

May 9, 2018

Ric McGee, Chief Administrative Officer/Clerk
Town of Deep River
100 Deep River Road
PO Box 400
Deep River, ON K0J 1P0

Via mail and email

Dear Mr. McGee,

Re: Closed meeting complaint – March 21, 2018

I am writing further to our telephone conversation on May 9, 2018. As we discussed, our Office received a complaint regarding a closed meeting held by council for the Town of Deep River on March 21, 2018. The complaint alleged that portions of council's discussion did not fit within the closed meeting exceptions in the *Municipal Act, 2001*. What follows is a summary of our review of this complaint, including our discussions with you.

Review

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an independent Officer of the Ontario Legislature. Our Office has the authority to review complaints regarding the administrative conduct of public sector organizations, including the Town of Deep River. As of January 1, 2008, the *Municipal Act, 2001* (the Act) gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.¹ The Ombudsman is the closed meeting investigator for the Town of Deep River.

We reviewed the agenda, as well as the open and closed minutes, from the March 21, 2018 council meeting. We also reviewed a video recording provided by the complainant

¹ *Municipal Act*, SO 2001, c 25, s 239.1.

documenting a portion of council's open session discussion. We spoke with the town's Chief Administrative Officer (CAO)/Clerk and reviewed related meeting materials.

March 21, 2018 council meeting

Our Office received a complaint about two matters discussed by council during its closed session on March 21, 2018. The agenda described these matters and the applicable closed meeting exceptions as follows:

**4.2 Development proposal – Keyes Property
TSH Development Group**

- (c) a proposed or pending acquisition or disposition of land by the municipality or local board;
- (i) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board, which, if disclosed, could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (k) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board.

**4.6 Fire Services Update including Deep River / Canadian Nuclear
Laboratories Fire Services Agreement and WSIB
Richard McGee, Chief Administrative Officer/Clerk**

- (b) personal matters about an identifiable individual, including municipal or local board employees;
- (d) labour relations or employee negotiations;
- (e) litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board;
- (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (h) information explicitly supplied in confidence to the municipality or local board by Canada, a province or territory or a Crown agency of any of them.

Prior to proceeding in camera, Councillor McLaren introduced a resolution to move the discussion about the Canadian Nuclear Laboratories fire service agreement update to open session. The resolution was defeated.

Once in closed session, our review indicates that council discussed a development proposal for a specific plot of municipally-owned land. According to the closed meeting materials and our discussion with the CAO/Clerk, the developer provided council with a specific business plan that identified the financial strategy the developer intended to pursue to ensure the project's success. We were told that this detailed information was relevant to council's consideration of the development proposal because council needed to ensure the project's viability before agreeing to sell prime municipal real estate. Following this discussion, council passed a resolution in open session to invite the developer to a special council meeting to provide more information about the proposed real estate project.

Regarding the fire services matter, our review indicates that council discussed various issues including: an ongoing workplace injury claim related to fire service personnel, proceedings at the Ontario Labour Relations Board, other firefighter personnel issues, and information related to an ongoing negotiation with Canadian Nuclear Laboratories.² We were told that during this discussion, the CAO/Clerk provided council with legal advice he had obtained regarding the workplace injury and labour relations proceedings. The CAO/Clerk also provided information from the town's solicitor regarding the ongoing negotiations with Canadian Nuclear Laboratories. We were told that council's discussion included detailed information about identified firefighters involved in each matter. We were also told that council's consideration of the Canadian Nuclear Laboratories negotiation included discussions regarding the performance of specific individuals and how different forms of the agreement would affect individual's employment. Council did not pass any resolutions in open session related to these matters.

² Canadian Nuclear Laboratories is a Crown agency wholly-owned by Atomic Energy of Canada Limited, a federal Crown corporation.

Analysis

Development proposal

Based on the closed meeting materials and information provided by the CAO/Clerk, council's discussion of the development proposal involved a proposed disposition of municipal property. To aid in its consideration, council was provided with the developer's detailed business plan that identified the financial strategy the developer intended to pursue to ensure the project's success. At the time of council's discussion, negotiations with the developer were ongoing. Pursuant to the acquisition or disposition of land closed meeting exception in section 239(2)(c) of the *Municipal Act*, council was entitled to discuss this matter in camera. Accordingly, it was not necessary to determine whether the discussion also fit within the other exceptions cited by the municipality.

Fire services

According to the information provided, council discussed ongoing legal proceedings, firefighter personnel issues, and information related to an ongoing negotiation with Canadian Nuclear Laboratories. Council received legal advice related to these matters and the discussions included personal information about identified individuals at Canadian Nuclear Laboratories and the Deep River Fire Department. Council was also permitted to discuss these matters in camera under the closed meeting exceptions for personal matters, labour relations or employee negotiations, litigation or potential litigation, and advice that is subject to solicitor-client privilege. Again, it was not necessary to determine whether the discussion also fit within the other exception cited by the municipality.

Resolution to proceed in camera

During our review of this complaint, our Office noticed that council's resolution to proceed in camera did not indicate which closed meeting exception(s) council intended to rely on to discuss specific matters. Instead, this information was provided in the meeting's agenda.

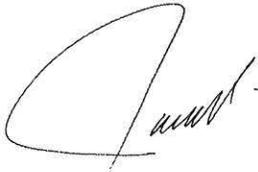
While the *Municipal Act* does not require council to specifically indicate which exception it intends to rely on for each matter discussed in camera, the town should adopt this as a best practice.

Conclusion

My Office's review found that the closed meeting held by the Town of Deep River on March 21, 2018, fit within the exceptions for closed meetings set out in the *Municipal Act, 2001*.

Thank you for your co-operation during our review. You indicated to us that this letter would be included as correspondence at the next meeting of council.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Joan Lougheed, Mayor