

June 5, 2014

Mayor Deborah Haswell  
Clerk Kristen Van Alphen  
City of Owen Sound  
808-2<sup>nd</sup> Avenue East  
Owen Sound, ON  
N4K 2H4

Dear Mayor Haswell and Ms. Van Alphen,

**Re: Closed Meeting Complaint – March 23, 2011**

I am writing further to our discussion of June 4, 2014, regarding the outcome of our review of a complaint regarding a closed meeting held by council for the City of Owen Sound. The complaint, which was received on May 7, 2014, alleged that council violated the *Municipal Act, 2001* (the Act) when it went into closed session on March 23, 2011 to discuss withdrawing a funding pledge to a local hospital for the purchase of an MRI machine.

As you know, the Act requires that council, local board, and committee meetings are open to the public, with limited exceptions and subject to certain procedural requirements.

In reviewing this complaint, we obtained and reviewed the meeting documents, including the meeting agenda and the minutes of the open and closed sessions. We also spoke with both of you and considered relevant sections of the city's Procedure By-law and the Act.

**Procedure By-law (By-law 2007-242)**

The Procedure By-law states that regular meetings of council are held on Monday evenings, commencing with *in camera* matters at 6:30 p.m., followed at 7:00 p.m. by the balance of the public agenda in the Council Chambers. Notice of regular meetings of council and local boards and committees is provided to each member and is posted on the city's website in the form of a calendar. The By-law provides for notice of special meetings to members of council, but does not mention how notice of special meetings is provided to the public.

According to the By-law, all meetings of council, committees and local boards shall be open to the public, subject to the provisions of the open meeting requirements.

### **The March 23, 2011 meeting**

The March 23 meeting was a special budget meeting that began at 10:00 am. The city's current practice is to provide notice to the public of special meetings at least 48 hours in advance. You were unaware of the city's practice for providing notice of special meetings in 2011.

The public agenda indicated council was scheduled to proceed *in camera* at 1:45 p.m., but did not provide any details of what was to be discussed. A separate confidential agenda indicated that council would discuss three matters while in camera, the third item being the MRI issue.

The open session minutes indicate that council moved to proceed *in camera* to consider personal matters about an identifiable individual (including a municipal or local board employee), and litigation or potential litigation (including matters before administrative tribunals) affecting the municipality or local board.

Neither the minutes nor the agenda specify which of the cited exceptions applied to which item of discussion, but the Mayor advised our Office that the MRI matter was discussed under the "personal matters about an identifiable individual" exception. In considering this matter, council mentioned a specific individual with whom the Mayor met, and council therefore believed the exception applied.

The *in camera* minutes state that council passed a motion that there would be no further funding provided for the MRI campaign, as the funding goal had already been achieved.

### **Analysis**

#### MRI Issue

As acknowledged by the city, the MRI issue did not fall within any of the exceptions to the open meeting requirements and was not eligible for closed meeting discussion.

At the time, council believed the item fit within the "personal matters about an identifiable individual" exception because the Mayor's meeting with an identified individual from Grey Bruce Health Services was mentioned.

As noted in the Ombudsman's report *Into the Light*, regarding the Township of Baldwin: "The exception for discussion of personal matters was not intended to allow council to circumvent open meeting requirements by allowing subjects to be generally discussed as long as there is reference at some point to a named individual [paragraph 34]."

When closing a meeting under this exception, council should consider whether an *in camera* discussion is necessary in order to protect an individual's right to privacy. A general remark that a member of council met with an individual in his or her professional capacity does not bring a discussion within the parameters of the "personal matters" exception.

During our discussion you advised us that council's practices regarding discussion of business in closed session have changed significantly since 2011 and that you felt this matter would not have been discussed *in camera* today.

#### Other Items Discussed During the Closed Meeting

There were also several items discussed at the end of the *in camera* meeting under "other business." The Mayor advised our Office that it used to be council's practice to discuss additional items that were not on the agenda at the end of the closed session. On March 23, 2011, council discussed several items under "other business," including doctor recruitment, an Ontario Municipal Board matter and a collective bargaining issue.

When we spoke, the Mayor acknowledged that the doctor recruitment matter likely did not fall within any of the exceptions under the Act and did not qualify for *in camera* discussion.

Although some of the other matters discussed appeared on their face to qualify for closed meeting discussion under the *Municipal Act*, they were not included on the closed meeting agenda, and the relevant exceptions were not in the resolution to proceed *in camera* that day. We were advised that council no longer discusses "other business" at the end of closed sessions, and that the specific exception for each item of discussion must be listed before an item is placed on the closed session agenda.

#### Voting in Closed Session

While *in camera*, council took two votes. Council first considered a motion to defer the decision regarding the city's contribution to the MRI campaign until after the Mayor's meeting with the CEO of Grey Bruce Health Services. That motion was defeated. Council then considered a motion to advise the Grey Bruce Health Services Foundation

that no further funding would be provided for the MRI campaign. That motion was carried.

The Act (s. 244) states that no vote shall be taken in secret, subject to certain exceptions. Section 239(6) of the Act provides that a meeting may be closed to the public during a vote if the meeting is properly closed to the public under one of the exceptions to the open meeting provisions, and if the vote is for a procedural matter or to provide directions or instructions to officers, employees or agents of the municipality. In this case, the discussion was not properly closed to the public, and accordingly the votes were not permitted under the Act. In addition, the vote to discontinue funding to the MRI campaign was a substantive council decision that would not have been appropriate for an *in camera* vote even if the discussion had been properly closed to the public.

#### Improvements to Closed Meetings Practices and Procedures

We understand that council's closed meeting procedures have changed since 2011, and that council now provides more information in both its agenda and in the resolution to proceed into closed session. On June 4, we discussed that the Ombudsman is of the view that council should provide as much information as possible in its agenda and resolution, in order to maximize the information available to the public while not undermining the reason for holding a closed session.

We also discussed that the city does not follow a process of reporting back to the public after a closed session. The Ombudsman encourages municipalities to report back in public what occurred *in camera*, in a general way. In some cases, public reporting might simply consist of a general discussion in open session of subjects considered in closed session (similar to the information in the resolution authorizing the session), together with information about staff directions, decisions and resolutions. In other cases, however, the nature of the discussion might allow for considerable information about the closed session to be provided.

You advised our Office that council no longer has an "other business" section at the end of its closed meetings. The Clerk said there is a process for adding items to the closed session agenda, which includes passing a revised resolution in open session, and that this is generally only done for matters of urgency. We discussed that, for the sake of clarity, the process for adding items to the agenda should be outlined in the city's Procedure By-law. We also noted that the By-law should be updated to provide for notice to the public of special meetings.

Finally, we discussed that the Ombudsman recommends that all municipalities audio record all meetings – both open and closed – to ensure the most thorough record possible.

This helps foster community trust and confidence in the transparency and accountability of local government.

On June 4, we shared our review and findings with you and provided you with an opportunity to provide feedback. You advised that you had no comments to add. You agreed to share this letter with council at the public meeting on June 23 and to make a copy available to the public.

We would like to thank you for your cooperation with our review.

Sincerely,

Michelle Bird  
Legal Advisor  
Open Meeting Law Enforcement Team