

October 23, 2013

Mayor Robert Deutschmann and  
CAO/Clerk Roger Mordue  
Corporation of the Township of North Dumfries  
1171 Greenfield Road, R.R. #4  
Cambridge, ON N1R 5S5

Dear Mayor Deutschmann and Mr. Mordue,

**Re: Closed Meeting Complaint – August 19, 2013 Closed Session**

I am writing further to my discussion with the CAO/Clerk on October 22, 2013 regarding the outcome of our review of a complaint that Council did not provide sufficient information to the public about the nature of subjects discussed at an August 19, 2013 closed session.

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 and subject to certain procedural requirements. The Act requires that, before going into closed session, Council “state by resolution the fact of the holding of the closed meeting and the general nature of the matter to be considered in the closed meeting.”

In reviewing this complaint, our Office spoke with the Clerk and obtained and reviewed the relevant meeting documentation.

**Procedure By-Law**

According to the Township’s Procedure By-Law, regular meetings of Council are held on the first and third Mondays of the month. If a closed session is going to be held, it is usually held prior to the regular meeting.

The Township posts an annual calendar of meetings on its website and also posts meeting agendas to notify the public of matters to be considered at Council meetings.

### **August 19, 2013 Closed Meeting**

The Agenda for the August 19, 2013 Council meeting notified the public that a closed session would be held at 6:30 p.m. and that the Township's Solicitor would be in attendance.

The public minutes show that Council passed a resolution to proceed in camera under s. 239 (2) of the Act to discuss "litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board"

According to the minutes, Council stated that the Township's Solicitor, Patrick Kraemer was attending the closed session to discuss Ontario Municipal Board appeals.

The closed meeting minutes are fairly detailed and show that the Solicitor provided Council with an update on the status of two active Ontario Municipal Board appeals and also provided advice about Council's options with respect to a recent Board decision.

Council also voted to direct the Solicitor with respect to next steps.

The public minutes reflect that Council passed a motion to return to the open session, following which Council considered a Planning Report and then passed a resolution in open session to instruct the Township Solicitor "to proceed with an appeal of the decision of the Ontario Municipal Board with respect to JK Development GP2 Limited".

### **Analysis**

Council is permitted to discuss litigation or potential litigation, including matters before administrative tribunals under s. 239 (2) (e) of the Act. In addition, Council is permitted under s. 239 (2) (f) to discuss "advice that is subject to solicitor-client privilege" in closed session. As indicated, the minutes show that Council received an update from the Township Solicitor on two active appeals before the Ontario Municipal Board and also received advice from the Town Solicitor on next steps. As such, the subject matter



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discussed qualifies for closed meeting consideration under the litigation exception that was cited and could also have been closed under the “solicitor-client privilege’ exception.

The public minutes show that Council passed a resolution to proceed in camera in the public session and confirmed the general nature of matters to be discussed (two Ontario Municipal Board appeals), in accordance with the Act.

Given this information, we do not find that Council for the Township of North Dumfries contravened the open meeting requirements of the Act in respect to its August 19, 2013 closed meeting.

During our discussion on October 22, 2013, we discussed our review and findings and provided the opportunity to provide feedback. The Clerk stated that he had no concerns with the findings and agreed that this letter would be included on the agenda for the next public Council meeting on November 4, 2013 and that a copy would be made available to the public on your website.

Thank you for your cooperation during our review.

Sincerely,

Yvonne Heggie  
Early Resolution Officer  
Open Meeting Law Enforcement Team