

June 27, 2014

Mayor David Bolton
Ms. Fran Urbshott, Administrator/Clerk
Township of Adelaide Metcalfe
2340 Egremont Drive, R.R. #5
Strathroy, ON N7G 3H6

Dear Mayor Bolton and Ms. Urbshott:

Re: Complaint about April 16, 2014 emergency closed meeting

I am writing further to our telephone conversation with you on June 25 regarding the results of the Ombudsman's review of a complaint about an emergency closed meeting, held April 16. The complaint alleged that no notice of the meeting was provided to the public.

In reviewing the complaint, our Office spoke with Ms. Urbshott and reviewed the meeting materials for the April 16 meeting, including the video recording of the closed session. We also reviewed the relevant sections of the *Municipal Act* (the Act) as well as the Township's Procedure By-law (115-2013) and Notice By-law (68-2002).

As you know, the Act requires that all meetings of council, local boards, and their committees be open to the public, with limited exceptions. The Act also sets out procedural requirements that must be observed before a closed session may be held.

April 16, 2014 Closed Session

You advised our Office that this meeting was held at the Clerk's request, and confirmed that no notice was provided to the public. The meeting was scheduled on an emergency basis, and members of council were notified the day before the meeting. Minutes were posted on the website after the meeting occurred, as was the video of the "open" portion of the meeting, wherein council passed a resolution to proceed in camera under s. 239(2)(b) of the Act to discuss personal matters about an identifiable individual.

According to the video of the closed session, council reviewed a memo written by the Clerk, outlining staff concerns about the conduct of a member of council. These concerns

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arose in the context of recent comments made by the councillor about the way staff members were handling a property dispute between identified members of the community. Details of the property dispute came up in the context of the discussion and members of staff present at the closed session expressed how they were affected by the councillor's comments.

Ms. Urbshott advised our Office that these matters had to be dealt with on an "emergency" basis because she felt it could not wait until the next council meeting, which was April 22, and the 16th was the only day when everyone was available.

Analysis

Notice of the Meeting

Ms. Urbshott confirmed that notice of this meeting was not provided to the public, due to the fact that the meeting was held on an "emergency" basis. Although notice of the meeting was provided to council members the day before, she advised our Office that she did not consider posting notice on the municipal website at the same time because she did not think it was a matter that concerned the public.

The Township's Procedure By-law states that, notwithstanding the Township's normal notice requirements, "in the event of an emergency, the meeting may be held as soon as practicable following the receipt of the summons or petition, as the case may be, and notice may be given by telephone, facsimile, personal contact, e-mails, or posted on the municipal website as determined by the Administrator/Clerk." (s. 5.5) Neither the By-law nor the *Municipal Act* defines "emergency."

The Ontario Court of Justice has provided the following interpretation of what is considered to be an "emergency":

Occam's razor, not to mention common sense, sometimes requires that, even in the application of the law, common words and phrases be given their common meaning... An emergency has a simple and well understood meaning: a serious, unexpected and potentially dangerous situation requiring immediate action (see the *Oxford English Dictionary* or *Black's Law Dictionary* for two examples)¹.

¹ *R v. Zehr* [2011] O.J. No. 4493

Although it is understandable that the Clerk wished to deal with this matter without delay, staff concerns about the behavior of a councillor in this case did not justify treating the matter as an “emergency” such that no public notice of the meeting was provided.

As noted in the Ombudsman’s 2008 report regarding the Township of Nipissing:

Municipalities often need the flexibility to deal with urgent situations as they arise... However, the need for quick communication does not relieve the council of its overriding responsibility to comply with the open meeting requirements... Expediency cannot be permitted to trump the public’s right to a transparent and accountable process for the conduct of municipal business. (pages 7-8)²

Although council has the authority to hold emergency meetings, it should do so sparingly and treat this as an exceptional process. Holding a meeting without first notifying the public should only be done in cases of genuine emergency, and not merely because council wants a matter dealt with quickly.

The personal matters exception

Although general discussions about tensions between council and staff would not necessarily be appropriate for in camera discussion, the discussions about a property dispute between identified citizens, and concerns expressed by specific staff members about the effect of the councillor’s comments, brought this matter within the boundaries of the “personal matters” exception.

On June 25, we shared our review and findings with you and gave you an opportunity to provide feedback. During our call, the Mayor said he still felt this was an emergency matter, and that it was something that needed to be dealt with before the long weekend. Ms. Urbshott reiterated that it was not a matter that concerned the public. We discussed that the open meeting requirements of the *Municipal Act* do not distinguish between matters that are of public interest and those that are not. The same procedures to ensure transparency should be followed regardless of the subject matter being discussed.

² <http://www.ombudsman.on.ca/Resources/Reports/Township-of-Emo---Township-of-Nipissing-br--New-cl.aspx>



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

You agreed to share our letter with council at the public meeting on July 21 and to make a copy available to the public.

I would like to take this opportunity to thank you for your cooperation during this review, and for providing our Office with the video of your closed session, which assisted us in completing a thorough and timely review.

Sincerely,

Michelle Bird
Open Meeting Law Enforcement Team