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REPORT ON CLOSED MEETING INVESTIGATION 2024-01

THE CORPORATION OF THE COUNTY OF GREY

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COUNTY OF GREY

REPORT ON CLOSED MEETING INVESTIGATION 2024-01

I. INTRODUCTION

1. This is a report on the investigation of a request made in accordance with section 239.1 of the *Municipal Act, 2001*.¹
2. A formal request for a closed meeting investigation, dated October 21, 2024 (the “**Request**”), was filed with the Clerk of The Corporation of the County of Grey (the “**County**”), who forwarded the request to us as the closed meeting investigator (the “**Investigator**”). The Request seeks an investigation of a closed session of the Special County of Grey Joint All Council meeting held on August 8, 2024 (the “**Meeting**”).
3. The Request alleges that the Meeting contravened section 239 of the *Municipal Act, 2001*. The Request does not allege that the Meeting contravened the County’s Procedure By-law 5134-22 (the “**Procedure By-law**”), but it does allege that the process giving rise to the Meeting failed to comply with the County of Grey Collaborative Decision-making Framework.
4. Upon concluding our investigation, we have found that the allegations in the Request cannot be sustained. While the County issued a press release on August 21, 2024 and correspondence on October 3, 2024 describing much of what was discussed at the Meeting, we have nevertheless been careful in this report to not disclose information discussed or debated at the Meeting that remains confidential.

II. CLOSED MEETING INVESTIGATOR – AUTHORITY & JURISDICTION

5. The County appointed Local Authority Services Inc. (“**LAS**”) as its closed meeting investigator pursuant to section 239.1 of the *Municipal Act, 2001* by By-law 4460-70 on November 27, 2007. LAS has delegated its authority to act as closed meeting investigator to Aird & Berlis LLP pursuant to subsection 239.2(6) of the *Municipal Act, 2001*.
6. Aird & Berlis LLP was selected by LAS through a competitive procurement process to provide closed meeting investigation services to its participating municipalities. Aird & Berlis LLP was not directly selected by the County to act in this particular matter or in general as its closed meeting investigator.
7. Prior to accepting any investigation mandate, Aird & Berlis LLP conducts a thorough legal conflict search and makes other conflict inquiries to ensure our firm is in a position to conduct an independent and impartial investigation.
8. Our jurisdiction as Investigator is set out in section 239.2 of the *Municipal Act, 2001*. Our function includes the authority to investigate, in an independent manner, a request or complaint made by any person to determine whether the County has complied with section 239 of the *Municipal Act, 2001* and the County’s Procedure By-law in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation, together with any recommendations as may be applicable.

¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

III. REQUEST

9. The Request was properly filed pursuant to section 239.1 of the *Municipal Act, 2001*.
10. As indicated above, the Request alleges that the Meeting contravened the *Municipal Act, 2001*, particularly that Council was not entitled to convene in closed session for the entirety of the Meeting pursuant to clauses 239(2)(d) and (f) of the *Municipal Act, 2001*. The Request contends that Council discussed matters in closed session that went beyond the cited exceptions in its resolution to convene *in camera*. The assertion appears to be that parts of the closed meeting discussion ought to have been considered in whole, or at least in part, in open session.
11. The Request also contends that Council failed to comply with the process for shared service delivery between the County and local municipalities, as set out in the County of Grey Collaborative Decision-making Framework (the “**Collaborative Framework**”) which was adopted by Council in March 2013. The Request appears to suggest that since the Collaborative Framework was adopted by Council, it has the same force and effect as the Procedure By-law in governing the process and procedural requirements to be followed by Council. We disagree. Adherence to the process set out in the Collaborative Framework is outside the scope of our jurisdiction as Investigator.²

IV. REVIEW OF MATERIALS AND INQUIRY PROCESS

12. In order to properly consider the allegations in the Request and make our determinations on the issues, we have reviewed the following materials:
- the Request;
 - Open Meeting Agenda for the Meeting;
 - Closed Session Agenda for the Meeting;
 - Confidential Report presented at the Meeting (the “**Report**”);
 - Minutes of the Meeting;
 - Closed Session Minutes of the Meeting (the “**Minutes**”);
 - Report CAOR-GOV-03-13, attaching the Collaborative Framework; and
 - the Procedure By-law.

² Subsection 239.2(1) of the *Municipal Act, 2001* provides:

Investigator

239.2 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an investigator who has the function to investigate in an independent manner, on a complaint made to him or her by any person, whether the municipality or a local board has complied with section 239 or a procedure by-law under subsection 238 (2) in respect of a meeting or part of a meeting that was closed to the public, and to report on the investigation.

13. Following our review of materials, we conducted a telephone interview with the Clerk. The Clerk attended the Meeting and prepared the Minutes; she had direct, relevant knowledge about the subject matter of the Request and what took place at the Meeting. We also interviewed the County's Director of Human Resources who attended the Meeting and conveyed legal advice from the County's lawyer. We did not believe that it was necessary to interview any other persons at the Meeting.

14. We also had recourse to the provisions of the *Municipal Act, 2001*, and such secondary sources and case law as we considered applicable to the issues raised in the Request.

15. Although not binding on us, we also reviewed and considered reports of other closed meeting investigators in order to assess our findings and make our determinations.

V. THE MEETING

16. The Meeting took place on August 8, 2024. As a special joint meeting, the following procedures were agreed to:

- The County would maintain all records of the Meeting;
- quorum was to be determined by 50% plus one of all elected officials across Grey County; and
- any votes taken would be determined by a simple majority.

17. The members of the local municipalities present at the Meeting ("**Council**") adopted the following procedural motion, being Item JC01-24, which provides that the Procedure By-law would govern the procedure of the special joint meeting:

That the Special Grey County Joint All Council meeting adopts the content of the agenda as presented and Grey County Procedural By-law 5134-22 to govern the procedure of its August 8, 2024, joint meeting of the County of Grey and the municipalities of the Town of The Blue Mountains, City of Owen Sound, Township of Georgian Bluffs, Municipality of Meaford, Township of Chatsworth, Township of Chatsworth, Municipality of Grey Highlands, Town of Hanover, Municipality of West Grey, and Township of Southgate.

18. The Open Meeting Agenda included the following as Item 7:

7. CLOSED SESSION

That the Special County of Grey Joint All Councils meeting does now go into closed session pursuant to Section 239(2) of the Municipal Act, 2001, as amended to discuss:

- Labour relations or employee negotiations and advice that is subject to solicitor-client privilege (Shared Service Delivery & Service Efficiencies)**

19. Council passed a resolution to convene in closed session that repeated the above wording.

20. The *in camera* portion of the Meeting was called to order at 8:48 a.m. Council received the Report and presentation from senior members of staff regarding a centralized planning service delivery model in the context of the potential impacts of such a model on existing local and County planning staff. The Minutes note that Council accepted the Report and provided direction to staff to discuss the proposed new planning model with planning staff.

21. Council reconvened to the open portion of the Meeting adjourned at 9:58 a.m.

22. The Open Session Minutes report as follows:

Reconvene in Open Session and Report

The Warden confirmed that the only items discussed were those cited in the motion to move in camera, and that direction was given to staff.

23. This was the final order of business at the Meeting prior to the enactment of the Confirmatory By-law.

VI. ANALYSIS

(1) Procedure for the Joint Special Meeting

24. The Request alleges that the Meeting failed to comply with the process for considering shared services set out in the Collaborative Framework. As indicated above, implementation of the Collaborative Framework is beyond the scope of our investigation. The Collaborative Framework is silent on the procedure for joint meetings.

25. Given the nature of the Meeting as a special joint meeting of all councils, we have reviewed and considered the procedure followed at the Meeting and concluded that the Meeting met all procedural requirements and best practices.

26. The *Municipal Act, 2001* does not specify the procedural requirements for a joint meeting. Similarly, there are no explicit provisions in the Procedure By-law for joint meetings. Nevertheless, the *Municipal Act, 2001* acknowledges that joint meetings may occur, with a reference to same in subsection 236(2) of the statute, which addresses the location requirements for meetings (and joint meetings).

27. While the *Municipal Act, 2001* is silent as to a specific process, it can be understood that the correct approach is one of common sense that ensures that the fundamental principles of transparency and good governance are achieved and the intent of the open meeting rule provisions in the *Municipal Act, 2001* are met.

28. The Ontario Ombudsman has considered other closed meeting investigation requests where the meeting at issue was ostensibly a joint meeting. For example, in *Village of Burk's Falls and Township of Armour*, the Ombudsman found that the two municipalities had, in fact, held two separate, concurrent meetings of their own councils even though they had met together to discuss matters of mutual interest. As a result, there were two separate agendas, two sets of minutes and each council was required to abide by its own procedural by-law.³ Additionally, the clerks of each

³ Ontario Ombudsman, [Village of Burk's Falls and Township of Armour](#) (October 28, 2015) at para. 19.

municipality had cited different closed meeting exceptions for the same meeting and had not agreed or discussed a process for the meeting ahead of time.⁴ The Ombudsman provided this background in its report because it provided separate recommendations for each municipality. Notably, the Ombudsman wrote that, “much of the confusion surrounding the process could have been avoided if the two municipalities had discussed the meeting in advance and agreed to follow the applicable procedures for an individual or joint meeting.”⁵

29. The Meeting in the present case is entirely distinguishable. It is clear from the materials provided that the clerks of all municipalities coordinated in advance of the Meeting on the procedures to be followed during the Meeting, including in respect of record keeping, quorum and voting. Moreover, all members present at the meeting passed a procedural motion at the outset, agreeing that it was the County’s Procedure By-law that would govern the proceedings.

(2) Statutory Framework for Closed Meetings

30. Ontario’s “open meeting” rule is set out in section 239 of the *Municipal Act, 2001*, which requires that all meetings of a municipal council be held in an open forum where the public is able to attend and observe local government in action. There are, however, a number of exceptions to this rule. These exceptions balance the need for confidentiality in certain matters with the public’s right to information about the decision-making process of local government.⁶

31. Subsection 239(2) sets out the exceptions that permit a council to hold a meeting that is closed to the public, including the following exceptions which were cited in the resolution to convene *in camera*:

Exceptions

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

...

(d) labour relations or employee negotiations;

...

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

(3) Exception for Labour Relations or Employee Negotiations

32. The closed meeting exception in clause 239(2)(d) allows a council to hold a meeting in the absence of the public where it will discuss labour relations or employee negotiations. The purpose of this exception is to protect discussions regarding the relationship between a municipality and its employees.

⁴ *Ibid* at para. 32.

⁵ *Ibid* at para. 34.

⁶ Stephen Auerback & John Mascarin, *The Annotated Municipal Act*, 2nd ed., (Toronto, ON: Thomson Reuters Canada Limited, 2017) (e-loose leaf updated 2021 – rel. 1) annotation to s. 239.

33. The term “labour relations” can extend to relations and conditions of work beyond those related to collective bargaining.⁷ Accordingly, this exception allows for discussion of changes to staffing, workload and the role of employees, as well as the qualifications and compensation of specific employees.⁸

34. The Ontario Ombudsman has held that while, in general, the labour relations exception does not apply to discussions regarding an organizational review or restructuring, the exception may apply to a discussion relating to reorganization as it affects employees and their roles.⁹

35. The presentation to Council and subsequent discussion focused on the staffing impacts of a shared planning services model. In this instance, background information about shared planning services was presented as context for Council’s consideration of whether to direct senior staff to take the next step to advise planning staff that the County and local municipalities were considering restructuring the delivery of planning services.

36. Based on our review of the evidentiary record and our interview with the Clerk, it is apparent that the main topic and focus of the Meeting fell within the scope of the labour relations exception as set out in clause 239(2)(d) of the *Municipal Act, 2001*.

(4) Exception for Solicitor-Client Privilege

37. The closed meeting exception in clause 239(2)(f) allows a council to close a meeting to the public where it will discuss legal advice. The purpose of this exception is to ensure that council can speak frankly about legal advice without fear of disclosure.

38. To be subject to solicitor-client privilege, a matter must be:

- a communication between a lawyer and a client where the lawyer is acting in a professional capacity,
- made in relation to the seeking or receiving of legal advice, and
- intended to be confidential.¹⁰

39. This exception may only be used when advice from a solicitor exists for council’s consideration.¹¹ Based on our review of the confidential Meeting Minutes and our discussion with the Clerk and the County’s Director of Human Resources, we are of the opinion that legal advice from the County’s solicitor was presented by the County’s Director of Human Resources at the Meeting and that the advice was intended to remain confidential.

⁷ *Ontario (MOHLTC) v. Ontario (IPC)*, [2003] O.J. No. 4123 (C.A.).

⁸ Ontario Ombudsman, [City of Welland](#) (November 18, 2014) at paras. 38-40.

⁹ Ontario Ombudsman, [City of Sault Ste. Marie](#) (August 2, 2016) at para. 22. See also Ontario Ombudsman, [Letter to the Town of Amherstburg](#) (December 9, 2013).

¹⁰ *Solosky v. the Queen*, [1980] 1 S.C.R. 821 at p. 837.

¹¹ Ontario Ombudsman, [City of London](#) (June 12, 2015) at para. 26.

40. We note that the test does not require a lawyer to be present at a meeting to give rise to this exception (and conversely, the mere presence of a lawyer at a meeting is not sufficient to rely on the exception). In the absence of a lawyer at a meeting, legal advice may be communicated either in writing or conveyed by a member of staff, which is what occurred in this case.¹²

(5) Entire Meeting should Not have been Closed

41. The Request suggests that the primary topic of discussion at the Meeting was shared planning services, and while this will affect employees, other considerations such as the impact on the public, municipal finances, and effective planning are more important considerations. On that basis, we understand the allegation to be that Council should not have held the entire Meeting in closed session. The Request notes:

As every decision of Council affects a municipality's employees to some degree, if Grey County's position is allowed to stand, then there would be no further need for any public meetings of Council as all one would need to do is say it affects employees...

42. In the present case, we questioned the Clerk regarding the staff presentation and questions from members of Council. The Clerk confirmed that the primary discussion at the Meeting related to the staffing implications of a shared services model.

43. We understand that there were some additional questions by members of Council regarding implementation of the shared services model, but it was clear that these matters were to be addressed in greater detail if staff were directed to move forward to review and report out on a new shared services model.¹³

44. The courts have recognized that it is unrealistic to expect members of municipal council to parse their meetings to include only discussion of discrete matters that fall within the cited exception. The Ontario Divisional Court considered this issue in *St. Catharines (City) v. Ontario (Information & Privacy Commissioner)* and commented:

The decision determined that only parts of the meeting could be closed. How is such a meeting to be conducted? Whenever a participant interrupts the consideration of the disposition of land to refer to any other option being considered or to review any part of the history or background, the meeting would have to adjourn to go into a public session and then close again when the discussion returned to consider the sale of property. It is not realistic to expect the members of a municipal council to parse their meetings in this way. At a minimum, it would detract from free, open and uninterrupted discussion. It could lead to meetings that dissolve into recurring, if not continuous, debate about when to close the meeting and when to invite the interested public to return.¹⁴

¹² Ontario Ombudsman, [City of Niagara Falls](#) (November 3, 2016) at para. 37.

¹³ We note that [Report PDR-CW-52-24 Investigating a Model for Planning Efficiencies and Shared Service Delivery](#) was received by County Council at its meeting on September 12, 2024. This report recommends that correspondence be sent to each lower-tier municipality to request feedback on a potential centralized planning service model, specifically requesting input on implementation of the model.

¹⁴ *St. Catharines (City) v. Ontario (Information & Privacy Commissioner)* (2011), 81 M.P.L.R. (4th) 243 (Ont. Div. Ct.).

45. It is our view that it would not have been realistic or desirable in the circumstances to expect Council to parse its discussions in this case.

46. In our opinion, the focus of the Meeting was directly related to the subject matter for which Council resolved to convene in closed session. Even if there were some parts of the discussion that could possibly have been held in open session, we find that those portions of the Meeting were inextricably linked to the *in camera* discussions which were properly held in a closed setting.

VII. CONCLUSIONS

47. For all of the reasons set out above, we have determined that Council did not contravene the *Municipal Act, 2001* and did not hold an improper Meeting. Council was entitled to consider the Report in closed session pursuant to the closed meeting exceptions in clauses 239(2)(d) and (f) and to give direction to staff based on that report.

48. This Report has been prepared for and is forwarded to Council for its consideration pursuant to section 293.2 of the *Municipal Act, 2001*.

49. As Investigator, we have discretion under the *Municipal Act, 2001* to disclose such matters in our report as we determine ought to be disclosed to establish our conclusions and recommendations. We have exercised that discretion in this Report.

50. We recommend that this Report be made public by publishing it on a Council agenda.

Respectfully submitted,

AIRD & BERLIS LLP



Meaghan Barrett

Closed Meeting Investigator for The Corporation of the County of Grey

Dated this 23rd day of January, 2025

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