

June 12, 2013

Mayor Claude Levac and
CAO Marc Chenier
Village of Casselman
751 rue St.-Jean
P.O. Box 710
Casselman, ON K0A 1M0

Dear Mayor Levac and Mr. Chenier,

Re: Closed Meeting Complaints – June 26 and July 10, 2012 and March 12, 2013

I am writing further to our conversation on June 10, 2013 regarding the outcome of our review of complaints that Council was observed on a number of occasions meeting prior to the regular Council meeting, which is held at 7:15 p.m. on the second and fourth Tuesdays of the month.

The complainant alleged that on June 26 and July 10, 2012 Council was observed meeting some time between 6:45 p.m. and 7:15 p.m. The complainant also stated that he observed Council meeting in a closed room and reviewing documents on March 12, 2013 approximately 15 minutes prior to the regular council meeting. The complainant suggested that Council business may have been discussed and decisions made during those gatherings.

As you know, the *Municipal Act, 2001* (the Act) requires that meetings of Council be open to the public, subject to the limited exceptions outlined in s. 239. Council must also observe certain procedural requirements in order to close a meeting to the public.

The Ombudsman is the closed meeting investigator for the Village of Casselman. In reviewing this complaint, our Office spoke with you both, and the interim CAO (Mario Villeneuve) who was acting in the role in the summer 2012. In addition, our Office reviewed the minutes of the public meetings following the alleged closed meetings.

June 26, 2012 Pre-Meeting Gathering

The individuals interviewed could not recall a specific pre-meeting gathering on June 26, 2012 but acknowledged that members of Council often meet upstairs in the municipal office approximately ten to fifteen minutes prior to Council meetings, which take place in Council Chambers in the basement. However, we were advised that Council is mindful of the open meeting requirements and that council business should not be discussed during such gatherings in advance of public meetings.

July 10, 2012 Pre-Meeting Gathering

Background: At the June 10, 2012 Council meeting, Council was scheduled to consider an amendment to the Zoning By-Law with respect to permitting small business activities on residential properties. The issue arose after a local resident raised concerns about the City's enforcement action against him for performing small machine repairs at his residence. At the June 26 and July 10, 2012 public Council meetings, the resident presented his concerns and requested permission to carry on the "hobby" at his home.

According to the information provided by the Mayor and the then Interim CAO, Mario Villeneuve, Mr. Villeneuve approached the Mayor in the presence of two other Council members prior to the July 10 Council meeting in the vestibule on the main level of the municipal office. He raised a suggestion to the Mayor regarding the wording of the resolution to be considered in the meeting, however the Mayor did not entertain this suggestion and there was no further discussion.

The other four members of Council were gathered in the open lobby area when Mr. Villeneuve approached the Mayor but they did not engage in any substantive discussion of Mr. Villeneuve's suggestion.

The public minutes confirm that the following resolution was considered at the Council meeting:

BE IT RESOLVED THAT the Council of the village of Casselman directs its personnel to advise Mr. Claude Levesque that he can continue certain activities of repair of small engines according to a list of predetermined restrictions; and

BE IT FURTHER RESOLVED THAT the Council of the Village of Casselman re-examines its zoning by-law 96-635.

Council voted in the public meeting (3:2) to defeat the motion.

Analysis

For the purposes of the open meeting requirements, a meeting is defined as any “regular, special or other meeting of a council, of a local board or of a committee of either them.”

As discussed, based on a review of court decisions and the principles that inform the open meeting requirements, the Ombudsman developed the following definition to determine whether a Council gathering is subject to the open meeting requirements of the Act:

Members of council (or a committee) must come together for the purpose of exercising the power or authority of the council (or committee), or for the purpose of doing the groundwork necessary to exercise that power or authority.

The information provided indicates that an administrative staff member approached the Mayor and made a suggestion about an agenda item and the suggestion was dismissed without further input or discussion by Council. As Council did not come together to exercise its authority or lay the groundwork for future decision-making, this discussion did not constitute a “meeting” for the purpose of the open meeting requirements.

March 12, 2013 Pre-Meeting Gathering

The complainant stated that he saw the Mayor and Council sitting at a table in an office reviewing documents at approximately 7:00 p.m. prior to the Council meeting that starts at 7:15 p.m.

The complainant was concerned that Council was discussing local development matters and making decisions prior to the meeting.

According to the information provided by the CAO and the Mayor, the CAO circulated to Council three Environmental Services reports, including the Annual Report on Drinking Water, and members of council individually reviewed the documents in Council Chambers a few minutes before the meeting started. We were advised that no discussion took place about the documents at that time. We were also told that eight members of the public were in the Council Chambers at that time.

The minutes of the public meeting show that Council voted to approve the amended agenda including the additional reports at the beginning of the Council meeting and in the course of the meeting Council voted to receive and approve the annual reports.

In terms of local development matters, the public minutes show that a resident raised questions about local development issues at the public meeting and the Mayor directed administrative staff to provide answers to the resident as soon as possible.

Analysis

We received consistent information that Council received and individually reviewed additional documentation to be added to the meeting agenda at approximately 7:00 p.m, just prior to the regularly scheduled meeting. We were further advised that Council did not discuss the content of the reports prior to the meeting. The reports were formally received at the public Council session. There does not appear to have been any violation of the open meeting requirements prior to the public session on March 12, 2013.

Although the individual complaints we received were not substantiated, we noted during our conversation with you that council should be mindful that pre-meeting gatherings among council members, particularly where a quorum of council is present, can lead to public speculation that business is being discussed and decided in advance of the public session.

During our conversation, we reviewed the above-noted information with you and you expressed general agreement with our findings.

You agreed to include this letter on the June 26, 2013 public Council meeting agenda and to make a copy available to the public on your website.

We would like to take this opportunity to thank you for your cooperation with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team