



March 1, 2017

Ms. Cathy Saunders, City Clerk
The City of London
300 Dufferin Avenue
P.O. Box 5035 London, ON
N6A 4L9

Re: Closed meeting complaint

Dear Ms. Saunders:

I am writing with the results of our review of a complaint made about a closed meeting held by the Corporate Services Committee for the City of London (the City) on November 1, 2016.

Authority of the Ombudsman

Under the *Municipal Act, 2001* (the Act), citizens have the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public. My Office is the closed meeting investigator for the City.

Closed meeting complaint

The complaint to my Office concerned a November 1, 2016 meeting of the City's Corporate Services Committee. During the meeting, the Committee went in camera to consider a motion about the City's hiring policy for certain senior staff. The complaint alleged that the matter was a general policy question that did not fit within the exceptions to the open meeting requirements found in section 239 of the Act and that it should have been considered in open session.

Our Review

In reviewing this complaint my staff spoke with you and with the complainant, and reviewed the agenda, open session minutes and video recording of the open portion of the November 1, 2016 meeting. We also considered relevant sections of the Act and the City's procedure by-law.

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The November 1, 2016 Corporate Services Committee meeting

The November 1, 2016 Committee meeting was a regular meeting, scheduled to begin at 12:00 p.m. On the agenda under “items for direction” was a council member submission regarding staff appointment by-laws. The submission noted that Chapter 18 of the City’s Policy Manual lists certain staff appointments that require council approval, including “statutory officers required to be appointed by by-law”.

The submission noted that the City’s Senior Leadership Team plays a key role in the provision of advice to council and it was imperative that council continue to confirm the appointment of the individuals to these positions by by-law. It requested that the following recommendation be supported:

- a) the City Clerk BE DIRECTED to place a by-law to appoint Kelly Scherr as the Managing Director, Environmental & Engineering Services and City Engineer, on the Agenda of the next meeting of the Municipal Council; and,
- b) the Civic Administration BE DIRECTED to report back to the Corporate Services Committee with proposed amendments to relevant by-laws, policies and procedures to require the enactment of a by-law for all appointments to the Senior Leadership Team, as well as the appointment of any other statutory officers of The Corporation of the City of London.

According to the video recording of the open session, when this item arose the Mayor observed that the City Manager had a legal opinion on the question of council approval to appoint a person to the role of city engineer. The Mayor suggested that the Committee should be able to hear that opinion before considering the submission. The Mayor also advised that he wanted to hear from staff on whether there were any human resources or legal issues that should be taken into account before considering the submission.

One of the City’s solicitors was present at the meeting and stated that legal advice could be provided to council in camera. It was noted that outside legal counsel was present at the meeting and could also offer advice.

According to the open session minutes, the Committee passed a resolution to go into closed session, and then proceeded in camera to discuss a matter pertaining to advice subject to solicitor-client privilege and advice and recommendations of officers and employees of the corporation, related to employment-related matters and identifiable individuals.

You confirmed to my staff that legal advice from one of the City’s solicitors and from outside legal counsel was provided and considered during the closed session.

When the open session resumed, the Committee voted that the communication from the councillor about using by-laws to appoint members of the Senior Leadership Team would be referred to a future meeting of the Corporate Services Committee in order to receive additional information.

Analysis

The Corporate Services Committee went in camera on November 1, 2016, citing the “solicitor-client privilege” exception found in section 239(2)(f) of the Act, as well as the “personal matters” and “labour relations” exceptions, found in sections 239(2)(b) and (d).

As you are aware, one of the limited and narrow exceptions to our general authority under the *Ombudsman Act* to require disclosure of information is that my Office cannot compel production of information subject to solicitor-client privilege. However, we must exercise due diligence and inquire into the circumstances surrounding meetings closed to consider legal advice. This can include determining whether legal counsel attended the meeting to provide advice verbally and/or whether council considered written legal advice during the meeting.

Some municipalities choose to waive solicitor-client privilege and provide us with privileged information. In such cases the information is protected by the *Ombudsman Act*, which requires that any information provided to my office be kept confidential unless, in the opinion of the Ombudsman, it ought to be disclosed to establish grounds for the Ombudsman’s conclusions or recommendations.

You advised my staff that both City and external legal counsel attended the closed session and provided legal advice, and that nothing else was addressed. The discussion in open session and the corresponding resolution authorizing the closed session also indicate that the purpose of the closed session was for council to receive legal advice.

Accordingly, I am satisfied that the in camera discussion was permitted under the solicitor-client privilege exception found in section 239(2)(f) of the Act.

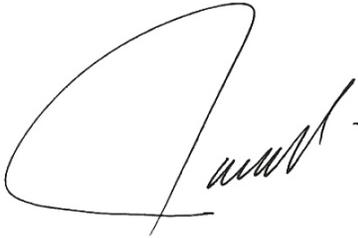
Conclusion

There is no exception to the open meeting requirements that authorizes general policy discussions to take place behind closed doors. However, I am satisfied that the discussion during the in camera session at the November 1, 2016 Corporate Services Committee meeting was permitted under the solicitor-client privilege exception.

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

We thank you for your co-operation during our review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written in a cursive style.

Paul Dubé
Ombudsman of Ontario