

J. Paul Dubé, Ombudsman

May 25, 2018

Joanne Camiré Laflamme
Clerk
Township of Russell
717 Notre-Dame Street
Embrun, ON
K0A 1W1

By mail and e-mail

Dear Ms. Camiré Laflamme:

Re: Closed meeting complaint – April 19, 2018

I am writing further to your telephone conversation with my Office on May 24, 2018. As discussed, our Office received a complaint that a non-council member motioned to move into closed session during the Township of Russell's special meeting on April 19, 2018. In addition, the complainant raised concerns that the motion did not provide sufficient information about council's intended discussion. Although our Office will not be further reviewing the complainant's concerns, we would like to bring these issues to the municipality's attention.

Closed Meeting Investigator

As of January 1, 2008, the *Municipal Act, 2001* gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.

Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.

The Ombudsman is the closed meeting investigator for the Township of Russell.

Review

My office reviewed the minutes of the special meeting of council held on April 19, 2018, in which the relocation of a public library branch was discussed.

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As the complaint did not allege any concerns about the content of the closed session, we did not request the closed session minutes. However, our review identified two procedural concerns with the resolution to proceed into closed session.

Resolution to move into closed session

The minutes from the April 19 meeting show that the resolution to proceed in camera was moved by Jacques Héroux (member of public library board) and seconded by councillor Jamie Laurin. Subsection 5(1) of the *Municipal Act, 2001*, states that the powers of a municipality shall be exercised by its council. There is nothing in the Township's procedure by-law that permits a non-council member to move or second a motion during a meeting of council.

Details included in the closed session resolution

The agenda for the special meeting noted that there would be a closed session if necessary, and listed the "personal matters" exception and the "proposed or pending disposition of land" exception as potentially applicable. No specific subject was identified for the closed session discussion.

During the meeting, council determined that it needed to proceed in camera and passed a resolution indicating that council would be considering "personal matters about an identifiable individual, including municipal or local board employees" and "a proposed or pending acquisition or disposition of land." No further details were provided.

The Act requires municipalities, before holding a closed meeting, state "the fact of holding a closed meeting and the general nature of the matter to be considered at the closed meeting".¹ The Ontario Court of Appeal noted in *Farber v. Kingston (City)*² that

[t]he resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.

This requirement is echoed in the Township's procedure by-law.³

In my Office's 2015 report to the Township of Russell,⁴ my Office recommended:

¹ *Municipal Act, 2001*, s. 239(4)(a).

² 2007 ONCA 173.

³ The Corporation of the Township of Russell, Procedural By-law No. 2018-026

⁴ *Russell (Township of) (Re)*, 2015 ONOMBUD 29 (CanLII).

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When proceeding in camera, council for the Township of Russell should pass a resolution that includes both the fact of holding the closed meeting and the general nature of the subject matter to be discussed.

The agenda for the April 19 special meeting of council listed the closed session as item 6, and noted that it was "if needed". Based on this, I understand that prior to the April 19 special meeting of council, council did not know whether it would be necessary to go into a closed session, and that the lack of detail provided may be a reflection of this. I remind council to be mindful of the requirements of the Act and the municipality's procedure by-law when passing resolutions to proceed in camera.

Thank you for your attention to this matter. You indicated to us that this letter would be included as correspondence at the next meeting of council.

Yours truly,



J. Paul Dubé
Ontario Ombudsman

Cc: Pierre Leroux, Mayor