

J. Paul Dubé, Ombudsman

May 16, 2019

Council for the Municipality of Temagami
Municipality of Temagami
7 Lakeshore Drive
PO Box 220
Temagami, ON P0H 2H0

Dear Council for the Municipality of Temagami,

Re: Notice practices, closed meeting complaint

My Office received a complaint regarding the January 10 and March 28, 2019 closed meetings of council for the Municipality of Temagami. The complaint alleged that the municipality did not provide proper notice for the January 10 closed session and that council failed to immediately report back regarding its closed session discussion. The complaint also raised concerns that councillors had informally discussed a matter in private prior to the council meeting.

Regarding the March 28, 2019 closed meeting, the complaint alleged that the municipality provided conflicting and inaccurate meeting notices. The complainant did not raise concerns about the substantive closed session discussion at either meeting.

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 Ombudsman is the closed meeting investigator for the Municipality of Temagami.

To assist municipal councils, staff, and citizens we have developed an online digest of

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

open meeting decisions that contains summaries of the Ombudsman's open meeting cases. This searchable repository was created to provide interested parties with easy access to the Ombudsman's past decisions on, and interpretations of, the open meeting rules. Council members and staff can consult the digest to inform their discussions and decisions on whether a matter should or may be discussed in closed session, as well as issues related to open meeting procedure. Summaries of all previous Ombudsman decisions cited in this letter may be consulted in the digest at www.ombudsman.on.ca/digest.

Review

My Office reviewed the posted notices, agendas, and meeting minutes from the January 10 and March 28, 2019 council meetings. We also reviewed relevant portions of the audio recording of the January 10 open meeting. We spoke with the Treasurer/Administrator, who was the acting Clerk during these meetings, and the Mayor. In addition, we reviewed Temagami's procedural by-law, its website, and other related documents.

January 10, 2019 meeting

The Treasurer/Administrator told my office that council for the Municipality of Temagami met at 5 p.m. on January 10, 2019 for a council meeting. He indicated that council immediately passed a resolution to proceed into closed session and returned to open session when that discussion was complete. He said that council took a short break before the regularly scheduled council meeting that began at 6:30 p.m.

Notice

However, our review indicates that the meeting agenda and procedure by-law each indicated that there would only be one council meeting, and that it began at 6:30 p.m., rather than 5:00 p.m. The Treasurer/Administrator acknowledged this discrepancy and said that the municipality had recently adopted a new procedure of having two council meetings per month, rather than a council meeting and a committee of the whole meeting. He also said that council had decided to move closed session discussions, if any, to the beginning of meetings, rather than holding them during the middle. He said that the January 10 meeting was only the second meeting of this council term and that the incorrect and incomplete notice was an oversight due to these changes. The

Treasurer/Administrator emphasized that council did not intend to hide the 5:00 p.m. meeting, saying that the municipality published meeting minutes and councillors referenced it repeatedly during later discussions. He also said that the error occurred while he was filling the Clerk role in a temporary acting capacity due to staffing shortages.

The Treasurer/Administrator said that he is now aware of these notice issues. He said council is in the process of modifying its procedure by-law to reflect the revised meeting schedule and practices, and that in the interim, council is scheduling special meetings before regular council meetings when it wishes to have a closed session discussion prior to the 6:30 p.m. council meeting.

Ombudsman staff spoke with the Treasurer/Administrator about the importance of complete and accurate meeting notice. The Treasurer/Administrator told our office that the municipality has already taken steps to update its procedure by-law and improve its notice practice to ensure that the public is provided with accurate and complete information about the time and place of council meetings.

Report back

Our Office received a complaint that council failed to immediately report back regarding its closed session discussion following the 5:00 p.m. meeting. Rather, this report back occurred during the 6:30 p.m. meeting shortly after it was called to order.

Although there is no requirement under the *Municipal Act* for municipal councils to report back in public after the conclusion of a closed meeting, I have recommended this practice to increase transparency of the closed meeting process.

The Treasurer/Administrator confirmed that Temagami council has adopted the best practice of reporting back, and that this is typically the first item on the agenda once council has reconvened in open session at 6:30 p.m. The meeting minutes and audio recording confirm that this occurred during the January 10 meeting. The Treasurer/Administrator said that sometimes council will report back on a closed session during the next substantive council meeting rather than reporting back to an empty or nearly-empty room.

I commend the openness and transparency of Temagami's reporting back practices, which ensure that information about what council discussed in closed session is shared with the public in a timely and convenient manner.

Alleged informal discussion prior to meeting

The complainant also raised concerns about a comment the Mayor made during the open portion of the January 10, 2019 meeting. While discussing a motion related to opting out of cannabis retail sales in the municipality, the Mayor referenced "some discussions we had informally among some of the councillors" related to public consultation on this issue. The complainant said this suggested that council had improperly discussed council business in private.

When asked about what the Mayor may have been referring to with this comment, the Treasurer/Administrator said that he was unsure and said he was not aware of any discussions among councillors about this subject. The Mayor also was unsure of what discussions he may have been referencing. He said that the January 10 meeting occurred at the beginning of the council term, and that he was likely referring to some informal discussions that occurred at two gatherings before the councillors-elect were sworn in to office. He specifically remembered one dinner and one education and training gathering.

The Mayor was unable to remember when or exactly who he discussed this subject with, but said he only spoke with one or two other councillors-elect. He said that he is very mindful of the open meeting provisions that prohibit a quorum of councillors from discussing business informally. Temagami council consists of seven councillors, and only two of the councillors-elect were sitting councillors.

Based on this information, there is insufficient evidence to conclude that a quorum of council members discussed or otherwise dealt with a matter in a way that materially advanced the business or decision-making of council contrary to the *Municipal Act*. As the Ombudsman's Office has previously noted, councillors-elect who have not been sworn in cannot transact council business and do not count for quorum purposes.²

² Ombudsman of Ontario, *Town of Fort Erie* (November 2013), online: <<https://www.ombudsman.on.ca/resources/reports-and-case-summaries/municipal-meetings/2013/town-of-fort-erie-en>>.

While gatherings of councillors-elect are not technically subject to the *Municipal Act's* open meeting requirements, my Office has repeatedly cautioned municipalities that these private gatherings can erode the public's trust in the openness and transparency of elected officials.

March 28, 2019 special meeting notice

The complaint to our office also alleged that the municipality provided confusing and incorrect notice for a March 28, 2019 special meeting. Our review confirmed that different portions of the municipality's website advertised different start times, different room locations, and used different wording for the agenda items for this special meeting.

The Treasurer/Administrator told our office that this mistake also occurred inadvertently due to human error and understaffing. He indicated that the municipality was alerted to these discrepancies before the meeting occurred, but that it was too late to alter the notice under the procedure by-law. As a result, council decided to hold its meeting at the later of the two posted times to ensure that the public would be able to attend the entire meeting, regardless of which notice they saw and relied on. Regarding the discrepancy between the meeting rooms, the Treasurer/Administrator acknowledged the error while also noting that the municipal building is quite small and that the two listed rooms are very close together, such that there was no concern about directing the public to the correct location.

Ensuring accurate and timely meeting notice is important for the openness and transparency of council meetings. As previously discussed, the Treasurer/Administrator confirmed that the municipality is already taking steps to improve its notice practices, including the recent hiring of a full-time Clerk and revisions to its procedure by-law.

Conclusion

My review identified administrative issues with the meeting notice provided for the January 10 and March 28, 2019 closed meetings. The municipality acknowledged these errors and has already taken steps to improve its processes.

My review did not find any evidence that council contravened the *Municipal Act's* meeting provisions when the Mayor spoke with a small number of councillors-elect about the cannabis opt-out procedure at two gatherings before new councillors were sworn in. However, the municipality should be cautious about having councillors-elect meet privately in this manner due to concerns about openness and transparency.

Regarding the municipality's practice of reporting back at subsequent council meetings, this procedure accomplishes the goal of ensuring greater accountability and transparency regarding closed session discussions.

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

Sincerely,



Paul Dubé
Ontario Ombudsman

Cc: Dan O'Mara, Mayor