

J. Paul Dubé, Ombudsman

January 9, 2018

Richard Al, Clerk
Township of North Huron
P.O. Box 90
274 Josephine Street
Wingham, Ontario N0G 2W0

Dear Mr. Al,

Re: Closed meeting complaint – December 11, 2017

I am writing further to our telephone conversation on January 8, 2018. As we discussed, our Office received a complaint regarding a closed meeting held by council for the Township of North Huron on December 11, 2017. The complaint alleged that council's discussion did not fit within the closed meeting exceptions in the *Municipal Act, 2001* and raised concerns about the presence of a large group during the closed session discussion. What follows is a summary of our review of this complaint, including our discussions with you.

Review

The Ontario Ombudsman is appointed under the *Ombudsman Act* as an independent Officer of the Ontario Legislature. Our Office has the authority to review complaints regarding the administrative conduct of public sector organizations, including the Township of North Huron. As of January 1, 2008, the *Municipal Act, 2001* (the Act) gives citizens the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.¹ The Ombudsman is the closed meeting investigator for the Township of North Huron.

We reviewed the agenda, as well as the open and closed minutes, from the December 11, 2017 special council meeting. We also spoke with the township's Clerk and reviewed related meeting materials.

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

December 11, 2017 special meeting

We understand that numerous volunteer firefighters in North Huron were unhappy with council's December 6, 2017 decision to direct the Clerk to prepare a by-law to appoint a specific individual as Acting Director of Fire and Emergency Services for North Huron's Fire Department. This occurred after the resignation of the former Director. According to news reports and the township's Clerk, many volunteer firefighters verbally resigned or threatened to resign in response to this decision, leading to concerns that there would be no firefighters to respond in case of emergency.

We were told that council called the December 11 special meeting shortly after the threatened resignation of the township's volunteer firefighters. The purpose of the meeting was to give council an opportunity to discuss this issue, hear the firefighters' concerns, and consider solutions to address those concerns.

According to the Clerk and meeting minutes, after calling the meeting to order, council proceeded in camera under the "personal matters" and the "labour relations or employee negotiations" closed meeting exceptions in sections 239(2)(b) and (d) of the Act, to discuss fire department personnel. Once in closed session, council discussed a legal opinion related to the fire department personnel. After council discussed this legal advice, approximately 40 firefighters entered the closed session and, through two representatives, spoke with council about various shared concerns. These concerns included comments about identified individuals and the department's work environment. After sharing these concerns, the fire department personnel left the closed session and council discussed the issues raised and how they could be addressed.

Once council returned to open session, council passed several resolutions related to the firefighters' concerns, including a resolution rescinding the previous appointment of the Acting Director of Fire and Emergency Services.

Analysis

Council relied on the closed meeting exception for personal matters about an identifiable individual, as well as labour relations or employee negotiations, to discuss fire department personnel issues.

When reviewing the parameters of the open meeting exceptions, our Office has often considered the case law of the Office of the Information and Privacy Commissioner. Although not binding, these cases can be informative.

While the personal matters exception does not apply to discussions about employees in their professional capacity, discussions about an individual in their official capacity can take on a more personal nature if the individual's conduct is scrutinized.²

The Information and Privacy Commissioner has established a two-part test to distinguish personal information from professional for the purposes of the open meeting rules:

1. In what context do the names of individuals appear? Is it in a personal or business context?
2. Is there something about the particular information that, if disclosed, would reveal something of a personal nature about the individual?

Based on information provided by the Clerk and the meeting materials, council discussed several individuals in the context of their employment or professional relationship to the municipality. However, council talked about aspects of the conduct of these employees that went beyond their professional roles, such that if the information were disclosed, it would reveal something of a personal nature about the individuals. Council also discussed how this conduct affected the work environment of the other firefighters. Accordingly, the in camera discussion fit within the "personal matters" exception to the open meeting requirements.

Council also relied on the "labour relations or employee negotiations" exception to discuss the fire department personnel issues. In 2003, the Ontario Court of Appeal found that the meaning of "labour relations" can extend to the relations and conditions of work, beyond those related to collective bargaining.³ In 2014, the Information and Privacy Commission also clarified that "labour relations" can apply to relationships outside a strict collective bargaining relationship, as long as they are analogous to those governed by collective bargaining legislation.⁴

² IPC Order MO-2519 (29 April 2010).

³ *Ontario (Minister of Health & Long-Term Care) v Ontario (Assistant Information & Privacy Commissioner)*, [2003] O.J. No. 4123. See also Orders PO-3311 and PO-3311.

⁴ Order MO-2997 (15 January 2014). See also Order PO-2057 (29 October 2002).

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During the December 11 closed meeting, council discussed the general work environment for the firefighters. This discussion occurred as part of an ongoing dispute between the firefighters and the township in which the firefighters had verbally resigned or threatened to resign unless council addressed their concerns. Accordingly, the “labour relations or employee negotiations” exception applied to this discussion.

Regarding the attendance of approximately 40 firefighters at a portion of the closed session, there is nothing in the *Municipal Act* that prohibits municipal councils from inviting large groups to attend closed session discussions. However, this practice has the potential to create suspicion in the eyes of the public and may, in practice, undermine the confidentiality of the in camera meeting. In future, council may wish to refrain from receiving delegations in closed session and instead have staff carry out these negotiations before reporting to council and seeking direction.

Conclusion

My Office’s review found that the closed meeting held by the Township of North Huron on December 11, 2017, fit within the exceptions for closed meetings set out in the *Municipal Act, 2001*.

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 council.

Sincerely,



Paul Dubé
Ontario Ombudsman

Cc: Neil Vincent, Reeve