

April 5, 2013

Clerk Bonnie Nistico-Dunk
PO Box 3012, 50 Church Street
St. Catharines, ON L2R 7C2

Dear Ms. Nistico-Dunk,

I am writing further to our conversation on April 4, 2013 regarding the results of our review of a complaint that City Council met in closed session on December 17, 2012 to discuss a proposal from the Town of Thorold to contract fire services from St. Catharines. The complaint alleged that the subject matter was not permitted under the legislated exceptions to the municipal open meeting requirements.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their Committees be open to the public, with limited exceptions.

The Ombudsman is the closed meeting investigator for the City of St. Catharines. In reviewing this complaint, our Office spoke with you, the Mayor, the Director of Fire and Emergency Management Services, and the then Acting City Solicitor. We also considered the City's Procedure By-Law and the relevant sections of the Act.

Background

The City of Thorold initiated an organizational review of the efficiency of its fire service in September 2012. The results of that review, conducted by consultant Emergency Management and Training Inc., were not made public until February 2013. The consultant's report outlines a number of options and recommendations for Thorold Council to consider in terms of improving its fire service. One of the options under consideration is to contract fire services from St. Catharines, which, the report points out, would likely result in the elimination of the Thorold Fire Chief's position, as well as his Administrative Assistant, and the Fire Prevention Officer position.

St. Catharines Procedure By-Law

Regular meetings of Council are held every Monday at 6:30 p.m. In accordance with the Act, the City's Procedure By-Law provides for public notice of meetings via an annual schedule that is posted on the website.

December 17, 2012 General Committee Meeting

The Agenda for the Monday December 17, 2012 General Committee meeting indicated that Council (as General Committee) intended to hold a closed session to discuss "a proposed or pending acquisition or disposition of land". However, the minutes of the meeting reflect that, in addition to addressing a property acquisition matter in camera, Council passed a resolution to also consider "a personal matter about an identifiable individual, including municipal or local board employees".

This item was added to the agenda at the request of the Director of Fire and Emergency Management Services in order to update Council on the potential staffing implications in the event that the City of Thorold contracted fire services from St. Catharines. The Procedure By-Law permits Council to add items to the agenda by majority vote.

The closed meeting record shows that all of Council attended the meeting, along with senior staff members, including the Clerk, the Chief Administrative Officer, the Director of Fire and Emergency Management Services, the Director of Financial Management Services, and the Acting City Solicitor Christopher Cooper.

The closed meeting record states that Council received a verbal report from the Director of Fire and Emergency Management Services "relative to Fire Services and the City of Thorold with respect to some preliminary discussions he is having with the Mayor and CAO of Thorold." The record states that Councillors asked questions of the Director and asked to be kept updated.

The information provided by you, the Mayor and the Director was that the closed meeting discussion focused on the implications for specific fire services staff in both Thorold and St. Catharines, should the two cities reach agreement on a fire services contract. In addition to discussing potential cuts to non-unionized staff, the Director reportedly also presented information about the anticipated impact to unionized staff.

The meeting lasted ten minutes and was adjourned.

Analysis

The *Municipal Act* permits Council to discuss “personal matters about identifiable individuals, including municipal or local board employees” within a closed meeting. While discussions about organizational restructuring would not normally fall within this exception, the Director presented information to Council concerning the potential impact of fire service amalgamation on specific individual employees, including potential terminations of identified staff members, which would bring the discussions within the “personal matters” exception.

As such, we found that this closed meeting was permitted under the Act.

Closed Meeting Record

Our ability to assess whether the discussions fell within the “personal matters” exception was made more difficult due to the limited meeting record. The record only stated that Council received a verbal report from the Director of Fire and Emergency Management Services on the status of discussions he had with the Mayor and the CAO in Thorold in relation to fire services. This does not provide any meaningful information about the substance of those discussions or what personal matters may have been discussed, so as to bring the meeting within the cited exception under the Act.

In our August 2009 letter to St. Catharines council in relation to our review of a June 22, 2009 closed meeting, we also noted that the meeting record was limited. We recommended at that time that minutes should include “referring to the various items that were discussed during the meeting as well as the nature of the meeting”. In the letter we referenced a 2008 Ombudsman Report to the City of Oshawa entitled “The ABCs of Education and Training” in which we stated in part:

The existence of an accurate record of all closed sessions containing sufficient detail to confirm what transpired is an important safeguard to ensure that the open meeting requirements have been observed and that only permissible topics have been considered in the absence of the public.

Council should maintain a closed meeting record that completely and accurately captures the substance of closed meeting discussions. As a best practice, the Ombudsman recommends that Councils audio or video record meetings in order to ensure a complete and accurate record.



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We reviewed our findings with you and Mayor McMullen on April 4, 2013 and provided an opportunity to provide relevant feedback and any additional pertinent information. You expressed general agreement with our review and findings.

We asked that this letter be included on the next public Council meeting agenda scheduled for April 22, 2013 and request that a copy be made available to the public on your website.

Thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team

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