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ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

October 25, 2012

Clerk Lesley Sprague
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON P5A 1X5

Dear Ms. Sprague,

Re: Closed Meeting Complaints

I am writing further to our conversation on October 25, 2012 regarding the results of our review of complaints received regarding alleged improper closed meetings of Council and the Finance and Administration Committee.

The complaints our Office received were as follows:

1. The Finance & Administration Committee held an improper closed meeting on July 24, 2012 to discuss renewal of an employee cell phone plan.
2. A quorum of Council attended closed meetings with six different Ministers/Ministry officials at the Association of Municipalities of Ontario (AMO) conference in August 2012.
3. Council did not hold a formal vote on the resolution to proceed in camera at the July 23, 2012 meeting.
4. Notice of three different committee meetings was not posted on the City's website: July and August Accessibility Advisory Committee and Economic Development Committee meetings; September 10 Ad Hoc Budget Committee meeting.

July 24, 2012 Finance & Administration Committee Meeting

The Finance and Administration Committee (the Committee) is comprised of four members of Council, including the Mayor, and the Director of Finance (Committee Secretary), and is subject to the open meeting requirements.

The complainant alleged that this Committee held an improper closed meeting to discuss renewal of the City's cell phone plan.

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In considering this complaint, our Office spoke with you and reviewed the meeting agenda and minutes, as well as the relevant sections of the *Municipal Act, 2001* (the Act).

The Agenda for the July 24 meeting did not include a scheduled closed session. However, Council passed a resolution to proceed in camera to discuss a memo from the IT Manager regarding "Mobile Device Plan Renewal".

The closed meeting record indicates that the Mayor commented on staff's use of cellphones and/or Blackberries, following which a general discussion took place on this topic.

The Committee Secretary and Mayor advised our Office that the meeting was closed under the "personal matters" exception to the open meeting requirements (s. 239 (2) (b) of the Act). The Mayor indicated that the discussion included review of a staff list of approximately ten to twelve employees and discussion of whether or not individual job duties required the use of a cell phone/Blackberry. Because specific staff members were identified, the Mayor viewed this as "personal information about identifiable individuals". The Committee Secretary indicated that the Committee also discussed employee cell phone billing information, which was deemed "personal".

While the *Municipal Act* does not define "personal information" for the purposes of the open meeting requirements, the Information and Privacy Commissioner has noted[1] that in order to qualify as personal information, the information "must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "personal information about the individual."

Given the above, the Committee's discussion of an employee's need and usage of a cell phone/Blackberry in respect to his/her job duties, does not include "personal" information and, therefore, the discussion was not permitted in a closed session.

As discussed, the Committee must ensure that only matters that fall within the permitted exceptions under the Act are discussed behind closed doors. In addition, we recommend that any resolutions to proceed in camera cite the specific exception authorizing the closed meeting.

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[1] Order MO-2203; (Town of Aylmer) (June 22, 2007)

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Meeting with Ministers at AMO Conference (August 2012)

Council disclosed at an August 27, 2012 Council meeting that the Mayor and three members of Council met with six different ministers during the Association of Municipalities of Ontario (AMO) Conference in Ottawa between August 20th and 22nd, 2012. This resulted in a complaint to our Office that these meetings contravened the open meeting requirements, as they were not open to the public.

The AMO holds an annual conference at which all municipalities attending are given the opportunity to meet with Ministers and/or Ministry staff on a confidential basis in order to draw attention to certain municipal interests, to seek resources for municipal projects, or to raise questions with Ministers on specific topics.

On July 23, 2012 Council passed a resolution to send a delegation of Council to the AMO Conference "subject to the opportunity of obtaining delegations with appropriate ministers".

You explained that the delegation sent to the AMO Conference was mandated by council to use the opportunity to meet with Ministers and Ministry officials in order to bring to their attention specific local concerns and issues on behalf of the municipality. The Mayor and three Councillors were successful in arranging appointments with six Ministries, at which they raised municipal issues of concern and sought support for local projects, including emergency initiatives following the Algo Mall collapse and funding for Phase II of the Waterfront Development project.

Although a quorum of council members attended these meetings at the AMO conference, based on the nature of the discussions held these do not appear to be the type of meetings that are subject to the open meeting requirements of the *Municipal Act*.

Based on a review of the relevant case law, the Ombudsman developed the following definition of a meeting for the purpose of determining whether the open meeting provisions of the *Municipal Act* should apply:

> Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

The information provided to our Office was that the delegates were instructed by all of Council to raise local concerns and issues and to make representations on behalf of the municipality with respect to local priorities and projects. When engaged in these discussions the Mayor and members of council were simply raising municipal issues and concerns to Ministers and Ministry representatives. They did not exercise any decision

making power on behalf of council or in fact lay the groundwork for the exercise of any future decision-making. Indeed the role of the delegation appears to have been to communicate and raise awareness of council's previous decisions and stated priorities relating to municipal issues.

Given the above information, the meetings with Ministers and Ministry representatives by a delegation of council at the AMO Conference would not be subject to the open meeting requirements.

July 23, 2012 Council Meeting

The complainant alleged that, although Council initiated a motion to proceed in camera, a vote was not taken to confirm Council's approval of the motion.

As you know, the *Municipal Act, 2001* (the Act) requires that Council "state by resolution…the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting…." (s. 239 (4) (a)).

Although Council meetings in Elliot Lake are televised and taped, we confirmed during the course of our review that neither the City nor the Eastlink Television Network (responsible for airing the meetings) maintain copies. Therefore, we considered information provided by you and the complainant, as well as the meeting Agenda and Minutes, in assessing this complaint.

The Agenda for the July 23, 2012 meeting of Council that was posted on the website stated that a closed meeting would be held to receive an update from Mr. Kennealy (General Manager of Elliot Lake Retirement Living) on the status of negotiations between the Ministry of Natural Resources and the Serpent River First Nation regarding the acquisition of Crown Land for the Waterfront Development Project. The exception relied on for closing the meeting was "proposed or pending acquisition of land" (s. 239 (2) (c)).

The public minutes state that, after Mr. Kennealy presented information publicly regarding the status of the Phase II Waterfront Project, Councillor Farquhar moved to discuss the matters involving land acquisition in closed session. The minutes state that the motion was seconded by Councillor Rastin and the motion 'carried'.

The minutes also indicate that, at 7:37 p.m. Council passed a resolution to proceed in camera.

The Procedure By-law indicates that voting is done by "show of hands" unless a member

specifically requests a roll call vote. Members can also object if they disagree with the outcome of the vote. There is no indication that an objection was raised in this case.

Based on the above information, it appears that Council provided notice of the closed meeting and informed the public of the nature of the subject matter to be discussed. The Act permits Council to discuss land acquisition matters within a closed meeting.

Notice of Committee Meetings

The *Municipal Act* requires municipalities to provide for public notice of meetings in their Procedure By-Law. The Act does not specify the content or format of notice.

Elliot Lake's Procedure By-Law states that public notice of meetings will be provided by posting the Agenda cover page on the City Hall Bulletin Board. However, you stated that it is also the City's practice to post meeting agendas on the website. Notice of meetings may also be published in the newspaper.

In regard to the complaint that notice was not provided of the Accessibility Advisory Committee meetings in July and August, you advised that no meetings of that Committee occurred in July or August.

With respect to complaints that there was no prior notice of the Economic Development Advisory Committee meetings for July and August, the Committee Secretary stated that a public meeting was held on August 8, 2012. The Secretary said that notice was provided on the City Hall Bulletin Board in accordance with the Procedure By-Law and the minutes of that meeting are available on the website.

In terms of the September 10, 2012 Ad-Hoc Budget Committee meeting, this meeting was rescheduled from July 17, 2012. The Committee Secretary noted that notice of the July 17 meeting was posted on the website, but, due to an oversight, the rescheduled meeting was not posted. However, notice was available on the City Hall Bulletin Board, in accordance with the By-Law.

The Committee Secretary stated that, over the course of the summer, the City held numerous meetings related to the Algo Mall collapse and it was difficult to ensure posting of all meetings on the website or in the newspaper.

During our conversation, we suggested that Council consider amending the Procedure By-Law to include the City's current practice of posting notice on the website.

You confirmed that you would share this letter with Council at the next public meeting on November 13, 2012 and make it available on your website.

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Thank you for your cooperation with our review of these matters.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team