



Cunningham Swan

LAWYERS

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CONFIDENTIAL

June 21, 2024

SENT BY EMAIL TO: TDafoe@stratford.ca

Mayor and Members of Council
c/o Tatiana Dafoe, City Clerk
City of Stratford
1 Wellington Street
P.O. Box 818
Stratford, ON N5A 6W1

Dear Mayor and Members of Council:

**RE: Closed Meeting Investigation
Our File No.: 36684-6**

This public report of our investigation is being provided to Council in accordance with Section 239.2(1) of the *Municipal Act*. We note that Section 239.2(11) of the *Municipal Act* requires that Council make the report public. The Clerk should identify on the agenda for the next open session Council meeting that this report will be discussed. Staff should consider whether it is appropriate to place the full report on the agenda in advance of Council deciding how the report should otherwise be made public.

Should Council desire, the Closed Meeting Investigator is prepared to attend at the open session meeting to present the report and answer any questions from Council.

At the meeting, Council must first receive the report for information. Council does not have the authority to alter the findings of the report, only consider the recommendations. Per section 239.2 (12), if the report contains a finding that all or part of a meeting was held in closed session contrary to the *Act*, then Council is required to pass a resolution stating how it intends to address the recommendations in the report.

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The Closed Meeting Investigator has included only the information in this report that is necessary to understand the findings. In making decisions about what information to include, the Investigator is guided by the duties set out in the *Municipal Act*. Members of Council are also reminded that Council has assigned to the Investigator the duty to conduct investigations in response to complaints under the *Municipal Act*, and that the Investigator is bound by the statutory framework to undertake a thorough process in an independent manner. The findings of this report represent the Investigator's final decision in this matter.

THE COMPLAINT

On February 2, 2024, our office received a closed meeting complaint, made to the City on January 31, 2024. The complaint alleged that the agenda for the January 22, 2024 closed session of City Council did not provide enough information as to the general nature of the subject matter being discussed.

The *Municipal Act* provides the Closed Meeting Investigator with powers which include the ability to interview witnesses and review documents deemed relevant to the investigation process. In conducting the preliminary review, our process included:

- Reviewing the relevant provisions of the *Municipal Act*;
- Correspondence with the complainant; and
- Reviewing agendas, closed session resolutions, and similar documentation.

FACTS:

On January 22, 2024, the following matter was included on Committee of the Whole's agenda to be discussed in closed session:

4.2 Proposed Disposition of Land (Long-Term Care Home) - Proposed or pending acquisition or disposal of land by the municipality or local board (section 239.(2)(c)) (includes municipal property leased for more than 21 years), and Advice that is subject to solicitor-client privilege including communications necessary for that purpose (section 239.(2)(f)), and A position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board (section 239.(2)(k)).

A review of the minutes indicates that this agenda accurately reflects the motion that was passed to move into closed session.

Municipal Act

239 (1) Except as provided in this section, all meetings shall be open to the public.

- (2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

[...]

(c) a proposed or pending acquisition or disposition of land by the municipality or local board;

[...]

(f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

- (4) Before holding a meeting or part of a meeting that is to be closed to the public, a municipality or local board or committee of either of them shall state by resolution,

(a) the fact of the holding of the closed meeting and the general nature of the matter to be considered at the closed meeting; or

(b) in the case of a meeting under subsection (3.1), the fact of the holding of the closed meeting, the general nature of its subject-matter and that it is to be closed under that subsection.

ANALYSIS:

Under the *Municipal Act*, the default position is that meetings of Council and similar bodies are open to the public. This is an important rule, as it reinforces principles of open and accountable government. However, there will, naturally, be circumstances in which Council must address issues that should not be discussed in public; for this reason, the *Act* includes a number of exceptions.

The scheme of the *Act*, and previous decisions of closed meeting investigators, make clear that for a meeting to be properly closed to the public, the following requirements must be met:

1. The meeting must begin in open session, and a resolution must be passed to move into closed session;
2. The resolution to move into closed session must cite the section of the *Act* relied upon and must give a general description of the matters to be discussed; and

3. The content of the meeting must actually fall within the cited exception.

The complaint only addressed the second of these three criteria; our report will, therefore be limited to considering whether the resolution to move into closed session provided a sufficient description of the matters to be discussed.

Even where an exception applies which permits a meeting to be held in closed session, the *Municipal Act* still imposes certain restrictions to ensure the possibility for a level of public scrutiny.

The motion to move into closed session must provide the “general nature” of what is to be discussed. In *Farber v. Kingston (City)* 2007 ONCA 173, the Ontario Court of Appeal described the contents of this requirement as follows:

I think 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.

A member of the public, not having been permitted to be present during the closed session, must nevertheless be able to review the motion and have a general idea as to what was discussed except in limited circumstances. This is important, not least of all because, without this step, the public has no way to otherwise hold its Council accountable with respect to the closed meeting.

Did Committee of the Whole Pass an Appropriate Resolution in Open Session to Move into Closed Session

The Minutes of January 22, 2024, show that the description provided was simply “Proposed Disposition of Land (Long-Term Care Home)”. We have had the benefit of reviewing the closed meeting minutes, in order to see whether this description matches what was actually discussed. In our opinion, it does. Although the complaint, quite accurately, points out that this description does not disclose whether the City is selling land that has a long term care home on it, or land for the purposes of building a long term care home, and does not reveal the location of the land to be sold, in our opinion, these details are not required. The public is entitled only to a general idea of what is discussed, not the specifics.

CONCLUSION AND RECOMMENDATIONS

We have found that the motion passed to move into closed session, with respect to agenda item 4.2 on January 22, 2024, provided a sufficient amount of general information about the topic being discussed so as to comply with the *Municipal Act*. Accordingly, the complaint is dismissed.

This concludes the investigation and report in this matter.

Sincerely,

Cunningham, Swan, Carty, Little & Bonham LLP

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