



J. Paul Dubé, Ombudsman

BY E-MAIL

Mayor Charlie Luke and Council
Norfolk County
50 Colborne Street South
Simcoe, ON N3Y 4H3

June 6, 2016

Dear Mayor Luke and members of Council for Norfolk County:

Re: Closed meeting complaints, January 19 and February 16, 2016

I am writing to you regarding complaints made to my Office that council for Norfolk County discussed matters that did not fall within the exceptions in the *Municipal Act, 2001* during closed meetings on January 19 and February 16, 2016.

Upon review of these complaints and for the reasons outlined below, I have determined that the discussions in camera on January 19 and February 16, 2016, fit within the exceptions to the open meeting rules in section 239 of the Act.

Authority of the Ombudsman

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality has properly closed a meeting to the public. The Act designates the Ombudsman as the default closed meeting investigator for municipalities that have not appointed their own. The Ombudsman is the closed meeting investigator for Norfolk County.

My Office's Open Meeting Law Enforcement Team reviews closed meeting complaints to determine whether the municipality has complied with section 239 of the Act and its own procedure by-law. More information about our jurisdiction and how the Open Meeting Law Enforcement Team investigates complaints is available in our guide to open municipal meetings, *The Sunshine Law Handbook*, available online at: <https://www.ombudsman.on.ca/Resources/Sunshine-Law-Handbook.aspx>

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Steps taken by our Office

We spoke with the complainant and reviewed documentation provided about the complaints. We spoke with the County's Clerk, who provided us with an overview of the closed session discussions on January 19 and February 16, 2016. He also provided copies of the minutes for the open and closed meetings on both dates, as well as supporting documentation considered during those meetings. We also reviewed media coverage of the meetings and the issues discussed.

Council-in-committee meeting on January 19, 2016

Council-in-committee for Norfolk County held a meeting at 5:00 p.m. on January 19, 2016 in Council Chambers. A resolution to go in camera was passed indicating that three matters would be discussed, including the matter that was identified by the complainant:

- C) C.S.D. – Verbal Update
Re: Update Respecting a Matter of Litigation/Hearing

The minutes indicate that council-in-committee cited exceptions in section 239 of the Act for discussions about personal matters about an identifiable individual (b), acquisition/disposition of land (c), litigation or potential litigation (e), and solicitor-client privilege (f). The Clerk told us that the discussion of item C on the agenda fell within exceptions (e) and (f), as it pertained to ongoing litigation and council was considering legal advice.

The discussion in camera pertained to an application to the Human Rights Tribunal of Ontario. At the time of this meeting, a tentative settlement had been reached in the matter, but had yet to be approved by council. Accordingly, the litigation matter was still ongoing.

The exception for discussions about litigation or potential litigation in s. 239(2)(e) of the Act applies to “matters before administrative tribunals”, including the Human Rights Tribunal. The discussion on January 19 about an ongoing matter before the Tribunal fit within the exception in s. 239(2)(e).

I understand that the County's legal counsel was not present during this meeting, but that counsel had provided legal advice regarding the settlement that was conveyed to council by staff during the meeting. Accordingly, this discussion also fit within the exception for advice subject to solicitor-client privilege set out in s. 239(2)(f).

Council-in-committee meeting on February 16, 2016

Council-in-committee for Norfolk County held a meeting at 5:00 p.m. on February 16, 2016 in Council Chambers. A resolution to go in camera was passed to discuss five items, including the matter identified by the complainant:

A) Staff Report P.W. 16-11 Re: Vendor related matter

Council-in-committee cited s. 239(2)(a), (b), (c), (e), and (f) to close the meeting.

The Clerk explained that the County had put out a request for proposals for a construction contract in Port Dover, a community in the County. During the in camera meeting on February 16, council-in-committee discussed the vendors that had bid on the contract.

During the meeting, staff conveyed legal advice received regarding the vendors. This part of the discussion fit within the exception in s. 239(2)(f) for advice subject to solicitor-client privilege. The lawyer providing advice does not need to be present during the meeting, as long as advice received is being conveyed.

The committee proceeded to discuss personal information about the individuals employed by the vendors. This discussion went beyond professional information, as council-in-committee discussed the reputation, past performance, and references of specific individuals.

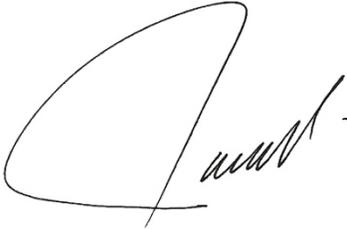
The *Municipal Act* does not provide for discussions about requests for proposals or contracts in closed session. However, in this case, the majority of the discussion involved personal information about identifiable individuals that went beyond information about them in their professional capacity. Accordingly, the committee's discussion about individuals associated with potential vendors on February 16 fit within the exception in s. 239(2)(b) for personal matters about identifiable individuals.

Conclusion

The in camera discussions on January 19 and February 16, 2016 fell within the exceptions to the open meeting rules set out in s. 239 of the *Municipal Act, 2001*.

Should you have any questions or concerns, please do not hesitate to contact our Office.

Yours truly,



J. Paul Dubé
Ombudsman of Ontario

CC: Clerk, Norfolk County