



Ombudsman Report

**Investigation into the closed meeting
held by the Municipality of St.-Charles
on March 6, 2017**

**Paul Dubé
Ombudsman of Ontario
June 2017**

Complaint

- 1 On March 13, 2017, our Office received a complaint alleging that the General Government Committee of the Municipality of St.-Charles inappropriately met in camera on March 6, 2017, to discuss allegations regarding employee municipal credit card abuse. The complainant felt this matter should not have been discussed in closed session because they felt information about the allegations was previously made public at an earlier council meeting on March 2, 2017.

Ombudsman jurisdiction

- 2 Under the *Municipal Act, 2001*, all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.
- 3 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. Municipalities may appoint their own investigator or use the services of the Ontario Ombudsman. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own.
- 4 The Ombudsman is the closed meeting investigator for the Municipality of St.-Charles.
- 5 When investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipality's procedure by-law have been observed.

Investigative process

- 6 On May 5, 2017, we advised the Municipality of St.-Charles of our intent to investigate these complaints.
- 7 We reviewed the municipality's procedure by-law and relevant portions of the Act, as well as the meeting agendas and open/closed meeting minutes from the March 2 and March 6, 2017 meetings. We also listened to audio recordings of the open and closed sessions of both meetings. Audio and video recordings provide the most accurate and complete record of a

meeting and we commend the municipality for adopting the practice of audio recording its closed sessions.

- 8 To understand the background and context of these meetings, we interviewed the Acting Clerk, the Interim Chief Administrative Officer (CAO) and four of the municipality's five councillors. We also reviewed various documents related to the March 6 meeting, including a package of information regarding the credit card abuse allegations, a written legal opinion obtained by the municipality, and other correspondence.
- 9 We received full co-operation with our investigation.

Council procedures

- 10 The municipality's procedure by-law¹ states that, subject to the *Municipal Act, 2001*, all meetings of council and committees shall be open to the public. The by-law states that the section of the Act that regulates closed meetings is attached as "Schedule C". However, Schedule C does not include any information about closed meetings, and relates only to "The Key and Distinctive Role of the Mayor".
- 11 Our Office identified this issue in our February 2016 report regarding closed meetings in St.-Charles and recommended that the by-law be revised.² At that time, the then-Clerk advised our Office that the municipality had been aware of the need to update its procedure by-law for the last two years.
- 12 Council for the Municipality of St.-Charles should amend its procedure by-law to reflect the open meeting provisions of the *Municipal Act, 2001*.

March 2, 2017 – Special council meeting

- 13 On March 2, 2017, at 7:00 p.m., council for the Municipality of St.-Charles met in council chambers for a special council meeting. Although our Office did not receive a complaint about this meeting, our Office reviewed the meeting's proceedings to determine what information about the municipal

¹ Municipality of St.-Charles, by-law 2007-59 (amended), *Council Procedure By-law*, online: <<http://www.stcharlesontario.ca/upload/documents/procedural-by-law--complete-.pdf>>.

² Ombudsman of Ontario, *Investigation into closed meetings held by Council for the Municipality of St.-Charles* (February 2016) at para 7, online: <<https://www.ombudsman.on.ca/Resources/Reports/Municipality-of-St--Charles.aspx>>.

credit card abuse allegations was made public prior to the March 6 meeting.

- 14** After calling the meeting to order, the Mayor indicated that council would be proceeding in camera under the closed meeting exception for personal matters about an identifiable individual to discuss allegations related to municipal credit card abuse. Before council went into closed session, Councillor Jackie Lafleur asked if the discussion would relate to a package of documents that had been circulating among local residents regarding the allegations. This package included an anonymous letter from a concerned citizen to the Minister of Municipal Affairs alleging that some employees and members of council had developed a scheme to use a municipal credit card for personal expenses. The letter alleged that three specific municipal staff members and two identified members of council were involved. Various credit card statements were attached to the letter, each of which had been obtained by Councillor Lafleur through a freedom of information request to the municipality.
- 15** Councillor Lafleur said that any discussion resulting from this information about the municipal accounting system should occur in open session. The Mayor responded that the discussion would relate to personal information about identifiable individuals, not the general accounting system. Councillor Phil Belanger raised a similar concern and the Mayor reiterated that the discussion would relate to personal information about identifiable individuals.
- 16** According to the open meeting minutes, council then proceeded in camera at 7:05 p.m. to discuss:

“personal matters about an identifiable individual, including municipal or local board employees; Special Council Agenda

Topic: Allegations regarding municipal credit card abuse”

- 17** During the closed session, council discussed personal information about various individuals, including their performance and conduct. Council also discussed various actions that it wished to take in response to this information.
- 18** Following the closed session, council returned to open session and the Mayor reported back that:

“Council is accepting the Freedom of Information document as a Municipal document for consideration from Councillor Lafleur. Council

has provided instructions to our interim CAO to take further actions.”

- 19 Council briefly discussed the need to remove sensitive information (e.g. visible credit card numbers, names) from the document package prior to making it publicly available. The meeting adjourned at 8:57 p.m.

March 6, 2017 – Special General Government Committee meeting

- 20 On March 6, 2017, 6:00 p.m., the General Government Committee for the Municipality of St.-Charles met in council chambers for a special committee meeting. The committee consists of the Mayor and one councillor.

- 21 After the meeting was called to order, the open meeting minutes indicate the committee immediately proceeded in camera to discuss:

- “Personal matters about an identifiable individual, including municipal or local board employees
- Litigation or potential litigation including matters before administrative tribunals

Topic: Allegations regarding Municipal Credit Card abuse.”

- 22 Once in closed session, the Mayor shared a written legal opinion provided by the municipal solicitor regarding the credit card abuse allegations and a separate matter that is subject to ongoing litigation. Our Office reviewed a copy of this legal opinion. The CAO spoke to the committee about the legal advice and various actions that the municipality might wish to take at the suggestion of the solicitor. The discussion included details of ongoing legal proceedings against the municipality and how the municipality’s response to the credit card abuse allegations could affect those proceedings. The committee also discussed personal information about several identified individuals, including their performance and conduct. The committee also discussed an individual’s employment status. The committee decided to summarize its discussion and bring it to council for closed session consideration on March 8, 2017.

- 23 Council resolved to return to open session and reported that:

“After having reviewed the legal advice provided the General Committee [we] will be reporting to Council during the Closed Session

following the March 8th, 2017 Committee of the Whole.”

- 24** The meeting adjourned at 6:50 p.m.
- 25** During interviews, we were told that following the March 8, 2017 meeting, council retained a forensic auditor to examine matters related to the municipal credit card abuse allegations.

Analysis

Closed meeting exceptions

- 26** The committee relied on the “litigation or potential litigation” exception in section 239(2)(e) of the Act to discuss details of ongoing legal proceedings against the municipality and how the municipality’s response to the credit card abuse allegations could affect those proceedings. During this discussion, the committee considered written legal advice from the municipal solicitor representing St.-Charles in the ongoing proceedings. Accordingly, the committee was entitled to rely on the “litigation or potential litigation” closed meeting exception.
- 27** The committee also relied on the closed meeting exception for personal matters about an identifiable individual under section 239(2)(b) of the Act. This exception does not apply to discussions about employees in their professional capacity. However, discussions about an individual in their official capacity can take on a more personal nature if the individual’s conduct is scrutinized.³
- 28** 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?
- 29** In this case, the committee discussed several individuals in the context of their employment or professional relationship to the municipality. However,

³ IPC Order MO-2519 (29 April 2010).

went beyond their professional roles, such that if the information were disclosed, it would reveal something of a personal nature about the individuals. This discussion fit within the exception in section 239(2)(b) of the Act.

- 30** We also considered whether the discussion could have fit within the exceptions in section 239(2)(f) for advice subject to solicitor-client privilege or section 239(2)(d) for labour relations or employee negotiations. During the closed meeting, the committee considered written legal advice from the municipal solicitor related to the credit card abuse allegations and other ongoing legal proceedings. Accordingly, the advice subject to solicitor-client privilege exception applied. The labour relations or employee negotiations exception generally applies to matters involving hiring, firing, and disciplining specific employees.⁴ At the meeting on

decisions regarding their employment status. This discussion also fit within the exception for labour relations or employee negotiations.

Information previously made public

- 31** The complainant who contacted our Office about the March 6 meeting felt that the credit card abuse allegations should not be discussed in closed session because information about the allegations was previously made public at an earlier council meeting on March 2, 2017.
- 32** As our Office has previously noted, the majority of the Act's closed meeting exceptions are discretionary, and municipalities should carefully consider whether the public might be better served by discussing a matter openly, rather than relying on the statutory exceptions to engage in discussion behind closed doors.⁵ During the March 6 meeting, however, the committee discussed advice subject to solicitor client privilege, ongoing litigation, and unproven allegations about identified municipal employees. This information had not been previously discussed in public and is not the type of information that would typically be debated in open session.

⁴ Ombudsman of Ontario, *Investigation into a complaint about a meeting held by the Board of Management for the Ridgeway Business Improvement Area* (April 2017), at para 37, online: <https://www.ombudsman.on.ca/Resources/Reports/Board-of-Management-for-the-Ridgeway-Business-Impr.aspx#_ftnref1>.

⁵ Letter from Ombudsman of Ontario to City of Hamilton (18 February 2010), online: <<http://www2.hamilton.ca/NR/rdonlyres/AE3168C9-6502-4387-B5EE-BD191D23E9F8/0/Aug12Item522.pdf>>.

Opinion

- 33 The General Government Committee for the Municipality of St.-Charles did not contravene the *Municipal Act, 2001* on March 6, 2017 when it went in camera to discuss allegations of municipal credit card fraud. The discussion fit within the cited closed meeting exceptions for “litigation or potential litigation” and “personal matters about an identifiable individual.”
- 34 However, the municipality should update its procedure by-law to reflect the closed meeting provisions in the *Municipal Act, 2001*.

Recommendation

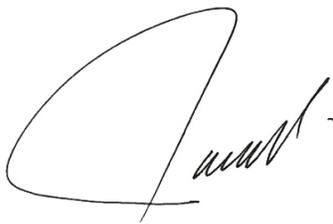
- 35 I make the following recommendation to assist the Municipality of St.-Charles in fulfilling its obligations under the Act and enhancing the transparency of its meetings.

Recommendation 1

Council for the Municipality of St.-Charles should amend its procedure by-law to reflect the open meeting provisions of the *Municipal Act, 2001*.

Report

- 36 The municipality was given the opportunity to review a preliminary version of this report and provide comments to our Office. No comments were received from the municipality.
- 37 My report should be shared with council and made available to the public as soon as possible, and no later than the next council meeting.



Paul Dubé
Ombudsman of Ontario