



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

October 30, 2013

Mayor Randall McLaren
Township of Bonfield
365 Highway 531
Bonfield, ON, P0H 1E0

Dear Mayor McLaren,

Re: Closed Meeting Complaint of October 8, 2013

I am writing further to our conversation of October 30, 2013, regarding the outcome of our review of ten complaints that the Personnel Committee met on October 8, 2013, in contravention of the *Municipal Act, 2001*. The complainants also took issue with Council's appointment of the Deputy Mayor's husband as Clerk for this meeting, and raised concerns about Council's general conduct during an ongoing municipal strike.

In reviewing the complaints, our Office spoke with you and Deputy Mayor, Tamela Price-Fry, obtained and reviewed the notice, agenda and minutes from the October 8, 2013 meeting and reviewed the relevant sections of the Act and the Procedure By-Law.

Ombudsman Jurisdiction

As you know, the *Municipal Act* requires that all meetings of council, local boards and their committees be open to the public, with limited exceptions. The Ombudsman is the closed meeting investigator for the Township of Bonfield.

The Ombudsman's authority, as a closed meeting investigator, is restricted to considering whether closed meetings have been held in accordance with the open meeting requirements of the Act and local procedure by-laws. The Ombudsman has no jurisdiction to address other municipal matters including staff appointments or the conduct of municipal council in connection with labour relations.

Accordingly, our review of the complaints we received was limited to an analysis of whether the October 8, 2013 meeting was held in compliance with the *Municipal Act* and the Township's procedure by-law with respect to open meetings. Our review did not examine council's decision to appoint the deputy mayor's husband as temporary Clerk or

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council's handling of the ongoing municipal strike, as these matters are outside of the Ombudsman's jurisdiction.

Background

The Township of Bonfield has been engaged in a labour dispute with its municipal employees since August 1, 2013. There are no non-unionized employees. You and Deputy Mayor Price-Fry are the only members of Council that represent the Township on the strike negotiating committee.

The October 8, 2013 Personnel Committee Meeting

The Personnel Committee is composed of all five members of Council. Although the Township has a Clerk on staff, the Committee uses the services of an individual under contract, to act as Clerk for its meetings.

The October 8, 2013 Personnel Committee meeting was called by its Chair, Councillor Yvan Foisy. Notice was provided to the public on October 5, 2013, by posting in the Township hall, and on the Township's website and Facebook page. The agenda for the meeting notified the public that the meeting would be closed pursuant to ss. 239(2) (b) [personal matters], (d) [labour relations/employee negotiations], (e) [litigation] and (f) [solicitor-client privilege].

Prior to the meeting, members of the public gathered outside the Township hall. As a result, Councillor Foisy and the Committee Clerk were prevented from entering the hall, where the meeting was held. The other four members of Council were in attendance.

The public minutes indicate that the meeting began at 7:15 p.m. At the outset, the Committee passed a motion to appoint Harold Fry (Deputy Mayor Price-Fry's husband) as Clerk for the meeting. A resolution was then passed to proceed *in camera* at 7:30 p.m., for the purpose of discussing issues concerning personal matters about an identifiable individual, and labour relations or employee negotiations.

The closed meeting minutes note that during the 1.5 hour closed session, you and the Deputy Mayor briefed the other two Councillors on the history and status of the labour negotiations, including the pending Ontario Labour Relations Board hearing. The Township's labour lawyer's advice relating to the labour situation was also considered. In addition, there was some discussion about specific municipal employees, their jobs and pay status.

The Councillors returned to open session at approximately 9:00 p.m., and adjourned the Personnel Committee meeting at 9:04 p.m.

Analysis

Under the *Municipal Act*, the Personnel Committee is entitled to discuss matters involving identifiable individuals, including municipal employees (s. 239(2)(b)), and labour relations and employee negotiations (s. 239(2)(d)), in closed session. In the case of the October 8, 2013 meeting, the subjects considered by the Committee appear to come within these exceptions to the open meeting requirements.

The agenda included reference to additional exceptions, litigation or potential litigation (s.239(2)(e)) and advice that is subject to solicitor-client privilege (s.239(2)(f)), which were not specifically listed in the motion preceding the closed session. The Committee considered litigation before the Ontario Labour Relations Board and solicitor-client advice, while it was discussing the Township's labour relations issues.

Under the *Municipal Act*, the resolution authorizing a closed session must indicate the general nature of the matter to be considered (s. 239(4)(a)). In this case, the resolution could have provided additional information about all of the exceptions that were being relied on, but the general nature of the discussion was clearly labour relations, as set out in the resolution.

Conclusion

Based on our review, we have found that the closed Personnel Committee meeting held on October 8, 2013 was permitted under the exceptions contained in the *Municipal Act*.

Publication of Letter

You confirmed that this letter will be shared with the public, by making it available on your Township website and posting it on the Township Hall door, as there are no Council meetings scheduled at this time, due to the ongoing labour dispute.

Thank you for your assistance with our review.

Sincerely,

Sara Gottlieb
Legal Advisor
Open Meeting Law Enforcement Team