



June 16, 2017

Karen Gerrard, Clerk-Treasurer
Township of Tehkummah
456 Hwy 542A
Tehkummah, ON
P0P 2C0

Via mail and email - twptehk@amtelecom.net

Dear Ms. Gerrard:

Re: Complaint received by the Ontario Ombudsman regarding closed meetings in the Township

I am writing further to our telephone conversation on June 21, 2017. As we discussed, our Office received a complaint regarding five closed meetings held by council for the Township of Tehkummah. This letter summarizes our discussion and highlights the best practices we shared with the Township.

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 Township of Tehkummah. As of January 1, 2008, the *Municipal Act, 2001* (the Act) also gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. The Ombudsman is the closed meeting investigator for the Township of Tehkummah.

We contacted the Township to request the open and closed minutes of council meetings held on February 2, May 3, June 7, July 12, and September 13, 2016. We also requested the meeting materials considered in these closed sessions.

The open and closed meeting minutes provided by the Township consisted mainly of lists of resolutions passed by council without further description of the nature of discussions which took place. We also reviewed meeting materials provided by the Township, which consisted of file folders of correspondence and other papers related to

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the meetings. We understand that the township appointed a new Clerk in September 2016 and that the minutes and materials provided to our Office were prepared by the township's previous Clerk.

Based on our review of these materials, we have identified several best practices the municipality may wish to adopt to enhance the accountability and transparency of its council meetings.

Meeting minutes

Numerous reports from our Office regarding closed municipal meetings have commented on the type of information that should be included in meeting minutes. For instance, in our November 2015 report regarding closed meetings in the Township of Bonfield, our Office noted that the following information should be included in meeting minutes:

- where the meeting took place;
- when the meeting started and adjourned;
- who chaired the meeting;
- who was in attendance, with specific reference to the Clerk or other designated official responsible for recording the meeting;
- whether any participants left or arrived while the meeting was in progress and if so, at what time this occurred;
- a detailed description of the substantive and procedural matters discussed, including reference to any specific documents considered;
- any motions, including who introduced the motion and seconders; and
- all votes taken, and all directions given.

In addition, our Office encourages municipalities to adopt the best practice of audio or video recording both open and closed council proceedings.

Keeping complete and accurate minutes of closed session meetings ensures that members of the public feel confident that matters dealt with in closed session were appropriate for in camera discussion and that requirements of the *Municipal Act* and local by-laws have been followed. Similarly, fulsome open meeting minutes allow members of the public who were unable to attend council meetings to understand how and why council reached certain decisions.

Resolution to proceed in camera

In our review of the township's meeting minutes, we noted that resolutions to proceed in camera did not clearly state the subject matter to be discussed in closed session. For example, the February 2, 2016 minutes state:

MOTION... THAT Council move to an In Camera Meeting to discuss personnel and legal carried.

Section 239(4) of the *Municipal Act* requires that the resolution to proceed into closed session include the general nature of the subject matter to be considered.

As noted by the Court of Appeal in *Farber v. Kingston City*¹, “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public”.

To ensure that the resolution to proceed in camera maximizes the information available to the public, the township may wish to include a brief description of the topic to be discussed in its resolutions. Doing so provides meaningful information to the public about the issues to be discussed in camera and inspires confidence that the meeting has been properly closed for a legitimate purpose.

Reporting back

From our review of the township’s minutes, it does not appear that council reports back – i.e. shares a general summary of what was discussed – in open session following its in camera discussion.

Numerous closed meeting investigators, including our Office, have recommended that municipalities adopt the practice of reporting back.² In a 2009 report regarding closed meetings in the County of Essex, LAS recommended that councils “report...in a general way, what happened at the closed session”.³

In some cases, public reporting might consist of a general discussion in open session of subjects considered in closed session. This might be similar to the information in the resolution authorizing the session, together with information about any decisions, resolutions, and directions given to staff. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.

¹ *Farber v. Kingston (City)*, 2007 ONCA 173 at para 21.

² Ombudsman of Ontario, *Investigation into whether council for the Municipality of Magnetawan held illegal closed meetings* (June 2015) at para 54, online: http://www.ombudsman.on.ca/Files/sitemedia/files/FinalReport-Magnetawan_2015.pdf.

³ Local Authority Services, *A Report to the corporation of the County of Essex* (September 2009) at 17, online: http://www.agavel.com/wp-content/uploads/2013/09/Essex_County_Report_Sep_18_Final.doc.



Conclusion

Thank you for your co-operation during our review. At this time, we will not be taking further action regarding the township's meeting practices. However, we urge the township to adopt the practices outlined in this letter to enhance the transparency and accountability of its council meeting. We have included various educational materials with this letter that may be of assistance educating councillors, staff, and members of the public regarding the open meeting requirements.

You indicated to us that this letter would be included as correspondence at the next available meeting of council.

If you have any questions or if you would like to discuss the content of this letter, please contact me at 1-800-263-1830, ext. 3438.

Yours truly,

Robin Bates
Office of the Ontario Ombudsman