

BY EMAIL

February 24, 2023

Mayor Josh Morgan
City Clerk Michael Schulthess
Council for the City of London
300 Dufferin Avenue
London, ON N6B 1Z2

Dear Members of Council for the City of London:

Re: Closed meeting complaint

My Office received a complaint suggesting that members of council for the City of London met improperly behind closed doors ahead of a meeting of the city's Corporate Services Committee ("the Committee") on October 12, 2021. The complainant told us they believed that members of council met outside of a formal council or committee meeting to discuss filling a vacant council seat with a specific individual since members of the public knew to provide letters of support to council on that subject ahead of the meeting on October 12, 2021.

I am writing to share the outcome of my review. For the reasons set out below, I found no evidence that the Committee or council met privately to discuss the vacancy in advance of the Committee meeting on October 12, 2021. Therefore, the City did not contravene the open meeting requirements under the *Municipal Act, 2001*¹ (the "Act").

Ombudsman's role and authority

As of January 1, 2008, the Act gives anyone the right to request an investigation into whether a municipality has complied with the Act in closing a meeting to the public.² Municipalities may appoint their own investigator. The Act designates the Ombudsman as the default investigator for municipalities that have not appointed their own. My Office is the closed meeting investigator for the City of London.

¹ SO 2001 c 25.

² *Ibid* at s 239.1.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of open meeting cases. This searchable repository was created to provide easy access to the Ombudsman's 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 certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Review

My Office reviewed documentation related to the meeting on October 12, 2021 and spoke with witnesses, including the Clerk.

The Clerk provided, and we reviewed, additional materials relating to the council vacancy and appointment, including agendas and minutes for meetings held before and after the Committee meeting on October 12, 2021, where filling the council vacancy was discussed. We also reviewed related media articles provided by the Clerk.

Council vacancy

Following the resignation of a member of council in September 2021, council made the resignation letter public on September 27, 2021, and declared the seat vacant on October 5, 2021.

The agenda for the Committee's meeting on October 12, 2021 included "Filling of Vacancies on Municipal Council" as an item for discussion. The original agenda included two letters from the public supporting the appointment or nomination of a particular individual to fill the vacancy. This individual was the runner-up for the council seat in the 2018 municipal election. The Clerk told our Office that an amended agenda was published on October 11, 2021, which included more than 60 letters of support for the individual.

According to the open meeting minutes, the Corporate Services Committee was called to order at 12:01 p.m. on October 12, 2021.

The open meeting minutes note that a report dated October 12, 2021, entitled "Filling Vacancies on Municipal Council" was received along with the letters of support for a specific individual. The report outlined methods for filling vacancies on municipal council and recommended an appointment process rather than a by-election given the costs and the fact that municipal elections would be held within the year. The Committee passed a motion recommending that council appoint the individual named in the letters of support.³

³ At this meeting, another member of council announced their resignation, and the Committee also considered how to fill that second vacancy. That second vacancy was not part of the closed meeting complaint under review here.



On October 26, 2021, council accepted the Committee's recommendation and appointed the individual named in the letters of support to the vacant council seat.

Analysis

The complainant suggested that the 60-plus letters of support attached to the October 12, 2021 Committee agenda were evidence that members of council had, at some point ahead of the Committee meeting on October 12, 2021, secretly discussed having that individual fill the vacancy on council.

We found no evidence that council or Committee members met to discuss the vacancy ahead of the Committee meeting on October 12, 2021. The Clerk told us that he was not aware of any meeting of council or of the Committee to discuss the filling of the council vacancy before the meeting on October 12, 2021.

The fact of the vacancy had already been made public by the City at council's meeting on September 27, 2021, and had also been discussed in the media. The individual named in the letters of support had been the runner-up in the previous municipal election in 2018.

Conclusion

My review indicates that the City did not hold improperly closed meetings to discuss filling a vacant council seat in advance of the Committee meeting on October 12, 2021.

I would like to thank the City of London for its co-operation during my review. The Clerk has confirmed that this letter will be included as correspondence at an upcoming council meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Michael Schulthess, City Clerk, City of London

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