



**Investigation into complaints
about a meeting held by
Council for the City of London
on June 10, 2015**

**Barbara Finlay
Acting Ombudsman of Ontario
February 2016**

Complaint

- 1** My Office received two complaints that council for the City of London held an illegal closed meeting on June 10, 2015.
- 2** One complainant told us that City Hall was locked ahead of the council meeting and that, when security staff began to let people in, only ten people were allowed to enter the public gallery at a time. The complainant stated that, following a disturbance in the gallery caused by an individual, all members of the public were removed from the gallery and no one was permitted back into the building to observe the rest of the meeting.
- 3** The second complainant told us that, while waiting on the main floor of the building to be let up to the public gallery, a member of the security team announced that the meeting was “cancelled” and everyone had to leave the building.
- 4** Under the *Municipal Act, 2001* (“the Act”) all meetings of council, local boards, and committees of council must be open to the public, unless they fall within prescribed exceptions.

Ombudsman jurisdiction

- 5** As of January 1, 2008, 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.
- 6** The Ombudsman is the closed meeting investigator for the City of London.
- 7** In investigating closed meeting complaints, we consider whether the open meeting requirements of the Act and the municipal procedure by-law have been observed.

Council procedures

- 8** Regular council meetings are held twice monthly on Tuesdays, commencing at 4:00 p.m., except in the months of July and August. The annual calendar of

meetings is posted on the City of London website, in addition to council and committee meeting agendas.

- 9** The city's procedure by-law requires that all meetings are open to the public, except as otherwise provided by the Act.
- 10** The city video records open council and committee meetings, and streams the videos on its website as live webcasts. The video is also available online a few days after each meeting, once staff have had time to format the file and add point-in-time links to the minutes for easy navigation through the videos.
- 11** Regular council meetings are held in council chambers on the second floor of City Hall. The public can observe meetings from a gallery on the third floor.
- 12** The city's procedure by-law states that members of the public in attendance at council (or committee) meetings are expected to "conduct themselves with proper decorum at all times, in order to ensure a safe and respectful meeting environment". If a person does not conduct himself/herself with decorum, he/she may be removed pursuant to s. 16.3 of the by-law. The Chair may also suspend a meeting in order to restore order.

Investigative process

- 13** The Ombudsman's Open Meeting Law Enforcement Team (OMLET) reviewed the city's procedure by-law, the meeting materials for the June 10 council meeting, and the city's video recording of the meeting. We obtained and reviewed an electronic "activity report" showing when the doors to city hall were locked and unlocked during the meeting. We also reviewed related news coverage and videos, including a video posted online by a member of the public.¹
- 14** OMLET staff interviewed the complainants, the Mayor, the Clerk, the City Manager, the Division Manager of Corporate Security and Emergency Management, and the Manager of Corporate Security. We also interviewed five employees of a private company retained by the city to provide security services. The five contracted security personnel were working in London City Hall on June 10, 2015. The complainants were unable to provide contact information for additional members of the public who were present at City Hall on the day of the meeting.

¹ Len Elliott, "OPSEU V.P. Ron Elliot & Exec Board Member Len Elliott- Ask London Mayor about CUPE 101 Strike", online: <www.youtube.com/watch?v=g_92CdaAmHc>.

15 We received full co-operation in this matter.

Council meeting on June 10

- 16** A regular City of London council meeting was scheduled for 4:00 p.m. on June 10, 2015 in council chambers. Item V on the meeting agenda was an in camera meeting of the Committee of the Whole to consider three matters under the exceptions in the *Municipal Act, 2001* for discussions related to a proposed acquisition or disposition of land and advice subject to solicitor-client privilege.
- 17** The June 10 meeting was held in the midst of a labour disruption affecting 750 city employees, which began on May 25.² During the disruption, there were demonstrations around City Hall.
- 18** Prior to the meeting, a large crowd of workers and supporters were present outside City Hall. Extra security personnel were called in to monitor the entrances to City Hall, in part to ensure that the number of people in the third floor gallery did not exceed the maximum of 90 people allowed in accordance with the fire code.
- 19** The Division Manager of Corporate Security [the Division Manager] spoke with Mayor Matt Brown about security concerns given the large crowd of people outside City Hall and the potential for disruption during the council meeting. The Division Manager advised the Mayor that security staff have the authority to lock the doors to City Hall and/or council chambers if needed, but that security would attempt to admit members of the public to council chambers in a controlled manner in order to allow public access to the council meeting.
- 20** The June 10 council meeting began at 4:04 p.m. Following the singing of the national anthem, the Mayor made a number of general announcements. Members of council declared a pecuniary interest with respect to certain items on the agenda. Representatives of the Thames River Rally were recognized with a certificate for “London’s Featured Community Organization”.

² See Patrick Maloney, “Day 17 of the strike by London city hall’s 750 inside workers was the most tense yet”, (10 June 2015), London Free Press, online: <<http://www.lfpress.com/2015/06/10/city-hall-calls-london-police-on-striking-workers-picket-line>>.

- 21** The Division Manager advised that, just after the meeting started, approximately 100 to 200 people from the crowd outside began to move towards the front doors to City Hall. He ordered staff to lock the doors in order to control entry. The door “activity report” indicates that the doors were locked at 4:06 p.m. The Division Manager then went outside, where people were yelling to be let in City Hall. He told the crowd that there are rules regarding capacity and that people would be let in slowly to proceed to the third floor gallery.
- 22** The Manager of Corporate Security [the Manager] escorted the first group of approximately 13 people up to the third floor in an elevator. She reminded the group of the rules that apply within council chambers and the gallery, including a requirement to refrain from speaking out unless directly addressed by council. When the group entered the gallery and sat down, the Manager went to council chambers on the second floor.
- 23** Approximately 12 minutes into the meeting, according to the city’s video recording, the Mayor sought a motion to move to committee of the whole in camera. At this time, an individual in the gallery began to ask loudly when council was going to talk about the CUPE 101 strike.
- 24** The incident was captured on the council meeting video and in a video captured by a member of the public that was subsequently posted online.³ The video shows two members of the gallery interrupting the council meeting. In the video, approximately 12 people can be seen in the gallery, and approximately eight more can be seen entering the gallery during the disruption.
- 25** The Mayor asked the individuals not to interrupt the meeting and said that, if they continued to interrupt, he would call a recess and ask the individual to leave. The individual continued to question council. The Mayor stated, “I am going to call a recess and ask those who have not filed a request and who are not respecting the environment to be removed”. The individuals continued to make loud comments from the gallery.
- 26** No motion for a recess was moved or seconded. Instead, at 4:20 p.m., council resolved to proceed in camera as committee of the whole, in accordance with the closed session noted on the meeting agenda. The meeting was closed to discuss the three matters that were listed on the agenda and one additional matter, under the exceptions for acquisition or disposition of land, solicitor-client privilege, and

³ *Supra* note 1.

labour relations or employee negotiations. Council members left the council chamber, as closed meetings are held in a committee room.⁴

- 27** During the disruption, the Manager entered council chambers on the second floor and heard a commotion coming from the gallery. She witnessed the exchange between the Mayor and members of the public in the gallery. She told our Office that she heard the Mayor asking the crowd not to interrupt and noticed the crowd was “not settling”. The Manager returned to the gallery, motioned to the Mayor to leave chambers, and asked the individuals disrupting the meeting to leave.
- 28** The Division Manager said that he was in council chambers and believed that the disruptive individuals were not responding to instructions from security staff to leave. He proceeded to the third floor and saw that the people in the gallery had not dispersed. He called the local police service to assist and returned to the lobby to escort the police officers to the third floor.
- 29** The Manager of Corporate Security escorted the two or three individuals who had led the disruption down on the elevator and out of the building.
- 30** Security staff advised that they believe most of the individuals in the gallery had attended the meeting to witness the disruption and chose to leave the building when it ended. We were told that most people in the gallery left of their own volition, leaving only two or three members of the public on the third floor. Members of the public are allowed to remain in the gallery during the closed session, as council leaves chambers. Some of the people who left the building gathered outside the back of City Hall, while others returned to the picket lines.
- 31** Council returned to open session at 5:23 p.m. As council was returning to chambers, the Mayor asked the Division Manager if the doors to the gallery were open and was told that they were. The Division Manager told us that, at the time of this conversation with the Mayor, he believed that the doors to City Hall were also unlocked.
- 32** The Mayor told us that, when the doors to the gallery are locked, a light comes on inside the gallery. He recalled this light being off, and, on that basis, the Mayor believed the gallery doors were open throughout the meeting, including during and following the disruption.

⁴ Note: The Complainants did not allege that the in camera session held by council was illegal or that council violated the *Municipal Act* with respect to this closed session.

- 33** The Mayor and the Clerk said they recall seeing one member of the public in the gallery when the open session resumed and that members of the press were still in council chambers on the second floor. Neither the Mayor nor the Clerk could recall anyone else entering the gallery after council resumed in open session.
- 34** The video of the meeting shows that, upon returning to open session, the Mayor made the following comments regarding keeping the meeting open to the public:

I want to indicate that I have confirmed with the City Clerk and with the Manager of Security that the gallery is open and the gallery is going to remain open. This is an open government. I will just expect that anyone attending is to behave in a respectful manner and to follow the code of conduct that was established for this chamber...so I want everyone to be aware of that and to be clear that this remains an open chamber and people can observe their government as it happens.

Doors to City Hall

- 35** The Division Manager advised that the front doors to City Hall were locked during the disruption in accordance with normal security practices. This is consistent with the door “activity report” that we reviewed, which shows that the doors remained locked from 4:06 p.m. to 4:20 p.m., when council went in camera. During this time period, the doors were opened seven times. The doors can be opened momentarily by staff using an access card, by security staff in the main control room, or by someone inside the building pressing a button near the doors. The doors are unlocked for five to ten seconds, and lock again once closed.
- 36** The Division Manager told us that, shortly after the disruptive individuals left the building, he instructed security staff to unlock the doors to City Hall. He told us that he gave this instruction before the council meeting resumed in open session at 5:25 p.m., so that when he told the Mayor that the doors to the gallery were open, he believed that the front doors to City Hall were also open.
- 37** However, the “activity report” indicates that the doors remained locked until 6:06 p.m. Throughout this time period, the doors were unlocked momentarily a number of times. A summary of the timeline, based on the “activity report”, the meeting video, and the meeting minutes, is as follows:

4:04 p.m.	Council meeting begins.
4:06 p.m.	City Hall doors locked.
4:12 to 4:19 p.m.	Doors opened momentarily 7 times.
4:20 p.m.	Council goes in camera.
4:20 to 4:59 p.m.	Doors opened momentarily 26 times.
5:00 p.m.	City Hall doors locked.
5:00 to 5:25 p.m.	Doors opened momentarily 7 times.
5:25 p.m.	Council meeting resumes in open session. The Mayor announces that the doors are open.
5:27 to 6:06 p.m.	Doors opened momentarily 17 times.
6:06 p.m.	City Hall doors unlocked.
6:55 p.m.	City Hall doors locked.
6:56 to 7:14 p.m.	Doors opened momentarily 2 times.
7:14 p.m.	Council meeting adjourns.

- 38** According to this information, the doors to City Hall were locked while council was in open session from 5:25 p.m. to 6:06 p.m., and again from 6:55 p.m. until the meeting adjourned at 7:14 p.m.

Analysis

- 39** The *Municipal Act* and London's procedure by-law require meetings to be open to the public, except where the subject matter discussed falls within one of the exceptions to the open meeting rules.

Normal security procedures at City Hall

- 40** The Division Manager and the Manager of Corporate Security oversee the private security guards contracted by the city. The Division Manager informed us that the contracted staff are trained quarterly on security procedures.
- 41** The City of London does not currently have a written security protocol. We were informed that, following inquiries from our Office, staff began working to develop a written protocol.
- 42** According to the Clerk and security personnel, members of the public normally access the third floor public gallery via a bank of elevators on the first floor.

Under normal circumstances, the public can use the elevators to reach the gallery unescorted. There is no public access to the gallery by the stairs, as a security pass is required.

- 43** Corporate security and contract security staff advised that, when a large crowd attends a meeting at City Hall, access is restricted to the elevators, such that only 10 members of the public can move up to the third floor gallery at a time. If the maximum capacity of 90 allowed in the gallery is reached, the Clerk is able to open two committee rooms where the live webcast of the meeting can be shown.
- 44** The Manager noted that security staff understand that council meetings must remain open to the public. Security staff told us that they have the authority to clear the gallery if a security risk is presented, although as noted, this is not reflected in any written city policy or protocol.

Was the June 10 council meeting closed to the public due to measures taken to limit public access to council chambers?

- 45** On June 10, due to concerns about the large crowd outside, security staff followed procedures by locking the doors to city hall in order to control the number of persons allowed to access the public gallery at one time. Members of the public were to be escorted in small groups up to council chambers. Shortly after the first small group of public attendees arrived at the meeting, security staff determined it was necessary to clear the gallery due to a disruption.
- 46** Following the disruption, council went into closed session as permitted under the *Municipal Act* and the city's procedure by-law.⁵ The head of corporate security instructed staff to unlock the doors to City Hall while council was in camera, but the door activity reports indicate that the doors remained locked throughout the closed session. Following the closed session, the meeting resumed in chambers, but the doors to City Hall remained locked for another 41 minutes. The doors were then unlocked for 49 minutes, but were locked again during the final 19 minutes of the council meeting.
- 47** It is not clear whether anyone tried to enter the meeting during this period. The doors were momentarily unlocked 19 times during these two locked periods, but there is no way to determine whether any members of the public entered the building during these unlocked moments, or if the 19 instances reflect individuals

⁵ Note: The complainants did not allege that the in camera portion of the meeting was illegal or in violation of the *Act*.

leaving the building. There is no video of the lobby or entrance to City Hall. The complainants did not try to access the building during this time period, and could not provide contact information for any additional witnesses who may have attended at City Hall that day.

- 48** Where members of the public are not permitted access to attend and observe a municipal meeting, the meeting may be found to have been closed for the purposes of the open meeting rules.
- 49** While members of council did not intend to meet in private, this does not negate the fact that the public was barred from attending the meeting. In a 2016 report about a meeting held by council for the Town of Fort Erie, our Office found that a locked door that prevented the public from observing local government in process caused a meeting to be closed, despite attempts by the clerk in that case to monitor the door and admit members of the public on an ad hoc basis.
- 50** Council for the City of London did not intentionally prohibit members of the public from attending the June 10 council meeting. Instead, the doors were locked by security staff responding to a disruption. When council resumed in open session, the Mayor was informed that the public had access to council chambers to observe the meeting. However, this was not the case for large portions of the meeting because the doors to city hall remained locked.
- 51** Although the *Municipal Act* and the city's procedure by-law require that the public have access and be able to attend open meetings, this does not prevent appropriate measures from being taken in order to preserve security and maintain order of council meetings. However, once the security issue was resolved, the doors to City Hall remained locked to the public. While the Mayor and council believed that the meeting was open to the public, the public was not actually free to enter the building in order to access council chambers to observe the meeting. Although members of the public were able to watch the meeting online, this is not a substitute for allowing the public access to council chambers to observe the meeting. Those attempting to watch the meeting in person at City Hall did not have access to council chambers for a significant period of time while the front doors to city hall remained locked. During this time period, the meeting was not open to the public as it should have been.

Opinion

- 52** Despite the best intentions of the Mayor and council, security staff of the City of London failed to ensure that the doors to city hall were unlocked during an open

council meeting, effectively preventing members of the public from freely entering to observe government in process. Consequently, large portions of the June 10 council meeting were closed to the public contrary to the *Municipal Act*.

- 53** During our investigation, it became clear that the city does not have a written security protocol in place. We were advised that city staff began working on a written protocol following inquiries made by my Office. As a best practice, I encourage the City of London to ensure that a written security protocol is created, implemented, and made available to the public. This will increase the transparency around decisions made by security staff, particularly where a disruption or threat of disruption impacts the proceedings of council or a committee. It should also assist in preventing the same situation from occurring in the future.

Recommendations

Recommendation 1

All members of council for the City of London should be vigilant in adhering to their individual and collective obligation to ensure that the city complies with its responsibilities under the *Municipal Act, 2001* and its own procedure by-law.

Recommendation 2

The City of London should ensure that the public has unimpeded access to council chambers in order to observe all open meetings of council and committees.

Recommendation 3

The City of London should ensure that a formal written policy is created and implemented that sets out security protocols during meetings of council or committees.

Report

- 54** The city was provided with the opportunity to review a preliminary version of this report. No comments were received.

55 My report should be shared with council for the City of London and made available to the public as soon as possible, and no later than the next council meeting.



Barbara Finlay
Acting Ombudsman of Ontario