

October 2, 2018

Board of Management
Owen Sound Downtown Improvement Area
854 2nd Avenue East
Owen Sound, ON N4K 2H3

Dear Directors of the Owen Sound Downtown Improvement Area,

Re: Notice practices, closed meeting complaint – August 8, 2018

My Office received a complaint regarding the August 8, 2018 closed meeting of the board of management for the Owen Sound Downtown Improvement Area (the DIA). The complaint alleged that the board's discussion did not fit within the "personal matters" closed meeting exception in the *Municipal Act, 2001*. The complaint also alleged that the DIA provided insufficient notice of four meetings that occurred in the summer of 2018.

Closed meeting investigator

As of January 1, 2008, the *Municipal Act, 2001* (the Act) gives citizens the right to request an investigation into whether a municipality or its local boards have complied with the Act in closing a meeting to the public.¹

Municipalities and local boards may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities and local boards that have not appointed their own. The Owen Sound Downtown Improvement Area is a local board and the Ombudsman is its closed meeting investigator.

Review

My Office reviewed the agenda, meeting minutes, and closed session meeting materials from the August 8, 2018 board meeting. We spoke with the DIA's Co-ordinator, the board's Chair, and a board Director. We also reviewed other documentation, including

¹ *Municipal Act*, SO 2001, c 25, s 239.1.

Owen Sound's procedural by-law², the DIA's policies and procedures, the DIA's meeting calendar, and other related documents.

August 8, 2018 meeting

During the board meeting on August 8, 2018, the board moved into closed session "to consider correspondence from an identifiable individual." We were told the board relied on section 239(2)(b) of the Act, which allows closed session discussions about "personal matters about an identifiable individual."

Once in closed session, the board discussed its response to an "open letter" that a resident and business-owner had submitted to a local news outlet and to council for the City of Owen Sound. The letter was not sent to the DIA's board. Our Office reviewed a copy of this letter, which raises various concerns, including about the transparency of the board's meeting practices.

Those we spoke with indicated that the board discussed in its closed session how it should respond to the concerns raised in the open letter. Prior to the meeting, the Chair prepared a draft response to the open letter for the board's consideration and this draft guided the discussion. We were told that during the closed session, some directors shared opinions about the individual who had written the letter, but that this was not the focus of the conversation. After the board considered the matter, one Director agreed to revise the response to reflect the board's feedback, although we were told that in the end the response was not sent.

When asked why this discussion was held in closed session, the DIA Co-ordinator said that the open letter had not been sent to the DIA and the board's discussion of the letter should therefore occur in private. The board Chair said the discussion occurred in closed session because he didn't want his proposed response to be made public before other board members could provide their comments. One Director we spoke with said she didn't feel the discussion about the response should have occurred in closed session, and that if the board felt it needed to discuss personal matters about the letter writer, that could have been separated from the more general discussion about the

² Owen Sound procedural by-law, by-law no 2018-018, <https://www.owensound.ca/en/city-hall/resources/Documents/2018-018---Procedural-By-law.pdf>

response. The Director also noted that Owen Sound city council discussed the same letter in open session.

Application of the “personal matters exception”

The board relied on the closed meeting exception for personal matters about an identifiable individual to discuss its intended response to an open letter about the board.

The Act does not define “personal matters”. When reviewing the parameters of the “personal matters” open meeting exception, our Office has determined that the information must be about individuals in their personal capacity, rather than their professional, official or business capacity. However, information in a professional capacity may qualify as personal information if it reveals something of a personal nature about the individual.³

Two people we spoke with said that some directors had discussed their opinions about the author of the open letter, but that this wasn’t the focus of the discussion. Rather, the closed meeting minutes and those we spoke with indicate that the board primarily discussed how it should respond to the issues raised in the open letter.

In *St. Catharines (City) v. IPCO*, the court found that it was not realistic to expect members of council to parse background and other information that would not fall within a closed meeting exception from the in camera discussions because it would impede free, open and uninterrupted discussion.⁴

In this case, those we spoke with agreed that the opinions shared about the identified letter writer were not integral to the board’s discussion about its response to the letter. Therefore, it would have been possible for the board to have discussed this personal information in closed session, if necessary, and returned to open session to discuss the open letter. Accordingly, the board’s discussion about its intended response to the open letter did not fit within the exception for personal matters about an identifiable individual.

³ Ombudsman of Ontario, *Investigation into complaints about closed meetings held by the Township of The North Shore* (June 2018), online: <https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2018/township-of-the-north-shore>

⁴ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42.

Meeting notice

The complaint to our office also alleged that the DIA provided insufficient notice of four meetings held in the summer of 2018. While the complaint acknowledged that agendas were posted 72 hours before each meeting, the complainant believes the meetings were not held on their originally scheduled days, making it necessary to check the DIA website every day to determine whether a meeting was occurring.

The Act does not specify how notice of meetings must be provided to the public. However, it does state that every municipality and local board must have a procedure by-law that provides for public notice of meetings.⁵ My Office has noted that notice should include adequate, meaningful information about all open and closed portions of a meeting. A reasonable interpretation of what constitutes adequate “notice” includes the time, date and location at which a meeting will take place.⁶

The DIA is subject to the City of Owen Sound’s procedure by-law, which indicates that notice of local board meetings must be provided by posting meeting agendas on the city’s website 72 hours before each regular meeting. Those we spoke with, including the complainant, confirmed that the DIA posted its agendas 72 hours before each meeting.

Regarding the complainant’s concern about an unpredictable meeting schedule, the Chair told us that sometimes the board has to change its meeting date to ensure that a quorum of directors is available to attend. The Chair and Co-ordinator said this occurred twice during the summer, and the changed meeting date was sent to all DIA members by email, but not updated on the website. The DIA Co-ordinator also told us that, due to an oversight, the online meeting calendar was not updated in early 2018 when board meetings were moved from the third to the second Wednesday of each month. As a result, the online meeting calendar provided members of the public incorrect information about the date of upcoming DIA meetings.

The Co-ordinator acknowledged these issues and said that since concerns were brought forward, the DIA has updated its online meeting calendar and amended its notice practices to ensure that its website indicates when the next meeting is and whether a meeting has been rescheduled. The Co-ordinator said that she also recently

⁵ *Municipal Act, 2001* s. 238 (2.1)

⁶ *Black River-Matheson (Township of) (Re)*, 2015 ONOMBUD 2, online: <http://canlii.ca/t/gtp6f>

J. Paul Dubé, Ombudsman

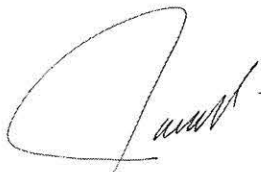
began posting notice of meetings on the DIA's social media pages, in addition to posting the agenda on the DIA's website and providing it to the city. I commend the DIA for these changes and its commitment to improving its notice procedures.

Conclusion

My review found that the closed meeting held by the board of directors for the Owen Sound Downtown Improvement Area on August 8, 2018, did not fit within the exceptions for closed meetings set out in the *Municipal Act, 2001*. My review also found that the DIA complied with the 72-hour notice requirements in its procedure by-law, although until recently, its website provided inaccurate information about the board's meeting schedule.

Thank you for your co-operation during our review. You indicated to us that this letter would be included as correspondence at the next meeting of the board.

Sincerely,



Paul Dubé
Ontario Ombudsman

Cc: David Parsons, Chair