entire closed session.

When we spoke on April 11 we discussed how the provision of more detailed information in the resolution and reporting back in open session what was discussed in general terms may have helped to alleviate any confusion on the part of the public regarding the nature of the *in camera* discussions in this case. During our call, the Mayor advised that it is council's usual practice to report back after a closed session. In this case, however, because the advice given *in camera* was privileged, there was limited information that could be shared.

We reviewed our findings with you and the Mayor on April 11 and provided an opportunity to provide relevant feedback and any additional pertinent information, which has been noted in this letter.

We request that you make this letter available to the public as soon as possible, and in any event no later than the next council meeting on May 6.

Thank you for the cooperation our Office received during this review.

Sincerely,

Michelle Bird
Legal Counsel
Open Meeting Law Enforcement Team