

December 6, 2018

BY EMAIL

Council for the Township of Tehkummah
456 Hwy 542A
Tehkummah, ON
P0P 2C0

Dear Members of Council for the Township of Tehkummah,

Re: Closed Meeting Complaints, June 2018

My Office received a complaint about four special meetings of council for the Township of Tehkummah held in June 2018. Specifically, the complaint raised concerns that the exterior doors to the municipal administration building were locked during the in-camera portion of the special council meetings held on June 5 and June 19, 2018. The complainant told my Office that the doors were not unlocked after the in-camera sessions were finished, preventing the public from attending the remaining open sessions. The complainant also told my Office that notice for two special meetings of council on June 14 and June 22, 2018 did not include the agendas, as required by the Township's procedure by-law.

I am writing to advise you that my investigation has determined that there is insufficient evidence to find that the exterior doors were locked during the June 5 and June 19, 2018 meeting. To assist in preventing future complaints, I am providing you with the following best practice suggestions to improve the township's door-locking practices and to remind the township of its obligations to provide public notice of all meetings under the *Municipal Act, 2001* and its own procedure by-law.

Previous findings

In June 2017, my Office sent a letter to the township, identifying several best practices to enhance the accountability and transparency of the township's meetings. I also investigated a meeting of council held on December 22, 2017, and issued a report in April 2018 in which I found the township failed to provide notice of the meeting as

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required by the *Municipal Act, 2001* and the township's procedure by-law. I urged the township to update its procedure by-law, especially with respect to its general practice for posting notice of meetings. In May 2018, I sent a letter to the township reminding the township of its obligations to provide public notice before holding any meeting.

Review

In investigating the present complaint, my Office spoke to the township's deputy clerk-treasurer, as well as to the acting deputy clerk-treasurer, four council members, and members of the public. We also spoke to the township's current clerk-treasurer, who was not employed at the township during the June 2018 meetings.

Locked doors – June 5 and June 19, 2018

My Office was told that it is the township's normal practice to lock the doors to the meeting room during an in-camera session, and unlock those doors when council returns to open session. It is generally the responsibility of the clerk to ensure that members of the public have left the meeting room and the doors are locked before an in-camera session begins. This practice is not formalized in a policy.

The deputy clerk-treasurer told my Office that she did not lock the exterior doors to the municipal administration building during the in-camera portion of the June 5 and June 19 special council meetings.

The acting deputy clerk-treasurer also told my Office that she does not recall locking the exterior doors during the in-camera portions of those meetings. However, she speculated that she could have mistakenly locked the exterior doors when she left for the day prior to the special council meetings on June 5 and June 19, because she was not aware that those special meetings had been called. Her normal practice is to lock the exterior doors when she leaves for the day, except on evenings when a council meeting is scheduled.

My Office was provided with the identities of members of the public who may have possessed relevant information about the locked doors. Members of my Office spoke to those potential witnesses, but were not provided with any evidence that could substantiate the allegations of the complainant.

Citizens have a right to attend public meetings and view council proceedings in action. The Supreme Court has found that this right is at the foundation of the municipal open meeting rules. Locking doors frustrates that right by preventing the public from “[observing] municipal government in process.”¹ My Office has investigated locked

¹ *London (City) v RSJ Holdings Inc* [2007], 2 SCR 588 at para 32.

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doors on four previous occasions. In each case, we found that locked entrance doors rendered an otherwise open council meeting illegal.² The fact that the doors are locked inadvertently or without council knowledge does not change the fact that when the doors are locked, citizens are denied access.

In future, to prevent further confusion, the township should take steps to develop a clear policy on when the doors to the exterior building and the council meeting room are locked, and train its staff accordingly. This procedure should also account for access by members of the public to the municipal administration building via the exterior doors during council meetings. The township clerk-treasurer agreed to bring forward such a policy to council.

Notice – June 14 and June 22, 2018

The complaint raised concerns regarding the content of the notice for the special meetings of council held on June 14 and June 22, 2018.

The procedure by-law in effect at the time of the meetings states that public notice of a meeting is given by posting the meeting agenda in the township offices two working days before the meeting occurs. My Office was provided with copies of the notice for the June 14 and June 22, 2018 meetings. The notices only included the date, time, and location of the meetings and did not include the meeting agendas.

A new procedure by-law was enacted by council on November 6, 2018. The new procedure by-law requires that public notice of meetings be posted on the township's website on the Friday prior to the meeting date, using all reasonable and appropriate means to inform the public of council and committee activities.

My Office has noted on numerous occasions, including in a report to the Township of Tehkummah, that a meeting notice should include adequate, meaningful information about all open and closed portions of a meeting, including the time, date and location at which a meeting will take place.³ This interpretation of the notice requirements in the *Municipal Act, 2001* is informed by the intent and purpose of the open meetings provisions, which is to enshrine the public's "right to observe municipal government in

² *London (City of) (Re)*, 2016 ONOMBUD 4 (CanLII); *Fort Erie (Town of) (Re)*, 2016 ONOMBUD 3 (CanLII); and *Russell (Township of) (Re)*, 2017 ONOMBUD 21 (CanLII), and Ombudsman of Ontario, *Press Pause – Investigation into a meeting of council for the Regional Municipality of Niagara on December 7, 2017* (July 2018), online: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-on-investigations/2018/press-pause>

³ *Mattawa (Town of) (Re)*, 2011 ONOMBUD 1 (CanLII), *Black River-Matheson (Township of) (Re)*, 2015 ONOMBUD 2 (CanLII), *Tehkummah (Township of) (Re)*, 2018 ONOMBUD 3 (CanLII).

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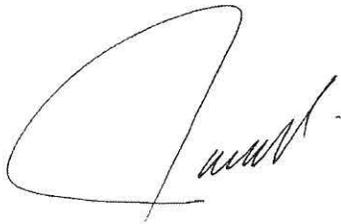
process.” Without notice of where a meeting will take place, members of the public are effectively denied this right.

I acknowledge that the township’s new by-law will help ensure meaningful notice of meetings is provided on a regular basis. I also urge the township to ensure that staff adhere to its new procedure by-law and my previous recommendations in providing notice to the public.

Conclusion

I would like to thank the township for its co-operation during my investigation, and for indicating to us that this letter would be included as correspondence at the next available meeting of council.

Sincerely,



Paul Dubé
Ombudsman of Ontario