

May 9, 2017

Council

City of Timmins
220 Algonquin Blvd. East
Timmins, ON P4N 1B3

Re: Closed Meeting Complaint – Meeting Date March 30, 2015

Dear Council,

I am writing further to our discussion on May 8, 2017 regarding the outcome of our review of a complaint made about a closed meeting held by council for the City of Timmins on March 30, 2015.

Authority of the Ombudsman

As of January 1, 2008, the *Municipal Act, 2001* (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.¹ The Ombudsman is the closed meeting investigator for the City of Timmins.

Closed meeting complaints

My office received a complaint about a closed meeting of council for the City of Timmins held on March 30, 2015.

The complaint alleged that the closed meeting did not fit within the exception for litigation or potential litigation in section 239(2)(e) of the *Municipal Act, 2001* (the “Act”). At this meeting, council discussed an open procurement entitled the Dome Avenue Reconstruction Project (the “project”). Council’s discussion focused on staff’s recommendation with respect to awarding the contract.

¹ SO 2001, c 25, s 239.1.

Review

In reviewing the complaint, we considered the meeting records from the open and closed sessions of the council meeting on March 30, 2015. We also spoke with the city clerk and Mayor Steven Black.

Discussion of Dome Avenue Reconstruction Project

The March 30, 2015 council meeting was closed to discuss a confidential staff report about the open procurement for the project under the litigation or potential litigation exception to the open meeting requirements of the Act. The clerk explained that the meeting was held in camera due to concerns that an unsuccessful bidder might initiate legal proceedings against the city.

Following its discussion, council directed staff to obtain a legal opinion from the city's solicitor on the possible legal ramifications of city staff's recommendation.

Ultimately, the city awarded the contract to the lowest bidding company.

The "litigation or potential litigation" exception

The *Municipal Act* does not specifically define what constitutes "litigation or potential litigation" for the purposes of the open meeting rules. My Office has found that the exception is reserved for circumstances where the matter being discussed is the subject of ongoing litigation or there is a reasonable prospect of litigation.²

The exception applies in the context of anticipated litigation where there is more than a remote possibility litigation may commence, although the litigation need not be a certainty. Council must use the closed meeting to explore the reasonable prospect of litigation in some way.³

At the time of the closed meeting on March 30, 2015, the city did not have a reasonable prospect of litigation with respect to the procurement process.

While it is not unusual for litigation initiated by unsuccessful bidders to occur at the conclusion of the procurement process, in this case, the city's concern that litigation

² Ombudsman of Ontario, *Investigation into complaints about a closed meeting held by Council for the County of Norfolk on May 24, 2016* (November 2016), [online](#).

³ Ombudsman of Ontario, *Investigation into the Township of West Lincoln's alleged violation of the Municipal Act, 2001 on June 15 and June 22, 2015* (November 2015), [online](#).

could occur was speculative at best. There was no specific evidence to bolster that concern to the level of a reasonable prospect of litigation. Therefore, council's discussion during its March 30, 2015 meeting did not fit within the litigation or potential litigation exception.

The “personal matters” exception

Based on information provided by the clerk and Mayor, we also reviewed if council's discussion fit within the “personal matters” exception found in section 239(2)(b) of the Act, although this exception was not cited by council in its resolution to proceed in camera. During the meeting, council discussed publicly available information about the proprietors of one of the bidding companies, including their business history, and expressed opinions on whether or not the company was suitable for the project based on that history.

For the personal matters exception to apply, the information being discussed must be about an individual in his or her personal capacity, rather than his or her professional, official or business capacity. However, this information may still qualify as personal if it reveals something of a personal nature about the individual.

Council's discussion about one of the bidding company's proprietors did not fit within the personal matters exception. This discussion was limited to information that was publicly available and did not reveal any personal information.

Conclusion

My Office's review found that the closed meeting held by the City of Timmins on March 30, 2015 was not permitted under the exceptions for closed meetings set out in the *Municipal Act*. I would note, however, that since the March 30, 2015 meeting took place, my Office has issued a number of recommendations to the City of Timmins to improve its closed meeting practices, which the City has accepted.⁴

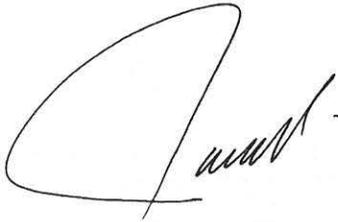
I would like to thank the City for its co-operation during this most recent review by my Office and to acknowledge its acceptance of my Office's previous recommendations and its commitment to improve its meeting practices.

⁴ Ombudsman of Ontario, *Investigation into a complaint about a closed meeting held by the City of Timmins on December 19, 2016* (April 2017), [online](#).
Ombudsman of Ontario, *Investigation into a complaint about closed meetings held by the City of Timmins on August 8 and August 29, 2016* (January 2017), [online](#).
Ombudsman of Ontario, *Investigation into a complaint about a closed meeting held by Council for the City of Timmins on June 27, 2016* (January 2017), [online](#).

J. Paul Dubé, Ombudsman

You indicated to us that this letter would be included as correspondence at the next available meeting of council.

Sincerely,



Paul Dubé
Ombudsman of Ontario