

August 30, 2012

Administrator Clerk-Treasurer Nancy Michie  
Municipality of Morris-Turnberry  
41342 Morris Rd.,  
PO Box 310,  
Brussels, ON N0G 1H0

Dear Ms. Michie,

**Re: Complaint re: Closed Meetings of Council held November 22, December 6, and December 20, 2011**

I am writing further to our conversation on August 30, 2012 regarding the results of our review about a complaint that Council allegedly held improper closed meetings at the end of 2011 at which it discussed the purchase of land for a potential fire department.

The complaint alleged that Council held the meeting(s) behind closed doors because a significant portion of the municipality's citizens were opposed to the formation of a new fire department, as they were of the view that contracting fire services from a neighbouring town was more cost effective.

As you know, the Ombudsman is the closed meeting investigator for the Municipality of Morris-Turnberry. In reviewing these complaints, our Office spoke with you, obtained and reviewed the agendas and minutes for the meetings, in addition to the City's Procedure By-Law and relevant sections of the *Municipal Act, 2001* (the Act).

Under the *Municipal Act*, all meetings of Council are required to be open to the public, with limited exceptions and subject to certain procedural requirements.

You confirmed that Council held closed meetings on November 22, December 6, and December 20, 2011.

### **Procedure By-Law**

The Municipality's Procedure By-Law indicates that regular meetings of Council are held on the first and third Tuesdays of each month, starting at 7:30 p.m.

The Procedure By-Law (#69-2010) references the open meeting requirements and provides for public notice of meetings. The Clerk is required to publish the agenda and post it on the municipal website not later than 48 hours prior to the meeting.

The same notice is required for special meetings, which may be called by the head or majority of Council.

In regard to Special meetings, the Procedure By-Law states that "no business except the business dealing directly with the purpose mentioned in the Notice shall be transacted at any Special Meeting." However, the Procedure By-Law also allows Council to suspend the rules set out in the by-laws with 2/3 majority vote.

### **November 22, 2011 – Special Meeting of Council**

The Agenda for the Special Meeting on November 22, 2011 indicates that notice of the meeting was posted on the website on November 9, 2011 and published in two local newspapers on November 16, 2011.

The Agenda includes notice that a closed session would be held to discuss "Confidential Report on Fire Options for Fire Suppression Services."

The exceptions referenced in the agenda authorizing the closed meeting were:

- s. 239 (2) (a) Security of the Property
- s. 239 (2) (b) Personal matters about an identifiable individual
- s. 239 (2) (c) A proposed or pending acquisition or disposition of land by the municipality

All members of Council, the Clerk, the Director of Public Works, the Chief Building Official and the Community Fire Safety Officer attended the closed meeting, which began at 7:30 p.m. and adjourned at 10:45 p.m.

The closed meeting record shows that Council considered information contained in the confidential report, "Fire Options for Fire Suppression Services". In addition, Council reviewed two employment related matters added to the agenda with unanimous approval of Council – one involving a staff complaint and another regarding changes to individual employment contracts.

The closed meeting record was limited in that it only indicates that Council discussed the confidential report but does not provide any detail about the specific content of the discussion or comments put forward by Council members.

Our Office obtained and reviewed the confidential report regarding fire suppression services discussed in the closed meeting to assess whether consideration within a closed meeting was justified. The report provided an overview and cost analysis of fire suppression options including detailed information about the option of purchasing land for a fire department.

During the closed meeting, Council passed a resolution directing the Clerk to take certain action relative to the acquisition of land.

The record also states that the Clerk left the meeting for a short period of time at Council's request "for the Council to have an open informal discussion" regarding a staff complaint. The Clerk did not delegate another staff member to record the minutes in her absence, as no one was available at that time. As you are aware, the Act requires that the Clerk "record...all resolutions, decisions and other proceedings of the council", including closed meetings, unless he/she delegates that authority to another person, other than a member of council.

Upon returning to open session, the public minutes indicate that Council reported back that it considered confidential issues concerning employee issues and fire options. Council then voted in the open session to "accept the Fire Options proposal for fire services."

### **Analysis**

Notice of the November 22, 2011 Special Meeting was posted in accordance with the Procedure By-Law. The agenda included notice that a closed meeting would be held. Items were added to the closed meeting agenda after Council unanimously voted to do so, as permitted under the Procedure By-Law.

In terms of the exceptions cited for holding the closed meeting, the resolution is not clear as to which exceptions apply to the different topics being considered in the closed meeting.

According to the information reviewed, including the closed meeting record and confidential report, the focus of the meeting (with respect to the topic of fire suppression options) was on a potential land acquisition, including the proposed offer price for that land. As such, the subject matter falls within the exception under s. 239 (2) (c) of the Act – proposed or pending acquisition or disposition of land by the municipality.

However, in addition to considering the land acquisition, Council reviewed information in the report regarding an overall cost analysis and comparison of fire suppression options. Although this aspect of the closed meeting discussion would not normally fit within the exception, it is recognized that this information was considered as background information to inform the discussion of the option for a potential land acquisition.

We noted that the exception ‘security of the property’ was also cited as a reason for closing the meeting. You stated that the exception related to the report on fire suppression options but could not recall why it was applied, given the time that had passed since the meeting.

Although the Act does not define ‘security of the property’, the Information and Privacy Commissioner has considered the meaning of the term and in a 2009 decision<sup>1</sup> which stated in part,

In my view, ‘security of the property of the municipality’ should be interpreted in accordance with its plain meaning, which is the protection of property from physical loss or damage (such as vandalism or theft) and the protection of public safety in relation to the property.

The subject matter discussed in the closed meeting does not fit within the ‘security of the property’ exception. As stated, the discussion focused on land acquisition and, any general discussion regarding fire suppression options would not normally be considered confidential information that falls within any of the exceptions under the Act permitting closed meeting consideration.

As discussed on August 30, 2012 it is important that Council ensure that the exceptions cited to authorize closed meeting discussion accurately reflect the subject matter being discussed.

In addition, we noted that, while Council identified the general nature of matters being considered, as required under the Act, the public minutes do not correlate the legislated exception to the subject matter being considered under that exception. In the interest of clarity and transparency, we suggested that Council identify the exception and general nature of the subject of the meeting within the same line/paragraph and within the resolution. For example, the resolution may state:

Council resolved to proceed *in camera* under s. 239 (2) (b) “personal matters about an identifiable individual” – employee performance

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<sup>1</sup> Information and Privacy Commission Order MO-2468-F; re: City of Toronto (October 27, 2009)

When we spoke, you said that this has been addressed and resolutions more clearly identify the exceptions that apply to the specific topics being discussed in a closed meeting.

### **Voting**

The *Municipal Act* prohibits voting in closed session unless votes are in relation to procedural matters and/or direction to staff, officers, or agents of the municipality. Council's vote in the closed meeting to direct the Clerk to take certain action with respect to property acquisition falls within this exception.

The by-law authorizing the purchase of the properties considered was passed in a public session on December 20, 2011.

### **December 6, 2011 Closed Meeting of Council**

The Agenda for the meeting was posted on the website on November 9, 2011 and published in two local newspapers on November 16, 2011.

The Agenda indicated that three matters would be discussed in camera:

1. Employee Benefit Plan Report
2. Golf Course Settlement Review
3. Property of the Municipality

The resolution to proceed in camera also states the exceptions under the Act that Council is relying upon to close the meeting to the public. The resolution stated:

“That the Council adjourn the public session of Council and enter into a ‘closed to the public’ session for a matter pursuant to the *Municipal Act*, Section 239 (2) (b) confidential matter concerning an identifiable individual and (2) (f) solicitor-client privilege and (2) (c) pending acquisition of land.

The closed meeting record indicates that all of Council and the Clerk attended the closed meeting. The meeting began at 10:13 p.m. and adjourned at 10:30 p.m.

For clarification, the Clerk advised that Council discussed the Employee Benefit Plan report in closed session as it contained confidential information about identifiable individuals. The Golf Course Settlement review was considered under the exception of solicitor-client privilege. Council reviewed a paralegal report that provided advice regarding the Golf Course's appeal to the Assessment Review Board.

In regard to the third item – property of the municipality – the closed meeting record shows that Council discussed details of a pending acquisition of land and the estimated closing date.

When Council returned to the open meeting, it reported that it considered “confidential issues concerning municipal property and identifiable individual.”

### **Analysis**

Council is permitted to discuss proposed or pending acquisition of land within a closed meeting under s. 239 (2) (c ) of the *Municipal Act*. The closed meeting record confirmed that the focus of the discussion under this exception was on a pending acquisition of land.

Again, and as discussed, in the interest of clarity, Council should confirm the general nature of the matter to be discussed in association with the exception cited for holding the closed meeting.

### **December 20, 2011 Closed Meeting of Council**

Notice of the meeting was posted on the website on November 9, 2011 and published in the local paper on November 16, 2011.

The Agenda identified three topics for closed meeting discussion:

1. Report on Confidential Information
2. Judicial Review
3. Property Acquisition

According to the closed meeting record, all of Council and the Clerk attended the meeting.

The closed record states that Council discussed 4 items in camera. Council voted within the closed session to amend the original agenda and add information concerning a “property matter.”

The Clerk stated that the item was added because, after the agenda was prepared, the bank requested a specific document that was required in relation to the close of a purchase of property, - the same property previously discussed at the November 22 and December 6 meetings. The closing was scheduled to take place on December 22, 2011.

The closed meeting record shows that the Clerk informed Council of the bank’s request during the closed meeting. However, Council also discussed concern that information

about the purchase was leaked to the public and how to address breaches of confidentiality, possibly through the development of a Code of Conduct.

After returning to the open session, Council passed a by-law authorizing the purchase of the property discussed in the closed meeting. Council also passed a by-law authorizing the purchase of a second property prior to the closed meeting. These were the two properties that were reviewed at the November 22 and the December 6, 2011 meetings.

The Clerk advised that the December 20, 2011 meeting was the first opportunity that Council had to consider the by-laws to purchase the properties in a public meeting. Although the agreements were signed on November 23 and November 24, the Clerk said that the agreements then had to be reviewed by the Municipality's lawyer, who reportedly needed to prepare the deeds to finalize the purchase. The Clerk said that Council was not sure that the sale of one of the properties would be completed.

### **Analysis**

As indicated above, the *Municipal Act* permits discussion of the proposed or pending acquisition or disposition of land within a closed meeting. Discussion regarding the bank's request for documentation to close the sale/purchase of land fits within that exception.

However, Council's closed session discussion of a potential leak of information and the need for a Code of Conduct was not permitted under any of the enumerated exceptions in the *Municipal Act*.

As discussed, Council must be careful to ensure that only matters that pertain directly to the cited exception(s) authorizing the closed meeting are discussed.

When we spoke on August 30, 2012 you expressed general agreement with the comments and suggestions made by our Office. We requested that you share this letter with Council at the next scheduled open meeting on September 18, 2012 and make this letter available to the public.

I would also like to thank you for your cooperation during our review.

Sincerely,  
Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team