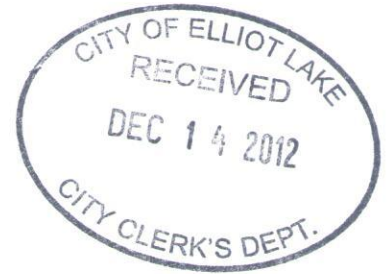


December 12, 2012



Clerk Lesley Sprague
City of Elliot Lake
45 Hillside Drive North
Elliot Lake, ON P5A 1X5

Dear Ms. Sprague,

Re: Closed Meeting Complaint – October 22, 2012 Meeting of Council

I am writing further to our conversation on December 12, 2012 regarding the outcome of our review of a complaint that Council's resolution to proceed in camera on October 22, 2012 did not identify the nature of the matter to be considered in the closed meeting.

The complainant stated that the Chief Administrative Officer called the meeting and the resolution confirmed that Council relied on s. 239 (2) (b) of the *Municipal Act, 2001* (the Act) - "personal matters about identifiable individuals, including municipal and local board employees" - to hold the meeting behind closed doors. However, the complainant stated that it was unclear if the subject matter fit within that exception as no additional information regarding the subject matter was provided.

As you are aware, the Act requires that all meetings of Council, Local Boards, and their committees are open to the public, with limited exceptions. The Act further requires that Council pass a resolution prior to proceeding in camera stating, "the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting."

In reviewing this complaint, our Office spoke with you, the Mayor, and the Chief Administrative Officer, and reviewed the meeting agenda and minutes, as well as the Procedure By-Law and relevant sections of the Act.

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. : 416-586-3300
Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

The Agenda and public minutes confirmed that the Chief Administrative Officer requested to address council in a closed meeting to discuss a “personal matter about an identifiable individual.”

Based on our discussions with you, the Mayor, and the Chief Administrative Officer (CAO), as well as the closed meeting record, the CAO initiated discussion of a performance matter within the closed meeting and Council provided feedback and comment in relation to the identified municipal employee’s performance. Council also discussed strategies to improve or prevent a perceived performance issue.

The meeting was adjourned at 10:00 p.m. without report, having lasted approximately one hour and twenty minutes.

Discussion of Personal Matters:

While the *Act* does not define “personal information” for the purposes of the open meeting requirements, the Information and Privacy Commissioner has noted¹ that in order to qualify as personal information, the information “must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “personal information about the individual.”

However, “information about persons in their professional or employment capacity may qualify as their personal information if it involves an evaluation of that individual’s performance as an employee or an investigation into his or her conduct as an employee.”²

Since the discussion at the October 22, 2012 meeting included an assessment of an individual’s performance, we determined that the subject matter falls within the “personal matters” exception (s. 239 2 (b)). However, we would like to caution Council to always ensure that matters discussed under this exception are indeed personal matters directly involving an assessment of an employee’s performance or conduct. Discussion of professional matters or municipal procedures and protocol

¹ Order MO-2203; (Town of Aylmer) (June 22, 2007)

² Order MO-2395 (Niagara Regional Police Services Board) (Feb 20, 2009)

that have an impact on employees does not fall within the personal matters exception.

Resolution to Proceed In Camera and Reporting Back After the Meeting:

The Ontario Court of Appeal in *Farber v. Kingston (City)* stated that “the resolution to go into closed session should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.”

As discussed, Council could have provided more detail in both the resolution and the agenda about the nature of the subjects to be considered at the October 22 closed meeting. For instance, Council could have indicated that the discussion pertained to an employee performance matter.

In the interest of transparency, the Ombudsman also recommends that Council report back publicly following the closed meeting. Council should provide the public with, at a minimum, a general description of what was discussed during the closed meeting. In some cases the report may simply confirm the subjects discussed in the closed meeting (similar to the resolution) and any decisions, directions to staff, or resolutions arising from the closed meeting. In other cases, however, Council may be able to provide considerably more detail to the public on what transpired in the closed session.

When we spoke on December 12, 2012 you said that this letter would be added to the next public Council meeting agenda on January 14, 2012 and that a copy would be available to the public on your website.

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

Sincerely,



Yvonne Heggie
Early Resolution Officer