

Committee of the Whole (2) Report

DATE: Tuesday, June 21, 2022

WARD(S): ALL

TITLE: CLOSED MEETING INVESTIGATION REPORT REGARDING
THE SPECIAL COUNCIL (CLOSED SESSION) EDUCATION
AND TRAINING SESSIONS ON MAY 5, 2021 AND MARCH 22,
2022

FROM:

Wendy Law, Deputy City Manager, Legal and Administrative Services & City Solicitor

ACTION: DECISION

Purpose

This report provides Committee with the outcome of a closed meeting investigation conducted by the City's appointed investigator pursuant to sections 239.1 and 239.2 of the *Municipal Act*.

Report Highlights

- A closed meeting complaint was received with respect to two Special Council (Closed Session) Education and Training Sessions on May 5, 2021 and March 22, 2022
- The complaint was referred to the City's Closed Meeting Investigator
- The Closed Meeting Investigator concluded that the meetings "were properly held in closed session".

Recommendations

1. That the closed meeting investigation report of Cunningham, Swan, Carty, Little & Bonham LLP dated June 9, 2022 and set out in Attachment 1 to this report, be received; and,
2. That Procedure By-law 7-2011, as amended, be amended to make specific reference to Section 239(3.1), being a meeting being held for the purpose of educating or training of members, as a permitted type of closed meeting.

Background

Open Meeting Requirements of the *Municipal Act*

The *Municipal Act, 2001* (the “Act”) includes requirements in Section 239 that all meetings of a Council be open to the public. The Act does include exceptions to this requirement. In particular, a Council meeting may be closed to the public if the meeting is held for the purpose of educating or training the members (Section 239(3.1)), subject to the requirements of the Act.

Closed Meeting Complaints

The Act allows for any person to request that an investigation be undertaken respecting whether a municipality, local board, or a committee of either, has complied with the closed meeting rules contained within section 239 of the Act. A complaint was received by the City Clerk and referred to Local Authority Services for investigation, as the City’s contracted closed meeting investigator.

Previous Reports/Authority

[SPECIAL COUNCIL \(CLOSED SESSION\) EDUCATION AND TRAINING SESSION – MAY 5, 2021](#)

[SPECIAL COUNCIL \(CLOSED SESSION\) EDUCATION AND TRAINING SESSION – MARCH 22, 2022](#)

Analysis and Options

Closed Meeting Complaint

A closed meeting complaint was received by the City Clerk with respect to two Special Council (Closed Session) Education and Training Sessions on May 5, 2021 and March 22, 2022. The report of the closed meeting investigator indicated that the nature of the complainant’s concern was “that the education programming pertaining to the municipal election – which was addressed during both of the impugned meetings – was such that Councillors seeking re-election would have an unfair advantage vis-à-vis those who had not received the training, and that it should have been available to the public.”

Findings of the Closed Meeting Investigator

In order for a meeting of Council to be properly closed to the public, the following criteria 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.

On the matter of the passing of a resolution to move into a closed session, the investigator found that the “reports recommending a closed session are, in fact, highly detailed, and the particular way of proceeding resulted in the two impugned meetings being discussed not once but twice in open session.”

With respect to including the required information, the investigator found “On review of the resolution, any person would have a clear understanding of the nature of the meeting, and the basis on which it was closed” and that this requirement was met.

Finally, on the matter of the content of the meeting fitting into the cited exception, the investigator found that the “Topics were wholly appropriate and related specifically to the changing nature of Councillors’ roles during an election year, addressing such matters as restrictions on use of City resources during this period.”

In conclusion, the investigator found that “As our investigation revealed that all requirements under the Act and the Procedure By-Law were met, it is our finding that the meetings on May 5, 2021, and March 22, 2022, were properly held in closed session.”

Opportunities for Improvement

The investigator has recommended some “housekeeping” items with the intent of improving clarity around the education sessions. The investigator notes that these recommendations “should be seen not as an indication that the City’s procedure falls short of the requirements in any way”. The Office of the City Clerk embraces continuous improvement opportunities and the Clerk supports the implementation of the following recommendations:

1. Begin in open session and then resolving to move into closed session, and specifically citing the particular section of the Act relied upon in so doing; and,
2. Amend the Procedure By-Law to explicitly reference section 239(3.1) of the Act.

A recommendation in this report has been included to amend the Procedure By-law to address the suggested revision.

Obligation to Make Investigation Public

Section 239.2(11) of the *Municipal Act* requires that the municipality make the report of the closed meeting investigator public. The report has been included as Attachment #1.

Financial Impact

The cost of the investigation has not yet been invoiced by Local Authority Services (LAS). Under the City's contractual arrangements with the Local Authority Services, a business services arm of AMO, a \$200 per year retainer is paid to serve as the City's closed meeting investigator. A further fee paid at an hourly rate, plus taxes and reasonable out of pocket expenses, is also payable upon receipt of an itemized invoice. A filing fee of \$130 was paid by the complainant to the City at the time the complaint was filed.

Broader Regional Impacts/Considerations

Not applicable.

Conclusion

A closed meeting complaint was received by the City Clerk with respect to two Special Council (Closed Session) Education and Training Sessions on May 5, 2021 and March 22, 2022. The Closed Meeting Investigator found that the Education Sessions "were properly held in closed session."

For more information, please contact: Todd Coles, City Clerk, x8281

Attachments

1. Closed Meeting Investigation report of Cunningham, Swan, Carty, Little & Bonham LLP, June 9, 2022

Prepared by

Todd Coles, City Clerk, x8281

Approved by

A handwritten signature in black ink, appearing to read "Wendy Law".

Wendy Law
Deputy City Manager
Legal and Administrative Services
& City Solicitor

Reviewed by

A handwritten signature in black ink, appearing to read "Nick Spensieri".

Nick Spensieri, City Manager