

J. Paul Dubé, Ombudsman

BY EMAIL

Council for the City of Hamilton
Hamilton City Hall
71 Main Street West
Hamilton, Ontario L8P 4Y5

July 4, 2019

Dear Members of Council for the City of Hamilton:

Re: Closed meeting complaints, February 13, 2019 & April 18, 2019

My Office received complaints that portions of two meetings held by the City of Hamilton were closed to the public when entrances to City Hall were locked or barricaded during part of each meeting.

Specifically, the complainant told us that the doors to City Hall were locked during part of the regular meeting of council on February 13, 2019, which commenced at 5:00 p.m. and continued past midnight into February 14, 2019. The complainant also told us that the doors to City Hall were barricaded with temporary barriers during part of the meeting of the Audit, Finance and Administration Committee held on April 18, 2019 at 7:00 p.m.

I am writing to advise you of the outcome of my Office's review of this complaint.

Ontario Ombudsman review

Under the *Municipal Act, 2001*, citizens have the right to request an investigation into whether a municipality has complied with the Act and its procedural by-law in closing a meeting to the public. The Ombudsman is the closed meeting investigator for the City of Hamilton.

My Office reviewed the information provided by the individual who complained about these meetings, including a photo of a barricade blocking access to City Hall. We reviewed the agendas and minutes of both meetings, and spoke with the Acting Clerk and the Mayor. We requested and were provided with the relevant security protocol in place at the time of the meetings, as well as an updated security protocol that has been in place since April 29, 2019.

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. : 416-586-3347
Facsimile/Télécopieur : 416-586-9659 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Council meeting on February 13, 2019

The February 13, 2019 council meeting commenced at 5:00 p.m. The complainant told us that most members of the public who attended the meeting left City Hall when council moved into closed session around 9:45 p.m.; however, a small number of citizens remained in the building to observe the remainder of the meeting. The complainant told us that a member of the public who tried to enter the building around 1:30 a.m. found that the doors were locked and had to be let in from the inside. Council returned to open session around 2:50 a.m., and the meeting adjourned at 3:07 a.m.

The Acting Clerk confirmed that staff received an email from a member of the public at approximately 1:30 a.m. advising that the doors to City Hall were locked. She told my Office that city staff took prompt action to ensure that the doors were manually unlocked by security personnel and remained unlocked for the rest of the meeting. The Acting Clerk explained that the doors had been locked in error and that the city is committed to ensuring City Hall is accessible to the public during all meetings of council and committees.

Audit, Finance, and Administration Committee meeting on April 18, 2019

The April 18, 2019 meeting of the city's Audit, Finance and Administration Committee was comprised of two sessions. The first commenced at 9:30 a.m., and adjourned at approximately 1:30 p.m. The second commenced at 7:00 p.m. and adjourned at 10:02 p.m. April 18 was the Thursday before a long holiday weekend.

The complainant to my Office told us that barricades were erected to physically block access to entrances to City Hall at approximately 8:00 p.m. A photo of one of the entrances showed a wooden barricade with a sign indicating that the building was closed due to a maintenance shut-down.

The Acting Clerk explained that building maintenance had been scheduled at City Hall over the long weekend as no council or committee meetings were scheduled during the holiday, but that staff had been instructed not to block the doors until the end of the committee meeting. However, a member of staff mistakenly put the barricades in place prior to the conclusion of the meeting. The Acting Clerk confirmed that once staff were made aware of the barricades, they were removed. She also confirmed that the doors remained unlocked and unobstructed for the remainder of the meeting.

City Hall access procedure

The Acting Clerk told us that the doors are to remain unlocked during business hours, between 7:30 a.m. and 5:00 p.m. on weekdays, or until the conclusion of any meeting required to be open to the public. She explained that there are doors at the front and the back of the building used by the public to access City Hall and that the doors are manually locked and unlocked by security staff.

At the time of the February 13 and April 18 meetings, we were told that there was no formal policy or written procedure in place specifically setting out a process for security staff to ensure that the doors to City Hall remain unlocked during public meetings.

We were told that going forward, security staff will be aware of all meetings taking place at City Hall that require building access after 5:00 p.m. A comprehensive and up-to-date list of all

meetings and events will be made available to security. As of April 29, 2019, the City's formal *Exterior Public Door Lock-up and Unlock Procedure* (CORPSEC-PO-CH-Access Control (19-04)) states that security staff are to confirm that all public meetings have concluded prior to locking the exterior doors to City Hall.

The procedure now in place also states that "[s]ecurity must ensure that no physical barriers or movable obstacles exist preventing entry or exit at all operational public doors during business / operational hours. This may include pylons, line stations and waste bins." Furthermore, security staff are to inspect all doors at least once an hour outside of regular business hours.

Analysis

Citizens have a right to attend public meetings and view council proceedings in action. The Supreme Court has found that this right is at the foundation of the municipal open meeting rules. Locking doors frustrates that right by preventing the public from "[observing] municipal government in process."¹

My Office has found that locked entrance doors render an otherwise open council meeting illegal.² The fact that the doors are locked inadvertently or without council knowledge does not change the fact that when the doors are locked, citizens are denied access to attend and observe the meeting. Municipal councils are required by the *Municipal Act, 2001* to ensure that meetings are open to the public, which includes an obligation to ensure that the public can access the building and meeting room.

I commend the City of Hamilton for putting in place a formal written procedure to ensure that the doors to City Hall are unlocked during future meetings, regardless of what time of day they occur. The new procedure provides clear direction to security staff to ensure that all public meetings have fully concluded before the doors to City Hall are locked. I urge the city to ensure that staff are fully informed of its new procedure and that it is adhered to at all times.

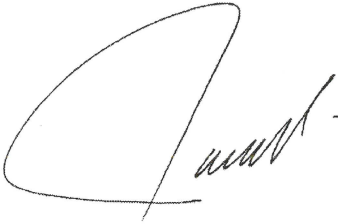
¹ *London (City) v RSJ Holdings Inc* [2007], 2 SCR 588 at para 32.

² See e.g. *London (City of) (Re)*, 2016 ONOMBUD 4 (CanIII); *Fort Erie (Town of) (Re)*, 2016 ONOMBUD 3 (CanIII); and *Russell (Township of) (Re)*, 2017 ONOMBUD 21 (CanIII), and Ombudsman of Ontario, *Press Pause - Investigation into a meeting of council for the Regional Municipality of Niagara on December 7, 2017* (July 2018), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/reports-oninvestigations/2018/press-pause>>.

Conclusion

I would like to thank the city for its co-operation during my Office's review of this complaint, and for indicating to us that this letter would be included as correspondence at the next meeting of council.

Sincerely,



Paul Dube
Ombudsman of Ontario

Cc: Janet Pilon, Acting Clerk