



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

October 3, 2019

By email (clerksoffice@carling.ca)

Mayor and Council
Township of Carling
2 West Carling Bay Road
Nobel, Ontario P0G 1G0

Dear Mayor Konoval,

Re: Closed meeting complaint

I am writing regarding complaints received by the Ontario Ombudsman about closed meetings held by council for the Township of Carling on July 27, October 10, and November 13, 2018. The complainant alleged that for these meetings, the resolutions to close the meetings did not include the general nature of the matter to be discussed *in camera*, and that council did not report back to the public following the closed sessions.

We discussed these complaints with township staff in July 2019. For the reasons outlined below, we have determined that we will not be reviewing these complaints further. However, we would like to provide you with best practice suggestions to assist the municipality with future meetings.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public. Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities and local boards that have not appointed their own. The Ombudsman is the closed meeting investigator for the Township of Carling.

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Review

Our Office reviewed the agenda and minutes for the council meetings referred to in the complaint. We spoke to the complainant and reviewed the documents they provided. We also spoke with township staff and reviewed the township's procedure by-law.

Resolutions to proceed into closed session

The complaint alleged that council failed to provide a description of the general nature of the matters to be considered in closed session during meetings of council held on July 27, October 10, and November 13, 2018.

Subsection 239(4) of the *Municipal Act, 2001* requires municipalities to pass a resolution to state the fact of a closed meeting and the general nature of the topic to be discussed, before proceeding *in camera*. The Ontario Court of Appeal has recognized that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”¹

Consistent with the courts, the Ombudsman has recommended that a resolution to go into closed session provide more substantive detail, such as “a brief description of the subject matter to be considered in closed session.”²

The resolutions to proceed in closed session for the Township of Carling council meetings held on July 27, October 10, and November 13, 2018 each referred to an exception under s. 239(2) of the Act. The July 27 resolution cited the exception for “matters pertaining to a proposed or pending acquisition of land.” The October 10 resolution cited the exception concerning “matters pertaining to potential litigation.”

¹ *Farber v. Kingston City*, [2007] O.J. No. 919, at page 151.

² *South Huron (Municipality of) (Re)*, 2015 ONOMBUD 6 at para 58, online: <<https://bit.ly/2ktobeA>>; *Fort Erie (Town of) (Re)*, 2018 ONOMBUD 2 at para 42, online: <<https://bit.ly/2m2rOss>>.

Finally, the November 13 resolution referred to the exception concerning “litigation or potential litigation.”

The resolutions for the three meetings did not describe the general nature of the subject matter to be considered *in camera*. A more descriptive resolution could have provided greater information to the public without undermining the reason for meeting *in camera*.

When we spoke with township staff on July 30, 2019, they agreed to recommend to council that, going forward, all resolutions to proceed into closed session contain a general description of the topics to be discussed in addition to the cited exception.

Reporting back from closed sessions

The complaint also alleged that council did not report back following the closed sessions held during the meetings of council on July 27, October 10, and November 13, 2018.

It is a best practice for municipalities to report back to the public following a closed meeting, in order to increase the transparency of local government. As the Ombudsman stated in a report about the Municipality of Magnetawan in 2015:

[in] some cases, public reporting might consist of a general discussion in open session of subjects considered in closed session. This might be similar to the information in the resolution authorizing the session, together with information about any decisions, resolutions, and directions given to staff. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.³

Reporting back after each closed session provides meaningful information to the public about the issues discussed *in camera* and inspires confidence that the meeting has been properly closed. When we spoke with township staff on July 30, 2019, they

³ *Magnetawan (Municipality of) (Re)*, 2015 ONOMBUD 20 at para 54, online: <https://www.canlii.org/en/on/onombud/doc/2015/2015onombud20/2015onombud20.html?autocompleteStr=magnetawan&autocompletePos=1>.

confirmed that, going forward, council will report back and provide more information about closed sessions when possible.

Conclusion

Thank you and your staff for your co-operation during our review. We urge the township to adopt the best practices outlined in this letter, to enhance the transparency and accountability of its council meetings.

To assist municipal councils, staff, and citizens, we have developed an online Digest that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's past decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the Digest to inform their discussions and decisions on whether a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of previous Ombudsman decisions may be reviewed in the Digest at www.ombudsman.on.ca/digest.

We ask that this letter be included as correspondence at the next meeting of council.

Sincerely,

Joseph Morin
Counsel
Office of the Ontario Ombudsman