

December 9, 2013

Brenda Percy, Director of Legislative Services/Clerk
Town of Amherstburg
271 Sandwich St. South
Amherstburg, ON
N9V 2A5

Dear Ms. Percy,

Re: Complaint Meeting Complaint of October 21, 2013

I am writing further to our conversation of December 3, 2013 regarding the outcome of our review of a complaint about a closed meeting of Council that took place on October 21, 2013.

As you know, the *Municipal Act, 2001* requires that meetings of Council be open to the public, subject to the limited exceptions outlined in section 239 of the Act. Council must also observe certain procedural requirements in order to close a meeting to the public. The Town of Amherstburg appointed the Ontario Ombudsman as its investigator on August 24, 2009.

Review Process

In reviewing the complaints, our Office spoke with you, Paula Parker (Deputy Clerk), Mayor Wayne Hurst, Deputy Mayor Ron Sutherland, Councillor Diane Pouget, Councillor Caroline Davies, Councillor John Sutton, Councillor Bart DiPasquale and CAO Mike Phipps. We also obtained and reviewed the notice, agenda and minutes of the public meeting of October 21, 2013, the minutes of the closed meeting of October 21, 2013, the minutes of the public meeting of November 4, 2013 and reviewed the relevant sections of the Act and the Procedure By-Law.

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The Town's Procedure By-law Regarding Meetings

The Town's procedure by-law (2008-28) states that regular council meetings will be held on the second and fourth Monday of every month at 7 p.m. Notice to the public of regular meetings is to be given at least five days prior to a scheduled meeting (Article 10(a)). Agendas are to be prepared and made available to members by 4:30 p.m. on the Thursday prior to a regular meeting, in so far as possible (Article 11(a)).

The Mayor and CAO are permitted to summon a special meeting (Article 9(a) or (c)). Notice for an "emergency" meeting is to be provided as much in advance as possible, by telephone or personal contact (Article 9 (e)). The notice of the special meeting is to specify the purpose for the meeting (Article 9(g)). There is no provision in the by-law speaking to Agenda distribution and preparation for special meetings.

October 21, 2013 meeting

The Town has been in the process of restructuring its staffing organization and operations, with many of the changes previously approved by Council. Subsequently, Council hired a new CAO, Mr. Phipps.

The CAO determined that, in furtherance of the restructuring efforts, reorganization of some senior staff roles would be undertaken. He anticipated informing council of this decision at a closed session of October 24, 2013. However, in the early afternoon of October 21, 2013, the CAO learned that rumours of widespread terminations at town hall had reached township staff. The CAO determined it was necessary to expedite the reorganization, to be effected the following day, and to convey this information to Council as soon as possible, anticipating Council's receipt of media and public inquiries, once news of the additional reorganization efforts became public.

Following discussions in the later afternoon between the CAO, Mayor and legal counsel, it was determined that an emergency closed session of Council would be held, following the public session, scheduled to begin at 7 p.m. that evening.

At the outset of the 7 p.m. public meeting, the Mayor announced to the public and media present that a special emergency *in camera* meeting was to be held after the public session, and that the matter to be discussed related to the corporate re-organization.



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The special emergency *in camera* session commenced at 7:33 p.m. by a motion citing section 239(2)(b) (personal matters) and section 239(2)(d) (labour relations and employee negotiations) as the reason for closing the meeting. At the meeting, the CAO presented information regarding his decision on the restructuring, specifically as it related to reorganizing certain departments, including the restructuring of certain senior staff roles and the impact on specific individuals.

There were no votes taken or directions given to the CAO.

On October 22, 2013, the CAO met with staff members and discussed the reorganization, as it would affect their roles. That same day, the media reported terminations among town personnel, and Councillors were in receipt of related public and media inquiries.

Analysis

The Subject Matter Discussed

Discussion of staff retention and reorganization as it affects individuals and their roles is permitted in closed session under the following exceptions contained in the Municipal Act: s. 239 (b) (personal matters about an identifiable individual) and s. 239(2)(d) (labour relations and employee negotiations).

Notice of the Special Emergency Meeting of Council

The CAO determined that the reorganization of certain departments should be expedited in order to deal with the growing rumours and to allow those affected to be informed as quickly as possible and to minimize as much as possible the disruption to the staff work environment.

Given the public and media interest that he anticipated would, and did, in fact, follow the restructuring on October 22, 2013, it was important that Council be advised of his decision, in advance. The use of the by-law provision allowing for emergency special closed meetings was justified on this basis. It was clearly in the interests of those affected to be notified of impending changes to their role and responsibilities as quickly as possible. It was also in the public interest, as well as that of remaining staff, to have the rumours dealt with and any potential impact on the staff work environment mitigated.



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Notice of the emergency special closed meeting was provided at the outset of the scheduled open meeting session, as permitted by the by-law.

Resolution

Section 239(4) of the *Municipal Act* requires that, prior to a closed meeting, a Council must state by resolution the fact of holding the closed meeting and the “the general nature of the matter to be considered at the closed meeting.” The Mayor stated the fact of the closed meeting and the general nature of the matter to be considered, i.e. related to the reorganization, at the outset of the public meeting. Given the sensitive nature of the topics to be discussed at the special meeting, the Mayor did not provide further detail on the matter to be considered.

Reporting Back

The Deputy Clerk reported back at the next open meeting of council (as is the Township’s practice) on November 4, 2013, stating that Council met in closed session on October 21, 2013 to discuss matters related to the reorganization under section 239(2)(b) and (d).

Conclusion

Council for the Town of Amherstburg did not violate the open meeting requirements with respect to the October 21, 2013 closed meeting. The subject matter that was discussed, and the procedural requirements that were followed were in keeping with the Act and the Town’s by-law. On December 4, 2013, we shared these findings with you and offered an opportunity to provide any additional information or comment.

We are requesting that you share this letter with the public and with Council as soon as possible, and in any event no later than at the next Council meeting on December 16, 2013.

In closing, we would like to thank you for your co-operation during this review.

Sara Gottlieb
Legal Advisor
Open Meeting Law Enforcement Team