

January 16, 2013

Mr. Brian R. Sweet
Director of Corporate Services/Clerk
The Corporation of the Municipality of Leamington
111 Erie St. North
Leamington, ON N8H 2Z9

Dear Mr. Sweet,

Re: Electronic Closed Meeting Complaint – E-mail Correspondence November, 2012

I am writing further to our conversation of January 15, 2013 regarding the outcome of our review of a complaint that a series of e-mails sent among Council members and a member of the public between November 10 and November 14, 2012 may have constituted an improper closed (electronic) meeting.

As you know, the *Municipal Act, 2001* (the Act) requires that all meetings of Council, Local Boards, and their committees, are open to the public with limited exceptions. The Ombudsman is the closed meeting investigator for the Municipality of Leamington.

In reviewing this complaint, our Office spoke with you, obtained and reviewed copies of the e-mails of concern, and reviewed the relevant sections of the Act and the Procedure By-Law.

According to the Municipality's Procedure By-Law (No. 180-00), regular meetings of Council take place on the first three Mondays of the month (that are not holidays). The Municipality's Notice By-Law (No. 420-03) provides for public notice of meetings. As the Act specifically requires that the Procedure By-Law provide for public notice, you advised that Council is expected to merge the Notice By-Law provisions into the Procedure By-Law in early 2013.

The E-Mails

The municipality has a general e-mail inquiry address for public comment or questions that is managed by the Manager of Corporate Services.

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9
Tel./Tél. : 416-586-3300
Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

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On November 10, 2012 a member of the public sent Councillor Hilda MacDonald an e-mail via the general inquiry address on the topic of development charges, property taxes, and the desire that these charges be lowered in order to be competitive with other 'similar' municipalities.

The e-mail was forwarded to Council members on November 13, 2012 for consideration and response.

The Mayor e-mailed his response to the resident at 1:32 p.m. on November 13 and copied all members of Council and the Chief Administrative Officer. The Mayor 's response was quite lengthy and expressed his view that the communities identified as comparable in the resident's e-mail were not truly similar and pointed out that housing and permit fees were generally more affordable in Leamington. He also stated that development charges were scheduled to be reviewed due to the public's perception that the charges were a hindrance to growth.

Councillor Rick Atkin also replied to the resident's e-mail at 3:23 p.m. on November 13, 2012 and copied this response to Council. Councillor Atkin expressed general agreement with the Mayor's comments and added some additional informational points.

On November 14, 2012 at 9:51 a.m. Councillor Hilda MacDonald also responded to the resident and copied Council. In the e-mail, Councillor MacDonald echoed the comments of the Mayor and Councillor Atkin and clarified certain comments that were attributed to her in the local news on the topic of development charges, in addition to identifying some of the factors that may influence tax rates and development charges.

The resident then sent a concluding e-mail thanking the Council members for their responses.

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 has adopted the following definition to determine whether group communications or Council gatherings are 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.

While e-mail exchanges between Councillors on topics before Council may constitute meetings of council that are subject to the open meeting requirements in some circumstances, the provisions of the Act were not intended to prevent Council members from communicating with constituents and responding to their inquiries.

The e-mails that were the subject of the complaint show that three of the seven Council members copied on the e-mail replied to the resident's concerns about development charges. The e-mails are specifically addressed to the resident and are informational in nature. Each Councillor shared his or her opinion on development charges and communicated certain facts pertaining to the issue for clarification purposes.

Although all Council members are copied on the e-mails there is no evidence presented that Council collectively discussed or advanced Council business or that the three emails laid the groundwork for future decisions. As such, this e-mail exchange with a constituent does not meet the definition of a "meeting" that is subject to the open meeting requirements.

As per our discussion, this letter will be shared with Council at a public meeting of Council on February 4, 2013 and a copy made available to the public on your website.

Thank you for your assistance with our review.

Sincerely,

Yvonne Heggie
Early Resolution Officer
Open Meeting Law Enforcement Team