



Ombudsman Report

**Investigation into a complaint about
closed meeting held by the County of Norfolk
on March 14, 2017**

**Paul Dubé
Ombudsman of Ontario
July 2017**

Complaint

- 1 On March 23, 2017, my Office received a complaint about a closed meeting held by the County of Norfolk on March 14, 2017.
- 2 At this meeting, council received a verbal presentation from representatives of the Port Dover Community Health Centre Board, including a request for funding from the county. The complaint alleged that this meeting did not fit within the exceptions to the open meeting requirements of the *Municipal Act* cited by the county or any of the permissible exceptions for closing a meeting to the public.

Ombudsman jurisdiction

- 3 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 4 As of January 1, 2008, the Act gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 5 The Ombudsman is the closed meeting investigator for the County of Norfolk.
- 6 In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's governing procedures have been observed.

Council procedures

- 7 The county's procedure by-law (by-law no. 2015-25) states that all meetings shall be open to the public except as provided by section 239 of the Act.

Investigative process

- 8 On May 5, 2017, we advised the municipality of our intent to investigate this complaint.

- 9 Members of my Office's staff reviewed relevant portions of the county's by-laws and policies, and the Act. We also reviewed the records from the open and closed sessions of the council meeting on March 14, 2017.
- 10 We interviewed all nine members of council, the clerk, and the chair of the Board.
- 11 My Office received full co-operation in this matter.

Background

The Port Dover Community Health Centre Board

- 12 Port Dover is a community of about 6,000 people within the County of Norfolk. In 2014, a not-for-profit corporation, the Port Dover Community Health Centre Board (the "Board"), was created with a mandate to recruit doctors to the community and construct a new medical centre in Port Dover.
- 13 In 2014, the Board received a \$250,000 operating grant from the county to assist in fulfilling its mandate. The grant was to be disbursed over five years in \$50,000 yearly installments.
- 14 Before construction could begin on a new medical centre, the Board announced in September 2016 it was disbanding and discontinuing operations immediately. The Board cited "a lack of operational financing, insufficient volunteer resources and myriad, seemingly endless obstacles"¹ as reasons it was unable to fulfill its mandate.

The March 14 closed meeting

- 15 On March 14, 2017 during a regular meeting, council proceeded into closed session under the "advice subject to solicitor-client privilege" and the "personal matters" exceptions. The resolution to proceed in camera cited the Port Dover Community Health Centre as the topic to be discussed in closed session. According to the clerk, the purpose of the closed meeting was to receive a formal verbal presentation from the representatives of the Board (known as a deputation) and to obtain legal advice from the county's solicitor on the deputation. The topic of the deputation was the Board's operational financing.

¹ "Port Dover Health Centre Committee Disbands", *Port Dover Maple Leaf* (28 September 2016), online: <<https://www.portdovermapleleaf.com/new-port-dover-health-centre-committee-disbands/>>

- 16 All council members except Councillor Noel Haydt were present during the closed session. Councillor Doug Brunton left the meeting before it was over. Several staff, the clerk and the county's solicitor were also present during the closed session.
- 17 During the first portion of the meeting, the county's solicitor provided legal advice to council about the Board's deputation. Following the county solicitor's advice, Councillor Brunton left the meeting.
- 18 Board representatives were subsequently invited into the closed session and provided a deputation to council. The deputation included information regarding the Board's operational finances and a request that the county release an installment of the \$250,000 grant. The representatives left the meeting after concluding their presentation.
- 19 Following the deputation, council received additional legal advice from the county's solicitor about the contents of the deputation and discussed the implications of the Board's request with their solicitor.
- 20 On May 9, 2017, during an open session, council passed a resolution refusing the Board's request for an additional installment of the grant.

Analysis

- 21 Council cited two closed meeting exceptions when it proceeded into closed session on March 14, 2017: advice subject to solicitor-client privilege and personal matters.

Applicability of the "advice subject to solicitor-client privilege" exception

- 22 As noted in several of my Office's reports², the section 239(2)(f) exception can be used when council is considering specific advice, or a related communication from a solicitor. Such communications can be privileged if they are: (a) between a client and his or her solicitor, where the solicitor is acting in a professional capacity; (b) made in relation to the seeking or receiving of legal advice; and (c) intended to be confidential.

² See, for example: Ombudsman of Ontario, *Investigation into whether Council for the City of Greater Sudbury held illegal closed meetings on March 2, March 23, and April 26, 2016* (January 2017), online: [https://www.ombudsman.on.ca/Resources/Reports/City-of-Greater-Sudbury-\(5\).aspx](https://www.ombudsman.on.ca/Resources/Reports/City-of-Greater-Sudbury-(5).aspx)

- 23** During the March 14, 2017 closed session, the county’s solicitor provided legal advice to council twice – before and after the deputation. These portions of the closed session fit within the advice subject to solicitor-client privilege exception to the open meeting requirements.

Applicability of the “personal matters” exception

- 24** The county also cited the “personal matters” exception when it moved into closed session. According to the clerk and the county’s solicitor, council relied on the personal matters exception to hear the Board’s deputation in camera.
- 25** Discussions under this exception must be about an individual in their personal capacity, rather than their official or professional capacity. However, information about an individual in their official capacity can take on a more personal nature if it relates to scrutiny of that individual’s conduct.³
- 26** During interviews, my staff were told the deputation related to the Board’s operations and included a request that the county release an installment of the \$250,000 grant. The clerk and the county’s solicitor told us the deputation contained information that could have had an effect on the personal lives of individual members of the Board. The Board’s chair also provided a similar opinion that if the deputation had been made in open session, the personal lives of the Board members could have been negatively impacted. For example, the chair was concerned that members could have been scrutinized by the community or the local media for their roles as members of the Board.
- 27** I acknowledge that the Board was composed of volunteers who dedicated their time for the benefit of their community. However, the evidence provided to my Office, including information contained in staff reports and provided during interviews, indicates that the deputation did not fit within the personal matters exception. The information conveyed to council by the Board’s representatives was professional in nature and related to the business of the Board. While this information, if made public, could have had an impact on the personal lives of Board members, the information solely related to the members in their professional capacity as Board members. Accordingly, the personal matters exception does not apply to the Board’s deputation.

³ IPC Order MO-2519, Township of Madawaska Valley, April 29, 2010.

Applicability of the *St. Catharines (City) v. IPCO*

- 28 In *St. Catharines (City) v. IPCO*⁴, the court found that it was not realistic to expect members of council to parse background and other information that would not fall within a closed meeting exception from the in camera discussions because it would impede free, open and uninterrupted discussion.
- 29 In a previous report to the City of Timmins, my Office found that the principle in *St. Catharines* did not apply to a closed council meeting where council received an in camera deputation from the opposite party in a land transaction. In that case, the deputation was not entwined with council's discussion, and it was not unrealistic for council to parse the discussion because the deputant was asked to leave the room before council's discussion commenced.⁵
- 30 Similar to the City of Timmins report, in the present circumstances, the Board's representatives left the room after completing the deputation. The deputation was neither entwined nor integral to council's in camera discussions. Therefore, it was not unrealistic for council to have received the deputation in open session and then moved into closed session to hold its discussion and receive legal advice.

Opinion

- 31 Council for the County of Norfolk contravened the *Municipal Act, 2001* and the county's procedure by-law when it received an in camera deputation from representatives of the Port Dover Community Health Centre Board on March 14, 2017. That portion of the closed session did not fit within the exceptions to the open meeting requirements of the Act.
- 32 The portions of the closed session discussion before and after the deputation fit within the "advice subject to solicitor-client privilege" exception.

⁴ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42.

⁵ Ombudsman of Ontario, *Investigation into a complaint about a closed meeting held by the City of Timmins on December 19, 2016* (April 2017), online: [https://www.ombudsman.on.ca/Resources/Reports/City-of-Timmins-\(4\).aspx](https://www.ombudsman.on.ca/Resources/Reports/City-of-Timmins-(4).aspx).

Recommendations

- 33 I make the following recommendations to assist the county in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

Recommendation 1

All members of council for the County of Norfolk should be vigilant in adhering to their individual and collective obligation to ensure that council complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Recommendation 2

The County of Norfolk should ensure that no subject is discussed in closed session unless it clearly comes within one of the statutory exceptions to the open meeting requirements.

Report

- 34 The County of Norfolk was given the opportunity to review a preliminary version of this report and provide comments. No comments were received.
- 35 My report should be shared with council for the County of Norfolk and should be made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman of Ontario