

November 14, 2013

Mayor Tom Laughren and
Clerk Steph Palmateer
City of Timmins
220 Algonquin Boulevard East
Timmins, ON P4N 1B3

Dear Mayor Laughren and Mr. Palmateer,

Re: Closed Meeting Complaint – June 17, 2013 *In Camera* Session

I am writing further to our discussion on November 8, 2013 regarding the outcome of our review of a complaint that Council improperly discussed a zoning by-law infraction complaint in a closed meeting on June 17, 2013.

As you know, the *Municipal Act, 2001* (the Act) requires that meetings of council, local boards, and their committees are open to the public, with limited exceptions, and subject to certain procedural requirements.

In reviewing this complaint, our Office spoke with the Clerk and obtained and reviewed the June 17, 2013 meeting documentation, including the agenda, open and closed session minutes, and additional documents considered at the closed meeting.

Procedure By-Law

According to the City's Procedure By-Law, regular meetings of Council are held on the second and fourth Mondays of each month from January to June and September to December at 6:00 p.m. One Council meeting may also be held in the months of July and August, as determined by the Mayor and Council.

Any closed session is usually held prior to the regularly scheduled Committee of the Whole and Council meetings.

In terms of public notice, the Procedure By-Law references the Notice By-Law (2007-6566) which states that public notice of Council and local board meetings is to be provided via the local newspaper and the City's website.

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June 17, 2013 Meeting

Notice of the June 17, 2013 Council meeting was advertised in the local newspaper on June 14, 2013 and also posted on the City's website. The notice included reference to the 5:00 p.m. *in camera* meeting on a "land matter".

The Agenda for the *in camera* meeting stated that Council intended to pass a resolution to go *in camera* to discuss a "Land/Personnel Matter – Licensing By-Law Issues" and the public meeting minutes confirm this was done.

According to the minutes of the closed session, the purpose of the meeting was to hear complaints from two neighbouring couples about a resident's small engine repair activities on his property. The City had been investigating complaints of zoning by-law infractions since 2010 and charges were laid in August and December 2012 against the resident in question for operating an engine repair shop in a residential area. The resident plead guilty to the charge but neighbours remained concerned about continuing infractions. At the meeting, the complainants outlined their concerns and questioned the City's decision to issue a mobile engine repair licence to the resident.

In the course of the closed meeting, the complainants (two neighbours) presented a history of the issue, expressed concerns about the City's response and enforcement of the zoning by-law, provided an overview of the evidence presented over the years, and outlined allegations that the property owner continues to breach the zoning by-law. The evidence submitted and considered by Council includes witness statements and observations about the activities taking place on the residential property.

In addition, after the complainants left the closed meeting, the property owner was permitted to respond to the allegations. He also submitted witness statements attesting to his character and expressing views about the allegations raised against him.

Based on the closed meeting minutes and information from the Clerk, Council considered a report from the Senior Municipal Law Enforcement Officer that set out the history of complaints, investigation and enforcement activities, and outlined the Enforcement Officer's position on the current allegations and the neighbour's request to revoke the mobile small engine repair licence.

Although not reflected in the minutes, the documents Council considered in the closed session included a written legal opinion from the City's Solicitor - discussed after the residents left the meeting. The Clerk advised that, in retrospect, the resolution to proceed

in camera should have reflected that Council intended to discuss a “personal matter” and “advice that is subject to solicitor-client privilege”.

At the end of the meeting, Council directed staff to prepare a response to the deputation. The meeting lasted approximately one hour.

Analysis

The resolution to proceed *in camera* stated that Council intended to discuss in the June 17, 2013 closed session, a “Land/Personnel matter”. The *Municipal Act, 2001* permits Council to meet *in camera* to discuss both “a proposed or pending acquisition or disposition of land” and “personal matters about an identifiable individual...”. As the June 17, 2013 closed session did not involve the acquisition or disposition of land, this exception does not apply.

Our Office assessed whether Council could rely on the “personal matters” exception in order to review allegations and evidence against a member of the public respecting zoning by-law infractions involving alleged improper business activities on a residential property.

Although the *Municipal Act* does not define “personal information” for the purpose of the open meeting requirements, findings of the Information and Privacy Commission and provisions of the *Municipal Freedom of Information and Privacy Act* (MFIPPA) may be referenced as a guide.

While information about an individual in a professional or business capacity has generally been found not to be personal information, it may still be considered personal if it reveals something inherently personal about the individual¹.

Information has been found to be personal in a business context if it involves an investigation or assessment of the performance or alleged improper conduct of the individual².

Further, section 14 (3) (b) of the MFIPPA states that:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is

¹ IPC Order PO-2225

² IPC Order MO-2796

identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Information and Privacy Commission has determined that such an investigation can include investigations into possible violations of municipal by-laws.

In a January 29, 2007 Information and Privacy Commission decision³, the Commission determined that information pertaining to individuals gathered in the course of a City's investigation and enforcement of one of its by-laws was "personal information".

As noted, in the June 17, 2013 closed Council session, Council considered information pertaining to an investigation into complaints of a resident's contravention of the City's zoning by-law with respect to a small engine repair business. Much of the information presented in the June 17, 2013 closed session reiterates the information and evidence submitted to the City's By-Law Enforcement unit as part of that investigation, including, a summary of evidence presented to the municipal by-law enforcement department, and current witness statements outlining their observations of what transpired and/or allegations of what activities continue on the property, as well as personal views about the resident's activities and character. The individuals present at the closed meeting besides Council and staff were the affected parties.

As the information discussed related to the evidence and complaint history compiled in the course of an investigation into a violation of a by-law, Council was entitled to consider this information in closed session under the personal matters exception of the Act (s. 239 (2) (b)).

Council's review of a legal opinion in the closed session also qualifies for closed meeting consideration under the "advice that is subject to solicitor-client privilege" exception to the open meeting requirements. However, the resolution to proceed *in camera* was deficient in that it did not reference this as a purpose of the closed session. In addition, the meeting minutes did not reflect that Council reviewed the legal opinion in the closed meeting. As discussed, Council must ensure that the resolution to proceed *in camera* accurately reflects those matters that are to be discussed in the closed meeting and that the closed meeting minutes reflect all of the substantive discussions that take place.

³ IPC Order MO-2147

As a best practice and to ensure a complete and accurate meeting record, the Ombudsman recommends that Council consider audio or video recording both open and closed meetings.

On November 8, 2013 we discussed our review and findings with you and provided you with an opportunity to provide any additional information and feedback. You stated that you did not have any concerns with our findings.

You agreed to share this letter with Council at the next public meeting to be held on November 25, 2013 and to make a copy 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