

July 3, 2012

Clerk Carolyn Kett
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, ON L2A 2S6

Dear Ms. Kett,

Re: Complaint that Council attended closed meeting hosted by the Fort Erie Economic Development and Tourism Corporation – April 17 and May 2, 2012.

I am writing further to our telephone conversation of July 3, 2012 regarding the results of the Ombudsman's review of a complaint received about a closed meeting hosted by the Fort Erie Economic Development and Tourism Corporation (EDTC) on April 17, 2012. We were advised that this meeting continued on May 2, 2012, due to a shortage of time at the initial meeting.

The complaint alleged that all of Council attended the meetings to discuss Council business with the EDTC, and that the meetings therefore should have been open to the public.

The Ombudsman is the closed meeting investigator for the Town of Fort Erie. As discussed and previously explained in a letter to the Town dated December 15, 2008, the EDTC is a Municipal Service Corporation that is not subject to the open meeting requirements of the *Municipal Act* (the Act). However, our Office reviewed the complaint to assess whether the April 17 and May 2 EDTC meetings could be considered meetings of Council and, therefore, subject to the open meeting requirements.

In reviewing the complaint, we spoke with you, Mayor Martin, and the General Manager of the EDTC, James Thibert. In addition, our Office considered the relevant sections of the Act, and obtained and reviewed a slide presentation that formed the basis of discussion at the meetings.

According to the information provided, all of Council and the Acting Chief Administrative Officer attended a meeting hosted by the EDTC on April 17, 2012 and a follow up meeting on May 2, 2012. There was no public notice of the meetings and

Councillors attended by invitation. No formal minutes or record of the meetings were kept.

The Mayor stated that the EDTC arranged the meeting in order to provide new Councillors with an understanding of the role of the EDTC, which he said is typically done shortly after Councillors are elected. Both the Mayor and the General Manager of the EDTC said that no specific development projects were discussed and the intended purpose of the meeting was to provide general education.

The slide presentation from the meeting provided an overview of the economic history and influences in Fort Erie. Mayor Martin and Mr. Thibert likened the content of the presentation to “economic development 101”.

We understand that, during the meeting, Councillors were given an opportunity to identify their individual priorities. The Mayor stated that there was also a general discussion about how these goals and priorities aligned with the Town’s strategic plan, and what the EDTC could do to assist Council in furthering the strategic plan.

The Mayor advised our Office that the EDTC generally attends Council meetings twice per year to update Council on its budget and accomplishments. In this case, however, the presentation was for training purposes only. The Mayor acknowledged that it would have been possible for the EDTC to provide this education session at a Council meeting rather than having Council attend a closed meeting hosted by the EDTC.

Analysis

Under the *Municipal Act* all meetings of Council must be open to the public with limited exceptions and subject to certain procedural requirements. 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 to our Office indicates that all of Council attended the EDTC meetings in order to receive information about the EDTC and economic development in Fort Erie generally.

Although the meetings reportedly did not include reference to specific development projects and no decisions were made, a portion of the meetings involved substantive discussions regarding Councillor priorities and alignment of those priorities with the strategic plan. In doing so, Council was, in effect, engaging in discussions that would lay the groundwork for future decision-making.

In the future the Town should ensure that meetings between Council and the EDTC, are conducted in a manner that respects the requirements and intent of the *Municipal Act*.

We requested that you share this letter with Council publicly and make a copy of this letter available to the public. Please contact our Office when you have had an opportunity to do so. We would also like to thank you for the cooperation we received during this review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team